

**AGREEMENT BETWEEN CITY AND ENGINEER  
FOR PROFESSIONAL SERVICES**

**PHASE 2 FINAL DESIGN AND PERMITTING STORMWATER  
MANAGEMENT AND CONVEYANCE IMPROVEMENTS**

THIS IS AN AGREEMENT effective this 20<sup>th</sup> day of June, in the year Two Thousand Sixteen by and between the City of Aurora (CITY) and CEMCON, Ltd. (ENGINEER).

CITY hereby retains ENGINEER to perform professional services in connection with the South Eola Road Stormwater Management and Conveyance Improvements (Assignment).

CITY and ENGINEER, in consideration of their mutual covenants as set forth herein agree as follows:

**ARTICLE 1 – ENGINEER’S SERVICES**

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**1.01 Scope of Services**

**PROJECT DESCRIPTION**

CEMCON, Ltd. initially completed and submitted to the CITY in January of 2014 a Preliminary South Eola Road Flooding Analysis and Report along with the digitized version of the Pond Pak model and backup documentation in accordance with the scope of services outlined in Purchase Order 274386 issued by the CITY 9/25/13. To achieve the desired objective of lowering the flood levels on Eola to a manageable six inches or less, the study area had to be expanded to include the Wheatland Heights and Misty Ridge Townhome Subdivisions and Misty Creek basin to the west as well as the northerly part of the Deerbrook Subdivision south of Hafenrichter Rd. By directing overflows from SWMF #2 (Wheatland Unit 1A) westward to the Misty Creek Basin it appeared, on the basis of a preliminary flood routing of the system, that the objective to lower design storm flood levels on Eola could be achieved. However, the scope of work in the initial P.O. #274386 did not include and weather/snow cover conditions did not facilitate the field survey work and investigation needed to verify as-constructed storm sewer sizes, overland flood route topographic features, flowlines, storage volumes, outlet control devices, and key utility conflicts which could all materially effect the performance characteristics predicted by the model and eventual cost of the retrofits.

The CITY then authorized and approved P.O. #279195 in January of 2015 to expand the scope of this design study to obtain and compile the necessary additional field survey work, including potential utility conflicts between SWMF #3 and SWMF #2; to refine the PondPack model accordingly and conduct iterative flood routings to confirm the conclusions reached in the initial study and report; to prepare Phase 1 Design Studies with exhibits and preliminary plans of the essential components comprising the replacements, retrofits, and additional improvements needed in the stormwater management system to achieve the desired objectives; and to prepare Engineer's Preliminary Opinions of Probable Construction Cost for the various components and establish priorities for construction of each component.

Those expanded Phase 1 Design Study professional services were partially completed in June of 2015 with the submittal of a first draft report which was subsequently revised and amended in September of 2015 to incorporate a number of additional refinements and alternative flood routing routines requested by CITY staff as well as to further explore the optimal combination of stormwater management and conveyance system retrofits. As an outcome of those additional flood routing analyses, a more effective sequence of improvements and a schedule of implementation was devised and summarized in an amended final Report which was subsequently approved by CITY staff. That amended Report and the Engineer's Conceptual Opinion of Probable Construction Cost is hereby incorporated by reference as Exhibit A.

As the performance characteristics of the five major stormwater management and conveyance system Sequences that were recommended, some of which have several optional features and are highly interdependent, there are numerous combinations and permutations that can be furthered explored in the PondPack Model. CITY staff has elected to evaluate a modified Sequence 1 (conveyance from SWMF #3 at Eola Road to SWMF #2 west of Ellington Drive) by incorporating a high stage drop structure east of Ellington Drive coupled with a larger diameter (48 inch) storm sewer between Ellington Dr. and SWMF #2. The City has also requested flood routing runs for the critical duration 2 and 10-year design storms in addition to the critical 100-year design storm and to plot stage vs. time graphs for each of the SWMF in the system. The 2, 10 and 100-year critical design storm HGL's between SWMF #3 and the Misty Creek Basin (SWMF #17) will then be plotted on the profile view of the intermediate storm sewer system. There is also certain additional field survey work that will need to be undertaken at the Misty Creek Basin to determine why the perimeter storm sewer and underdrain systems are not functioning and to assist the City Public Works Dept. in some sub-surface exploration work to determine the vertical location of water mains and gas mains as well as to obtain horizontal ties to JULIE utility markings (at select locations to be designated by ENGINEER). Base Sheets will then be revised and updated to include this additional information and approximate locations of utilities from atlases.

Final Design Plans, specifications, supporting documents and special provisions will then be prepared in one consolidated set of Contract Documents for each of the various Sequences with selected options as described in Exhibit A and as set forth below:

**STORMWATER MANAGEMENT AND CONVEYANCE COMPONENTS  
TO BE INCORPORATED INTO CONTRACT DOCUMENT (see Exhibit A)**

*SEQUENCE 1* - with or without Option 1 - high stage drop structure and 48 inch storm sewer

*SEQUENCE 5* - (instead of Sequence 2) with Option 2 - 24 inch low stage conveyance system through SWMF #2 and Corridor

*SEQUENCE 3A & 3B* - with enhanced inlet capacity and additional conveyance (30 inch storm sewer) under Royal Lane

*SEQUENCE 4* - modify outlet control structure at Misty Creek Basin and retrofit existing perimeter storm sewer (not now functioning) excluding retrofits to the underdrain system which is of dubious value

*SEQUENCE 6* - minor retrofits to outlet control structures at SWMF #4 and SWMF #5 (Barrington Drive)

*SEQUENCE 7* - removal of low flow restrictors and retrofit of control structure at SWMF #1 (as a preventative maintenance measure)

The various tasks to be performed and provided by ENGINEER in this process are described as follows:

**A1.01 SUPPLEMENTAL FIELD SURVEY WORK & INVESTIGATION**

**1. Utility Conflicts/Julie Stake-Outs (Task 00120)**

Utilizing the plan views on the preliminary base sheets previously prepared and incorporated into Exhibit A, mark and delineate on those base sheets the street crossings and corridors where potential utility conflicts will need to be further investigated. Draft a letter to be sent to JULIE under City letterhead advising JULIE of the scheduled sub-surface exploration by City PWD Crews and Geotechnical Consultants along the construction corridor. Contact utility companies to obtain atlases and records of utility locations. Furnish the draft letter, notice, and mark-up base sheets to the City for transmittal to JULIE. Thereafter, ENGINEER will coordinate with JULIE, City PWD Crews, and the Geotechnical Consultant on scheduling the various tasks to coincide with JULIE locates. When JULIE has completed marking and flagging the various utility routes, undertake field survey work to tie the horizontal locations and alignment of such utilities which were marked or can be discerned from the ground surface and incorporate this information into the final design plan and profile base sheets.

**2. City of Aurora Sub-Surface Exploration (Task 00160)**

At those limited locations where proposed storm sewer system improvements will cross existing City of Aurora water mains or NICOR gas mains, assist City Public Works

personnel in determining the vertical elevation of existing water mains at these crossings through the use of hydraulic drills or puddling machines. Plot the approximate profile of existing water mains and/or gas mains at such crossings on the plan and profile views of the final design base sheets based on this information.

**3. Landscape Improvements and Photographic Panoramas of Proposed Storm Sewer Routes (Task 00180)**

Undertake additional field survey work to measure and obtain the location and material composition/physical characteristics of planimetric features within the proposed storm sewer system corridors including additional details of trees and landscape improvements and obtain photographs of the corridor to document the nature and condition of such improvements. In coordination with City PWD Crews, arrange for the Misty Creek Basin perimeter storm sewers to be pumped down to expose inverts, pipe sizes, materials, and sediment levels, and ascertain if the underdrain system was actually constructed and/or is functioning. Compile and integrate the digital images into corridor exhibits to be furnished to the CITY as documentation of existing conditions and incorporate all of the additional field survey data into the topographic and planimetric base sheets for the corridor.

**A1.02 PROGRAMMING/DESIGN DEVELOPMENT AND NEGOTIATIONS WITH PARK DISTRICT**

**1. Consultation and Assistance with Park District Negotiations (Task 00250)**

If requested by CITY staff, assist in the negotiations with Park District personnel in securing any needed easements for construction work through the park (SWMF #2) by participating in meetings, presenting and explaining the merits of the proposed stormwater management system retrofits and improvements in reducing the frequency and depth of inundation within the Park, and defining the minor regrading work proposed and the nature and scope of restoration work to be implemented. Prepare grant of easement survey exhibits and grant of easement documents based on the public record and the limits of construction as set forth in Exhibit A.

**2. Additional Flood Routing Iterations (Task 00320)**

Utilizing the PondPack Computer Model previously developed and refined, conduct additional flood routing iterations to assess the relative effectiveness of constructing a high stage drop structure and larger size storm sewer conveyance system for SWMF #3 (Eola Rd.) to potentially further lower flood stages on Eola Rd. (below the gutter line) without concurrently increasing depths of inundation in SWMF #2 (park site) or flood flows through the corridor. Also flood route the system for the 2 and 10 year critical duration storm events and plot graphs of stage vs. time for each of the SWMFs in the system and plot the HGL's for the 2, 10 and 100-year critical storm events through the conveyance system between SWMF #3 and SWMF #17 (Misty Creek). Draft a supplement to Exhibit A describing these findings and review with CITY staff for possible inclusion or alterations in the Sequence 1 improvements. Amend the EOPCC to quantify any additional costs.

### **3. Soils Investigation (Task 00486)**

Solicit on behalf of the CITY proposals from qualified geotechnical firms to undertake soils investigations along the route of the proposed storm sewer extensions including the furnishing of base sheets with suggested likely locations for sub-surface borings. Upon completion of the sub-surface investigation, plot and delineate the boring logs on the base sheets to help allay concerns by prospective bidders on adverse soil conditions.

4. Review with City the possible retrofits to the Misty Creek basin perimeter drainage system to determine if it would be worthwhile to replace or retrofit all or portions of that system.

## **A1.04 CONSTRUCTION DOCUMENTS**

### **1. Final Design Plans, Permit Applications and Supporting Documents (Task 00430)**

Utilizing the revised and expanded plan and profile base sheets prepared in Sections A1.01 and A1.02 above, and based on the additional directives from CITY staff on the optional items to be included with each Sequence, and on the outlet enhancements for SWMF #3 and Misty Creek basin perimeter drainage system prepare for incorporation into the Contract Documents one consolidated set of Final Design Plans and Specifications to show the character and scope of the work to be performed by contractors on the Project which shall consist of the infrastructure systems, components, and incidental work as set forth below:

### **INFRASTRUCTURE SYSTEMS AND COMPONENTS**

- i). Storm sewer extensions as described in Exhibit A for the following:
  - a.) *SEQUENCE 1* - with possible addition of high stage drop structure and larger storm sewer extension from Ellington Dr. to SWMF #2 (see Exhibit B-1 of Exhibit A)
  - b.) *SEQUENCE 5* - with option 2 from SWMF #2 through the corridor to Royal Lane as shown on Exhibit B-1 and B-2 to Exhibit A
  - c.) *SEQUENCE 3A and 3B* - with increased inlet capacity and conveyance at and across Royal Lane as shown on Exhibit B-2 of Exhibit A
  - d.) *SEQUENCE 4* - retrofits to outlet control structure of Misty Creek Basin (SWMF #17) with possible inclusion of repairs and retrofits to the perimeter drainage system as shown on Exhibit B-3 of Exhibit A
  - e.) *SEQUENCE 6* - retrofits to control structures at SWMF #4 and SWMF #5 as shown in Exhibit C to Exhibit A
  - f.) *SEQUENCE 7* - removal of internal weir wall and orifice in the control structure for SWMF #1 as described on page 15 of Exhibit A

- ii.) Repairs/replacement of public street pavements and sidewalks
- iii.) Utility structure adjustments, repairs, or replacements occasioned by the construction of or conflicts with the above storm sewer improvements
- iv.) Detailed grading and incidental surface drainage modifications incidental to construction and/or as shown on Exhibits B-1, B-2 and B-3 of Exhibit A (SWMF #1, SWMF #2, SWMF #17)
- v.) Erosion and sedimentation control measures and devices and best management practices, tree protection and/or replacements, NPDES/NOI (see also A1.03-3)
- vi.) Possible enhanced outlet system for SWMF #3 and perimeter drainage replacements / retrofits for the Misty Creek basin.
- vii.) Maintenance of Traffic Plan to depict lane closures and describe the means, methods, and techniques for traffic controls including standard details and specifications.

## **2. Permit Applications and Supporting Documents (Task 00445)**

Review the initial set of Final Design Plans with the CITY and confirm design assumptions, design criteria, and the general sequence of construction best suited for the Project and the affected neighborhoods.

Conduct a quantity take-off and prepare a separate Schedule of Quantities and an Engineer's Opinion of Probable Project Cost for each Sequence of the project based on the Contract Documents.

Present and review copies and prints of these instruments of service with the CITY.

Submit the Final Design Plans, Specifications, Special Provisions and Engineer's Opinion of Probable Construction Cost to the CITY and possible agencies exercising jurisdiction over the Project (see below); make changes and revisions requested with the concurrence of the CITY, attend meetings and conferences with public officials, and assist CITY in obtaining permits. Construction documents, contract forms, standard specifications and bid forms to be incorporated into the contract documents shall be those furnished by the City.

It is the City's intention that the project is to be designed in general conformance with the condition of IDNR-OWR Regional Permit #03 and Statewide Permit #07 (self-issuing permits). ENGINEER will provide to the City a narrative substantiating conformance with these general conditions. ENGINEER will also file with the USCAE a request for a "No Objection" clearance and file with the IHPA a request for sign-offs on historical preservation and with IEPA for an endangered species sign-off (see also Paragraph 3 Section A1.04 for NPDES NOI). It is not certain at this time what if any additional documentation these agencies may request in processing these sign-offs which records of documentation ENGINEER is unlikely to possess. The City, in that event, will need to marshal its resources in researching files and/or in retaining special consultants to perform investigations and prepare reports.

**3. Stormwater Pollution Prevention Plan and NPDES NOI (Task 00473)**

Prepare on behalf of CITY a "Storm Water Pollution Prevention Plan" and technical documentation, as well as Notice of Intent (NOI) to discharge stormwater from the I.E.P.A. "National Pollutant Discharge Elimination System" (NPDES) Rules and Regulations issued October 20, 1992. Said plan will include provisions for CITY to provide on-site observation and monitoring services to assess and/or administer the implementation of the Storm Water Pollution Prevention Plan, as well as the maintenance procedures and structural control measures incident to the Plan, and once every seven (7) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater or equivalent snowfall, conduct construction site observations, measurements and other quantitative and qualitative analysis by qualified personnel to determine conformance with the intent of the Plan. Based on these observations, measurements and analyses, CITY will be responsible during the construction phase to make recommendations for amendments to structural practices, stabilization procedures, stormwater management operations, and other controls to better accomplish the desired objectives. CITY will be responsible to also prepare reports, retain records, and otherwise assemble documentation and a log of compliance activity in accordance with N.P.D.E.S. guidelines.

**A1.05 BIDDING OR NEGOTIATING PHASE (TASK 00500)**

- A. When authorized to proceed with the bidding or Negotiating Phase, ENGINEER shall:**
1. Furnish to the CITY prints, copies, and/or the electronic media version of ENGINEER's Instruments of Service for City's use in procuring bids and issue and disseminate addenda and bid clarifications to the contract documents to prospective bidders.
  2. Consult with and advise CITY as to the acceptability of subcontractors and other persons and organizations proposed by prime contractor(s) (hereinafter called "Contractor(s)" for those portions of the work as to which such acceptability is required by the Contract Documents.
  3. Consult with and advise CITY as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.
  4. Assist CITY in evaluating the responsiveness and competitiveness of bids or proposals received, review the bid analysis and issue an opinion for consideration by CITY, attend meetings and conferences to discuss award of contracts and assist in preparation of Contract Documents for execution by CITY and Contractor(s).

**A1.06 CONSTRUCTION PHASE**

**A. Upon successful completion of the Bidding and Negotiating Phase, ENGINEER shall:**

**1. Post Bidding and Negotiating (Task 00600)**

At the request of CITY, attend a pre-construction conference with CITY's construction inspector representative and contractor prior to commencement of the work to clarify design intent and the sequence of construction and special conditions attendant to the Project.

2. Other than post bidding and negotiations, ENGINEER shall have no further duties during the construction phase under this Agreement and the City will undertake and contract separately for such services including NPDES monitoring and reporting.

**A1.07 RECORD DOCUMENTATION & PERMIT CLOSE-OUT PHASE (Task 00700)**

ENGINEER has not been retained under this Agreement for record drawings or permit close-out phase services.

**ARTICLE 2 – CITY'S RESPONSIBILITIES**

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**2.01 General**

A. CITY shall have the responsibilities set forth herein and in Exhibit B.

**ARTICLE 3 – TIMES FOR RENDERING SERVICES**

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**3.01** ENGINEER's services will be performed as stipulated herein and in accordance with Exhibit B.

**3.02** If ENGINEER's services are delayed or suspended in whole or in part by OWNER, ENGINEER shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

**3.03** City, at its sole discretion, shall have the right to direct ENGINEER to suspend his work under this Agreement in whole or in part by giving seven (7) days written notice to ENGINEER. In this event, ENGINEER shall be paid for all services actually performed and reimbursable expenses incurred prior to written notice by City. If the Project is



resumed after being suspended for more than six (6) months, ENGINEER's fee shall be subject to renegotiation.

## **ARTICLE 4 – PAYMENTS TO ENGINEER**

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### **4.01 Methods of Payment for Services of ENGINEER**

For Basic Services having a Determined Scope - Direct Labor Costs plus Overhead plus a Fixed Fee method of payment.

A. CITY shall pay ENGINEER for Basic Services set forth in Article 1 above as follows.

1. An amount equal to ENGINEER's Direct Labor Costs plus a Factor of 1.5 times direct labor cost for overhead for the services of ENGINEER's employees engaged on the Assignment, plus a fixed fee of \$6,008.82 as well as reimbursable expenses not to exceed \$1,600.00 (see Appendix 1, IDOT prequalification and Exhibit C attached).
2. ENGINEER's Reimbursable Expenses Schedule is attached as Appendix 1.
3. The total compensation for services excluding reimbursable expenses above shall be limited to \$47,400.00 (based on totals from Exhibit C, see attached) assumed distribution of compensation.

Total compensation including reimbursable expenses shall not exceed \$ 49,000.00.

4. ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by CITY.
5. ~~The amounts billed for ENGINEER's services will be based on the applicable Direct Labor Costs charged to the Assignment by ENGINEER's employees during the billing period multiplied by the above-designated Factor, plus a portion of the fixed fee and Reimbursable Expenses incurred during the billing period limited to no more than 40 hard copy paper sets of plans and specifications and up to four PDF transmittals thereof.~~
6. Direct Labor Costs means salaries and wages paid to employees but does not include payroll related costs or benefits (overhead).
7. The Direct Labor Costs Factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead, which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects,

plus indirect operating costs, including but not limited to, business taxes, legal expense, rent, utilities, office supplies, insurance, and other operating costs.

8. Payment of fees and expenses by the CITY to ENGINEER shall be due sixty (60) days from receipt of invoice.

## **ARTICLE 5 – DESIGNATED REPRESENTATIVES**

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**5.01** Contemporaneous with the execution of this Agreement, ENGINEER and CITY shall each designate specific individuals as ENGINEER's and CITY's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of CITY under this Agreement. Such individuals shall have authority to transmit instruction, receive information, and render decisions relative to the Assignment on behalf of their respective party.

## **ARTICLE 6 – CONTENT OF AGREEMENT**

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**6.01** The following Exhibits are incorporated herein by reference:

- EXHIBIT A - South Eola Road Supplemental Flood Routing Analyses and Phase 1 Design Report
  - EXHIBIT B - General Conditions
  - EXHIBIT C - Labor Cost Table
  - APPENDIX 1 - Schedule of Reimbursements Expenses
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IN WITNESS WHEREOF, the **parties** hereto have executed this Agreement, the EFFECTIVE DATE of which is indicated on Page 1.

CITY:

\_\_\_\_\_

ENGINEER:

\_\_\_\_\_ *CEMCON, LTD.*

By: \_\_\_\_\_

By: \_\_\_\_\_ *Randall W. Bus*

Title: \_\_\_\_\_

Title: \_\_\_\_\_ *CEO*

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_ *6/28/14*

Address for giving notices:

**City of Aurora**  
44 East Downer Place  
Aurora, IL 60507  
630-256-3201

Address for giving notices:

**CEMCON, Ltd.**  
2280 White Oak Circle, Suite 100  
Aurora, IL 60502  
630-862-2100

**Designated Representative**  
(paragraph 5.01)

Mark Phipps, P.E.

Title: Project Coordinator

**Designated Representative**  
(paragraph 5.01)

Randall W. Bus, P.E.

Title: CEO

Ken Schroth, P.E.

Title: Director of Public Works and City Engineer

Phone Number: 630-256-3201

Phone Number: 630-862-2100

Facsimile Number: 630-256-3229

Facsimile Number: 630-862-2199

E-mail Address: [kschroth@aurora-il.org](mailto:kschroth@aurora-il.org)

E-mail Address: [randyb@cemcon.com](mailto:randyb@cemcon.com)

**APPENDIX I**

**SCHEDULE OF STANDARD REIMBURSABLE EXPENSE RATES**

**CEMCON, LTD.  
MATERIAL RATES  
NOVEMBER 1, 2015 THROUGH OCTOBER 31, 2016**

**II.**

**STANDARD MATERIAL RATES**

Printing (In-House)	\$ 0.40 / s.f.
Xeroxing (In-House)	0.10 / copy
Vellum	0.50 / s.f.
Sepia Mylar	1.90 / s.f.
Outside Services, Printing & Graphics	Cost + 10%
Transfer of Electronic Media (Per Occasion)	\$ 75.00 – 150.00
HP Color Exhibits (In-House)	1-2 \$5.00 / s.f.
	3+ \$4.00 / s.f.

*The above Standard Rates are effective for services rendered during CEMCON, Ltd.'s fiscal year November 1, 2015 through October 31, 2016. For services rendered subsequent to October 31, 2016, these Standard Rates are subject to annual cost of living increases.*

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**EXHIBIT "B"**

**ENGINEERING SERVICES**

**GENERAL CONDITIONS**

1. **Engineer's Duties, Responsibilities, & Limitations on Authority**
  2. **City's Duties and Responsibilities**
  3. **Payments to Engineer**
  4. **Termination**
  5. **General and Protective Provisions**
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# GENERAL CONDITIONS

## ARTICLE 1

### Engineer's Duties, Responsibilities & Limitations on Authority

#### 1.1 Engineer's Duties and Responsibilities

Engineer is City's independent consultant for the professional services to which this Agreement applies and the duties and responsibilities of Engineer thereunder shall inure to the benefit of City and no other party. Engineer shall not be considered a joint venture partner with City nor shall Engineer act or be construed as an agent or representative of City except in those limited cases where and those specific instances when Engineer has been assigned, and Engineer has consented to undertake the role of agent or representative of City under the written terms of this Agreement.

#### 1.2 Limitations on Authority of Engineer

Engineer shall specifically not be responsible for supervising, directing, or otherwise controlling the activities of contractors, subcontractors, or service providers not engaged by Engineer nor shall Engineer be in charge of construction at the project site.

#### 1.3 Representative

Upon execution of the Agreement, Engineer shall furnish to City, in writing, the name of an individual employed by Engineer, who shall be authorized to act on behalf of the Engineer in receiving instructions from City's duly authorized representative and to assume obligations on behalf of Engineer.

#### 1.4 Coordination and Schedule

When requested, and when so advised and informed by City, Engineer shall endeavor to perform services in a character, sequence and in a time-frame that will compliment and be in concert with the project related efforts of other consultants retained by City.

#### 1.5 Standard of Care

Engineer's work shall conform to the standards ordinarily exercised by members of the engineering profession practicing under similar conditions at the same time in the Chicagoland area. In providing the services hereinafter described, Engineer shall utilize

duly licensed and experienced personnel qualified in the particular consulting disciplines involved and endeavor to incorporate value engineering considerations into design plans to the extent practical given regulatory requirements.

In those instances where City alleges a deficiency in the work of Engineer, City may request Engineer to make revisions, changes, modifications and/or corrections to improve the economy of the design or to make a value engineering assessment, and Engineer shall make all such revisions or assessments at no additional charge to City to the extent such revisions are consistent with good engineering practices and the ethical standards to which Engineer is bound by law.

#### **1.6 Revisions**

If a technical submission or document prepared by Engineer is later revised or modified, it shall be appropriately marked on or adjacent to the Title Sheet with the sequence, date, and subject of the revision or modification before further release or distribution.

#### **1.7 Designs and Records**

Engineer shall maintain design calculations and other technical data and correspondence in the Project file in legible and understandable form which file will be made available for review by City or copies of documents will be furnished to City at the cost of reproduction upon request.

#### **1.8 Changes in Scope of Work**

City, without invalidating the Contract, may make changes by altering, adding to, or deducting from, the Scope of Services set forth in this Agreement in which case the Fee and Project time-schedule stipulated in the Agreement shall be adjusted as mutually agreed upon between City and Engineer.

No changes in the Scope of Services or adjustments in the Fee and/or Schedule shall be effective unless reduced to writing and signed by both City and Engineer or their authorized representatives.

#### **1.9 Additional Services and Reimbursable Expenses**

Any additional services which fall outside the Scope of Services as delineated in the Agreement and which are requested in writing by City, shall be furnished by Engineer in the same manner and under the same conditions, except that such Additional Services shall be compensated by payment to the Engineer of an additional fee as stipulated in the Agreement.

## **2.0 Opinions of Probable Cost**

In providing opinions of probable construction cost, City understands that the Engineer has no control over costs, over the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided hereunder are made on the basis of the Engineer's qualifications, experience and general familiarity with the local construction industry. Engineer makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bids recorded or actual costs incurred.

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## ARTICLE 2

### City's Duties and Responsibilities

#### **2.1 Information**

City shall furnish or cause to be furnished to Engineer:

- (a) Input concerning design criteria, consisting of full information relative to City's requirements and intentions for the development of the project;
- (b) Surveys of property boundary, rights-of-way, easements, topography, soil exploration borings and reports, hydrographic surveys, laboratory tests and reports and/or other existing information reasonably required for Engineer's services as set forth in the Agreement; and
- (c) Prompt written notice to Engineer if, and to the extent that, City observes or otherwise becomes aware of conditions or events which might affect and cause changes to the Engineer's work, provided, however, that City shall be under no obligation or duty to observe or discover any such conditions or event

#### **2.2 Reviews**

City shall conduct reviews and give comments and/or approvals of studies, reports, sketches, estimates, specifications, drawings, and/or other instruments of service prepared by Engineer, and shall render decisions pertaining thereto in writing within a reasonable period of time so as not to delay Engineer's services. It is understood and agreed that such decisions and approvals shall not relieve Engineer of responsibility for the technical, functional and professional content of Engineer's instruments of service.

#### **2.3 Representative**

City shall designate in writing a person to act as City's representative with respect to this Agreement. This person shall have complete authority to transmit instructions, to receive information, to interpret and define City's intentions, and to make decisions on behalf of City with respect to Engineer's services.

## **2.4 Notifications**

City shall notify Engineer in writing of any delay, suspension or other changes to Engineer's schedule of services. City shall give timely notice to Engineer of the date, time and place of meetings, conferences, and other events which require Engineer's attendance.

## **2.5 Permits/Approvals**

City shall execute the various permit applications and pay the requisite review and inspection fees to obtain permits from governmental authority and regulatory agencies having jurisdiction over the Project and to obtain such approvals and consents from other parties as may be necessary for completion of the Project.

## ARTICLE 3

### Payments to Engineer

#### **3.1 Invoices For Fees and Expenses**

Engineer shall render invoices and requests for payment of fees and expenses to City in a form approved or accepted by City on or before the first day of each month during the term of this Agreement. If applicable, invoices shall also include a detailed statement of Reimbursable Expenses incurred and a separate statement of Additional Services performed by Engineer during the preceding period.

#### **3.2 Payment of Fees and Expenses**

City will review and process requests for payment of fees and expenses within ten (10) days of receipt thereof and City shall issue full payment for fees and expenses within sixty (60) calendar days of receipt of invoice.

#### **3.3 Suspension of Work**

This Agreement may be terminated by the City, at its sole discretion, upon seven (7) days written notice. In the event of termination, the City shall only be liable for paying Engineer for services actually performed up to the date of termination.

## ARTICLE 4

### Termination

This Agreement may be terminated by City at its sole discretion and without cause upon seven (7) days written notice. In addition, this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. In the event of termination hereunder, Engineer shall be fully paid for services actually performed to the date of termination.

## ARTICLE 5

### General and Protective Provisions

#### 5.1 Indemnification

To the extent of their respective insurance coverages and as provided by public policy, City and Engineer shall and hereby do mutually indemnify and hold harmless each other from and against any and all liabilities, obligations, claims, demands, fines, penalties, sums, losses, damages, costs, fees and expenses, including but not limited to, reasonable attorneys' and accountants' fees, which City or Engineer may incur, which they may suffer or be required to pay, or which may be asserted against the City or Engineer, directly related to and in connection with the events or occurrences set forth below occasioned by either City or Engineer, their respective employees, representatives or agents, except such acts of City and Engineer as may constitute negligent, willful, reckless or intentional conduct arising out of, related to or in connection with the Project to wit:

- (a) Any violation of any law, ordinance or administrative rule or regulation;
- (b) Any accident or other occurrence causing injury or death to any person or persons or any damage to property;
- (c) Any breach or other failure of the parties hereto, their agents and employees to comply with or perform any provision or conditions of this Agreement;
- (d) Errors, omissions or negligent acts arising out of or in connection with the performance of professional services.

## **5.2 Insurance**

Engineer shall procure and maintain with reputable insurance carriers during the term of this Agreement the types of policies and insurance coverage amounts set forth below:

- (a) General Public Liability and Property Damage Insurance, limits of liability of not less than One (1) Million Dollars (\$1,000,000) combined Single Limit 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 one occurrence;
- (b) Workmen's Compensation and Employers Liability Insurance of not less than One (1) Million Dollars (\$1,000,000);
- (c) Professional Liability Insurance of not less than One (1) Million Dollars (\$1,000,000) Combined Single Limit.
- (d) Automobile Liability Insurance with limits of liability of not less than One (1) 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.
- (e) Umbrella Liability with limits of not less than Five (5) Million Dollars (\$5,000,000) providing coverage above and beyond the policies described in paragraphs (a), (b) and (d) above.

Engineer shall provide certificates and name City as additional insured on the General Liability Policy.

## **5.3 Applicable Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois. Venue shall be proved in the Circuit Court of Kane County or any Federal District Court of Illinois.

## **5.4 Assignment**

Except as otherwise expressly provided, this Agreement shall be binding upon and inure to the benefit of City and Engineer and their respective agents, employees, beneficiaries, partners, executors, administrators, heirs, successors and assigns. Except as stated in this Agreement, no party shall transfer or assign any interest in this Agreement without the prior written consent of the other party.

## **5.5 Survival**

In the event that any part or provision of this Agreement shall be declared invalid by the final unappealable order, decree or judgment of any Court of competent jurisdiction, the validity of the remainder of this Agreement shall not be affected thereby and all such remaining provisions shall remain in full force and effect provided that the balance of the provisions can be reasonably construed together without the portions so invalidated.

## **5.6 Completeness**

This Agreement together with any exhibits constitutes the entire agreement between City and Engineer with respect to the professional services to be rendered and the payments made thereunder. This Agreement supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, of any kind whatsoever relating to the Project.

## **5.7 Amendments**

This Agreement may not be orally amended, modified or discharged in whole or in part. No written amendment to this Agreement may be enforced against either party unless such amendment shall have been signed by each party. No course of dealing between the parties hereto shall be deemed effective to modify, amend or discharge any part of the Agreement or of any rights or obligations of either party hereunder.