



### AGENDA ITEM EXECUTIVE SUMMARY

|   |   |  |  |
|---|---|--|--|
| Agenda Item:  | Consider resolution awarding a professional services agreement to Stanley Consultants for engineering, procurement support and project management to upgrade the Western Ave Substation Transformer |  |  |
| Presenter & Title:  | Hal Wright, Superintendent of Electrical Services   |  |  |
| Date:   | June 07, 2017   |  |  |
| <b><i>Please Check Appropriate Box:</i></b>   |   |  |  |
| <input checked="" type="checkbox"/>   | Committee of the Whole Meeting  |  | Special Committee of the Whole Meeting |
| <input checked="" type="checkbox"/>   | City Council Meeting  |  | Special City Council Meeting           |
| <input type="checkbox"/>  | Public Hearing  |  | Other -                                |
| Associated Strategic Plan Goal/Objective: Vision 5, Goal G to Develop and provide funding for capital investments and projects that consider a variety of local capital needs and those mandated by State/Federal Agencies including: other identified capital projects and equipment for all departments and programs (Capital Projects Plan). |   |  |  |
|   |   |  |  |
| Estimated Cost: \$75,000.00   | Budgeted? <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No  | Other Funding? <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| <i>If "Other Funding," please explain how the item will be funded:</i>  |   |  |  |
| <b>Executive Summary:</b>   |   |  |  |
| City of Geneva Electric Division has identified the Western Ave Substation transformer as needing replacement due to abnormal oil samples and preventive maintenance testing.   |   |  |  |
| The replacement of the transformer was anticipated in the 10 year Capital Projects Plan. The professional service contract with Stanley Consultants will assist in engineering, procurement support and project management for the upgrade of the transformer.  |   |  |  |
| <b>Attachments:</b> <i>(please list)</i>  |   |  |  |
| <ul style="list-style-type: none"> <li>• Resolution 2017-57</li> <li>• Memo dated 06-07-2017</li> <li>• Contract for Professional Services with Stanley Consultants.</li> </ul>   |   |  |  |
| <b>Recommendation / Suggested Action:</b> <i>(how item should be listed on agenda)</i>  |   |  |  |
| Award professional service agreement to Stanley Consultants for engineering, procurement support and project management to upgrade the Western Ave Substation Transformer in the amount not to exceed \$75,000.   |   |  |  |

**RESOLUTION NO. 2017-57**

**RESOLUTION AUTHORIZING EXECUTION OF  
Professional service agreement with Stanley Consultants for engineering, procurement support  
and project management to upgrade the Western Ave Substation Transformer**

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**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS**, as follows:

**SECTION 1:** That the City Administrator is hereby authorized to award, on behalf of the City of Geneva, the Professional Services agreement with Stanley Consultants for engineering, procurement support and project management to upgrade the Western Ave Substation Transformer in the form attached hereto.

**SECTION 2:** This Resolution shall become effective from and after its passage as in accordance with law.

**PASSED** by the City Council of the City of Geneva, Kane County, Illinois, this 19<sup>th</sup> day of June, 2017

**AYES: \_\_ NAYS: \_\_ ABSENT: \_\_ ABSTAINING: \_\_ HOLDING OFFICE: \_\_**

Approved by me this 19<sup>th</sup> day of June, 2017.

\_\_\_\_\_  
City Administrator

ATTEST:

\_\_\_\_\_  
City Clerk



## **PUBLIC WORKS DEPARTMENT MEMORANDUM**

June 07, 2017

**Memo To:** Mayor Burns and the Committee of the Whole

**From:** Hal Wright, Superintendent of Electrical Services

**Re:** Recommendation for professional service contract to Stanley Consultants for engineering, procurement support and project management to upgrade the Western Ave Substation Transformer

The Western Ave Substation was built in 1972 and feeds loads predominantly in the area south of the railroad tracks between the river and Randall Road – approximately 1,300 customers. The current power transformer is original to the substation construction and at 14 MVA is the smallest substation transformer on Geneva's system.

The Electric Division performs transformer oil sampling as part of a preventive maintenance program for the substations. These samples look for dissolved gasses and solids that can indicate parts inside the transformer that are starting to fail. Also, the Division has undertaken a 5 year preventive maintenance cycle on each substation that uses tests and performance data to identify the health and functionality of the substation components.

For a few years now, oil samples for the Western Ave transformer have shown higher than normal dissolved cellulose. The windings of the transformer are separated by craft paper. The increase in dissolved cellulose indicates this craft paper is beginning to deteriorate. During the 5 year preventive maintenance cycle performed in the spring of 2017 several of the tests on the transformer windings showed the insulating quality of the craft paper is becoming degraded. These two test taken together show strong signs the transformer is nearing the end of its life cycle and will need to be taken out of service.

Since the Western Ave Substation was constructed, loads within the area have greatly increased, (Eaglebrook, Allendale, Randall Road, etc.). The City of Geneva electric system is designed and constructed such that the loads from

one substation can be served from neighboring substations. Due to the size of the Western Ave Substation transformer, during certain times of the year, the substation cannot be used to “back up” neighboring substations because of its limited transformer capacity. During this project the new transformer will be specified at a higher capacity rating, greatly increasing the ability to serve loads from other substations in the event of an emergency or system maintenance.

As part of the 10 year Capital Improvement Plan, Electric Division staff earmarked a project to replace the transformer at Western Ave starting in 2017. This project will span two consecutive budget years, with the engineering and procurement to take place in 2017-18 budget year and the delivery and installation to take place in 2018-19 budget year. Project costs will be expensed to capital line item: 620.90.95.95-815-25, budgeted at \$1,901,910.00.

Stanley Consultants has performed similar work in the past for the City of Geneva. Staff has been very pleased with their past performance and has full confidence in their abilities.

**Staff Recommendations:**

Based on the above, it is staff’s recommendation to award a professional service contract to Stanley Consultants for engineering, procurement support and project management to upgrade the Western Ave Substation Transformer in the amount not to exceed \$75,000.

Cc: Stephanie Dawkins, City Administrator  
Rich Babica, Director of Public Works  
Aaron Holton, Manager of Electric Operations  
Jennifer Hilkemann, Manager of Distribution Construction & Maintenance  
Kirk Landberg, Purchasing & Inventory Coordinator



# PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of June 19, 2017, between City of Geneva, Illinois (CLIENT) and Stanley Consultants, Inc. (CONSULTANT). CLIENT intends to Upgrade Western Avenue Substation Transformer (hereinafter called "project").

CLIENT and CONSULTANT agree:

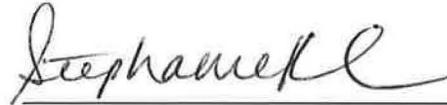
1. **Scope of Services.** CONSULTANT shall perform professional services as stated in Exhibit 1.
2. **Compensation.** CLIENT shall compensate CONSULTANT for CONSULTANT's services as stated in Exhibit 2.
3. **Terms and Conditions.** CONSULTANT shall provide professional services in accordance with the terms and conditions stated in Exhibit 3. If CLIENT issues a purchase order or other document to initiate the commencement of services hereunder, it is agreed that any terms and conditions appearing thereon shall have no application and only the provisions of this Agreement shall automatically apply.
4. CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.
5. Following exhibits are attached to and made part of this Agreement:
  - Exhibit 1 – Scope of Services
  - Exhibit 2 – Compensation
  - Exhibit 3 – Standard Terms and Conditions

IN WITNESS WHEREOF, the parties below have executed this Agreement as of the day and year first above written.

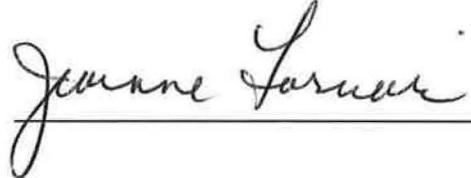
STANLEY CONSULTANTS, INC.

CITY OF GENEVA, ILLINOIS

By:   
 Brian J. Schoer, Distribution Group Manager

By: 

Attest:   
 Eric D. Kamm, Business Development Manager

Attest: 

Address for giving notices:  
 225 Iowa Avenue  
 Muscatine, IA 52761

Address for giving notices:  
 22 South First Street  
 Geneva, IL 60134

If CLIENT is a public body, attach evidence of authority to sign and resolution or other document authorizing execution of AGREEMENT.



## EXHIBIT 1

### SCOPE OF SERVICES

Following CONSULTANT's Scope of Services for a project identified by the CLIENT as the Western Avenue Transformer Upgrade.

#### **Project Understanding**

The Western Avenue Transformer Upgrade will consist of a 34.5-12.47 kV, 10/11.5/14 MVA transformer at Western Avenue Substation that needs to be upgraded. CONSULTANT will provide design services for procurement and installation of the 34.5-12.47 kV, 12/16/20 MVA transformer to replace the existing transformer.

The scope of services described herein is developed in five phases, each with several tasks. Each task has a defined scope of work and deliverable(s). The tasks have been developed and arranged such that each task will build on the deliverables developed during previous tasks. The following is a description for each of the phases and associated tasks.

#### **Phase 1 Predesign Activities**

Phase 1 will commence with the Notice-to-Proceed. During this phase, all tasks required to be completed before detailed design will be provided, for example data collection.

##### Task 1.1 General and Administrative

The objective of this task is to establish a clear understanding of the procedures to be adhered to throughout the project. Detailed task descriptions, specific schedules, control and reporting methods, and quality control programs will be developed and reviewed by all concerned parties. This task will commence with a project kick-off meeting and continue throughout the project, with specific deliverables being made on a mutually agreeable schedule.

##### 1.1.1 Scheduling

A project design schedule using Microsoft Project will be developed and maintained by CONSULTANT. The design schedule identifying Project Milestones, such as completion dates for deliverables, will be maintained.

##### *Deliverables:*

- Schedule

##### 1.1.2 Status Reporting

CONSULTANT will maintain contact with CLIENT to provide informal, timely project status, and coordination requirements. Significant issues will be conveyed to CLIENT, in writing, as they arise.

##### *Deliverables:*

- Periodic Status Reports

##### 1.1.3 Review Meetings

CONSULTANT will maintain contact with CLIENT through a teleconference meeting. The Scope of Work includes one teleconference with CLIENT regarding the procurement package.

##### *Deliverables:*

- Review Meeting via Teleconference (one meeting)
- Meeting Notes



## EXHIBIT 1

### SCOPE OF SERVICES

#### Task 1.2 Project Kick-Off

The objective of this task is to collect data, review the project requirements, and review the scope of work as presented in this proposal. This work will commence with the kick-off meeting where data will be requested. A site visit will follow.

##### *Deliverables:*

- Kick-Off Meeting Notes

#### **Phase 2 Transformer Specifications/Procurement Package**

General: This phase will commence after the data requested at the kick-off meeting has been received. CONSULTANT will prepare technical specifications and procurement documents required for bidding and construction of two 34.5-12.47 kV 12/16/20 MVA LTC transformers. EJCDC front-end documents will be used for procurement of the transformers.

#### Task 2.1 Procurement Specifications

The objective of this task is to develop the technical and administrative specifications for use in procuring new transformers. The transformers will be 34.5-12.47 kV 12/16/20 MVA transformers with LTC.

##### *Deliverables:*

- Transformer Technical Specifications
- EJCDC Procurement Documents

#### Task 2.2 Bidding Services

CONSULTANT will solicit bids from qualified transformer manufactures. CONSULTANT services for this task include issuing addenda, answering bidder questions, review and evaluation of bids received, and recommendation of award.

##### *Deliverables:*

- Issue Addenda
- Recommendation for Award of Transformer Contract
- Conformed Contract

#### Task 2.3 Shop Drawing Review

CONSULTANT will review requested vendor submittals and stamp as "Reviewed," "Reviewed as Noted," "Resubmit," or "For Information Only."

##### *Deliverables:*

- Transformer Shop Drawing Review

#### **Phase 3 Transformer Installation Specifications/Construction Package**

Phase 3 will commence after Phase 2. Technical specifications and shop drawings review will be provided. EJCDC front-end documents will also be provided by CONSULTANT.

#### Task 3.1 Substation Construction Specifications

The objective of this task is to develop the technical and administrative specifications for use in installation of the new transformer. This would include civil, structural, and electrical design. Drawings provided from the vendors, as well as additional design drawings to aid in construction will be part of the construction



## EXHIBIT 1

### SCOPE OF SERVICES

documents. The foundation design and oil containment will be completed using the Geotech report that was provided for the substation expansion project. Relays settings would be updated for the new installation. A testing and commissioning technical spec will be provided to CLIENT to procure a testing company to perform testing and commissioning on the new installation.

*Deliverables:*

- Foundation Technical Specification
- Transformer Installation Technical Specification
- EJCDC Contract Documents
- Vendor Drawing
- Design Drawings
- Relay Settings
- Testing and Commissioning Specification

Task 3.2 Bidding Services

CONSULTANT will solicit bids from qualified construction contractors. CONSULTANT services for this task include attending and running a pre-bid meeting, issuing addenda, answering bidder questions, review and evaluation of bids received, and recommendation of award.

*Deliverables:*

- Pre-bid Meeting
- Issue Addenda
- Recommendation for Award of Construction Contract
- Conformed Contract

Task 3.3 Shop Drawing Review

CONSULTANT will review requested contractor submittals and stamp as "Reviewed," "Reviewed as Noted," "Resubmit," or "For Information Only."

*Deliverables:*

- Material Shop Drawing Review

### **Phase 4 Construction Site Visits**

CONSULTANT's scope of work includes two site visits during the construction process. These visits will occur at the construction kick-off meeting and final walk-through inspection. In the event there are deficiencies in the Drawings or Specifications prepared by CONSULTANT, additional site visits shall be at CONSULTANT's sole expense.

Task 4.1 Construction Kick-Off

The objective of this task is to conduct a construction kick-off meeting with CLIENT and award construction contractor at CLIENT's office. CLIENT, CONSULTANT, and construction contractor will participate in a site visit following the meeting.

*Deliverables:*

- Meeting Agenda
- Meeting Notes



## EXHIBIT 1 SCOPE OF SERVICES

### Task 4.2 Final Walk-Through Inspection

The objective of this task is to assist CLIENT in final on-site review of construction contractor's work in accordance to the specification. Punchlist items will be compiled into a final report to be given to construction contractor for correction.

#### *Deliverables:*

- Meeting Notes
- Punchlist

### **Phase 5 Installation Record Drawings**

In this phase, CONSULTANT will create the installation record drawings for the project by incorporating changes noted on the construction drawings.

### Task 5.1 Record Drawings

The objective of this task will be to produce Installation Record Drawings for the project by incorporating changes noted on the construction drawings. The construction contractor will transmit construction drawings, red-lined to indicate changes, to CONSULTANT. CONSULTANT will incorporate the changes and provide CLIENT with final record drawings in MicroStation digital format.

#### *Deliverables:*

- Installation Record Drawings

### **Schedule**

Engineering for this project will commence upon receipt of a fully executed agreement. The project is estimated to be completed 32 weeks after kick-off meeting.

### **Deliverable Format and Distribution**

Submittal of the design package deliverables as listed above will be made as outlined. All submittals shall be concurrently submitted via email in electronic format as PDF files, plus paper submittals in accordance with the following table:

| Phase   | Deliverables                     | Number of Sets               |
|---|----------------------------------|------------------------------|
| <b>Preliminary Design</b>   | Electronic via Email or FTA Site | 1                            |
| <b>Bidding Documents</b>  | Electronic via Email or FTA Site | 1                            |
| <b>Conformed Documents</b>  | Documents: 8-1/2" x 11"          | 2*                           |
|   | Drawings: 11" x 17"              | 2*                           |
|   | Drawings: Full Size, Stamped     | 2*                           |
|   | Electronic via Email or FTA Site | 1                            |
| <b>General Correspondence</b>   | Electronic via Email and PDF     | Distribution, as appropriate |
| <b>Notes:</b>   |                                  |                              |
| <b>*Two hard copy sets of conformed documents consists of one set for CLIENT and one set for vendor/manufacturer.</b> |                                  |                              |



## EXHIBIT 1 SCOPE OF SERVICES

| Documents  | Format                      | Method of Transmittal |
|--|-----------------------------|-----------------------|
| General Correspondence   | PDF                         | Email                 |
| Specifications   | Microsoft Word format (PDF) | Email or via FTA site |
| Review Drawings  | PDF                         | Email or via FTA site |
| Issued for Bidding (IFB)<br>Drawings, PE Sealed**  | Scanned PDF***              | FTA site              |
| <b>Notes:</b><br><b>**Issued for Bid Documents will be sealed by a Professional Engineer registered in the State of Illinois with signature and date.</b><br><b>***The physically stamped drawing will be scanned to electronic format and issued as an Adobe PDF file for record. MicroStation format drawings will not contain signatures.</b> |                             |                       |

### Work Not Included in Proposal

Work not specifically listed in Exhibit 1 is not included in the proposal provided by CONSULTANT. Specific exclusions of this proposal are as follows:

- System Fault Data (provided by CLIENT).
- Permitting assistance.

### Additional Services

CONSULTANT can, at CLIENT's request, provide assistance in items stated in the "Work Not Included in Proposal" section above. Additional services authorized by CLIENT and accepted by CONSULTANT will be compensated as mutually-agreed upon.



## **EXHIBIT 2 COMPENSATION**

Based upon Scope of Services described in Exhibit 1, CONSULTANT will provide services on an Hourly Fee and Charges basis for a total not-to-exceed fee of Seventy-Five Thousand Dollars (\$75,000), unless mutually modified by both parties.

Work will be performed in accordance with our current schedule of Hourly Fees and Charges (Form BC\_C 17-18, attached).



# Stanley Consultants

## HOURLY FEES AND CHARGES

### Fiscal Year 2017-2018

- I. Compensation for office-based personnel in the contiguous United States for time in the performance of the work shall be in accordance with the following Hourly Fees:

| Classification | Hourly Fee | Classification | Hourly Fee | Classification | Hourly Fee |
|----------------|------------|----------------|------------|----------------|------------|
| BC-1           | 38.00      | BC-11          | 132.00     | BC-21          | 251.00     |
| BC-2           | 48.00      | BC-12          | 147.00     | BC-22          | 266.00     |
| BC-3           | 56.00      | BC-13          | 155.00     | BC-23          | 282.00     |
| BC-4           | 65.00      | BC-14          | 167.00     | BC-24          | 297.00     |
| BC-5           | 75.00      | BC-15          | 179.00     | BC-25          | 312.00     |
| BC-6           | 84.00      | BC-16          | 192.00     | BC-26          | 326.00     |
| BC-7           | 93.00      | BC-17          | 202.00     | BC-27          | 383.00     |
| BC-8           | 102.00     | BC-18          | 213.00     | BC-28          | 488.00     |
| BC-9           | 111.00     | BC-19          | 225.00     |                |            |
| BC-10          | 119.00     | BC-20          | 238.00     |                |            |

Travel time in the interest of the work and away from the assigned office, either local or intercity, will be charged in accordance with the foregoing schedule.

- II. Compensation for items of expense and other charges incurred in connection with the performance of the work shall be in accordance with the following schedule:

|  |                                  |
|--|----------------------------------|
| Automobile   | \$0.60/mile                      |
| Automobile Assigned to Project Site                | \$46.00/cal. day                 |
| Four-Wheel Drive Vehicles                          | \$0.80/mile                      |
| Four-Wheel Drive Vehicles Assigned to Project Site | \$56.00/cal. day                 |
| Ground Transportation (rental car, taxi, etc.)     | At Cost Plus 10%                 |
| Air Travel (commercial and charter)                | At Cost Plus 10%                 |
| Living Expenses (away from assigned office)        | At Cost Plus 10%                 |
| Telephone and Facsimile                            | At Cost Plus 10%                 |
| Equipment Rental                                   | At Cost Plus 10%                 |
| Laboratory Work                                    | At Cost Plus 10%                 |
| Soils Testing and Analysis                         | At Cost Plus 10%                 |
| Outside Photographic Work                          | At Cost Plus 10%                 |
| Duplicating Work                                   | (schedule supplied upon request) |
| Technical Testing and Surveying Equipment          | (schedule supplied upon request) |

- III. Compensation for purchases, items of expense, and other charges not scheduled above, incurred in connection with the performance of the work, shall be at cost plus 10%.
- IV. Interest at the rate of 1½% per month will be charged on invoices not paid within 30 days after receipt of invoice.
- V. Fees and charges are subject to revision on or after March 31, 2018.



## 1. CLIENT'S RESPONSIBILITIES

1.1 Name CLIENT's representative with authority to receive information and transmit instructions for CLIENT.

1.2 Provide CLIENT's requirements for project, including objectives and constraints, design and construction standards, bonding and insurance requirements, and contract forms.

1.3 Provide available information pertinent to project upon which CONSULTANT may rely.

1.4 Arrange for access by CONSULTANT upon public property, as required.

1.5 Examine documents presented by CONSULTANT, obtain legal and other advice as CLIENT deems appropriate, and render written decisions within reasonable time.

1.6 Obtain consents, approvals, licenses, and permits necessary for project.

1.7 Advertise for and open bids when scheduled.

1.8 Provide services necessary for project but not within scope of CONSULTANT's services.

1.9 Indemnify CONSULTANT, its employees, agents, and consultants against claims arising out of CONSULTANT's design, if there has been a deviation from the design by others beyond the CONSULTANT's control or failure to follow CONSULTANT's recommendation and such deviation or failure caused the claims.

1.10 Promptly notify CONSULTANT when CLIENT learns of contractor error or any development that affects scope or timing of CONSULTANT's services.

1.11 Nothing in this agreement shall create a fiduciary duty between the parties.

## 2. PERIOD OF SERVICE

2.1 CONSULTANT is not responsible for delays due to factors beyond its reasonable control.

2.2 If CLIENT requests changes in project, compensation for and time of performance of CONSULTANT's services shall be adjusted appropriately.

## 3. CONSTRUCTION COST AND COST ESTIMATES

3.1 **Construction Cost.** Construction cost means total cost of entire project to CLIENT, except for CONSULTANT's compensation and expenses, cost of land, rights-of-way, legal and accounting services,

insurance, financing charges, and other costs which are CLIENT's responsibility as provided in this Agreement.

3.2 **Cost Estimates.** Since CONSULTANT has no control over cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, or over competitive bidding or market conditions, its estimates of project construction cost will be made on the basis of its employees' experience and qualifications and will represent their best judgment as experienced and qualified professionals, familiar with the construction industry. CONSULTANT does not guarantee that proposals, bids, or actual construction cost will not vary from its estimates of project cost.

## 4. GENERAL

### 4.1 Termination.

4.1.1 Either party may terminate their obligation to provide further services upon twenty (20) days' written notice, after substantial default by other party through no fault of terminating party.

4.1.2 CLIENT may terminate CONSULTANT's obligation to provide further services upon twenty (20) days' written notice if project is abandoned. In such event, progress payments due to CONSULTANT for services rendered plus unpaid reimbursable to expenses, shall constitute total compensation due.

### 4.2 Reuse of Documents.

4.2.1 All tangible items prepared by CONSULTANT are instruments of service, and CONSULTANT retains all copyrights. CLIENT may retain copies for reference, but reuse on another project at a different site without CONSULTANT's written consent is prohibited. CLIENT will indemnify CONSULTANT, its employees, agents, and consultants against claims resulting from such prohibited reuse. Said items are not intended to be suitable for completion of this project by others.

4.2.2 Submittal or distribution of items in connection with project is not publication in derogation of CONSULTANT's rights.

4.2.3 **Confidentiality.** Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the agreement except as may be required by a court or



governmental authority. CLIENT and CONSULTANT shall keep all information and communications related to the project confidential in the same manner each party protects its own confidential information, to the extent that it is marked "proprietary" or "confidential" or with a similar label or which by the nature of the information generally would be regarded as proprietary or confidential. This clause shall not apply to information that is previously known by either party, lawfully becomes public knowledge, or is required to be disclosed by law or a court order.

#### 4.3 Payment.

4.3.1 CONSULTANT shall submit a monthly statement for services rendered and reimbursable expenses incurred. CLIENT shall make prompt monthly payments.

4.3.2 If CLIENT fails to make payment within thirty (30) days after receipt of statement, interest at maximum legal rate or at a rate of 18%, whichever is less, shall accrue; and, in addition, CONSULTANT may, after giving seven (7) days' written notice, suspend services until it has been paid in full all amounts due it.

4.3.3 CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.

4.3.4 CONSULTANT's compensation shall not be reduced on account of any amounts withheld from payments to contractors.

4.3.5 If services performed by CONSULTANT are subject to state or local sales taxes, said taxes will be reflected in the invoices and remitted according to state law. If CLIENT claims a status that would make the transaction exempt, then CLIENT shall provide appropriate proof of exempt status to CONSULTANT.

4.4 **Controlling Law.** Agreement shall be governed by Illinois law. CONSULTANT's work on this project shall be subject to Illinois Freedom of Information Act.

#### 4.5 Successors and Assigns.

4.5.1 The parties bind themselves, their successors, and legal representatives to the other party and to successors and legal representatives of such other party, in respect to all covenants and obligations of this Agreement.

4.5.2 Neither party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other, provided CONSULTANT may employ such independent consultants, associates, and subcontractors as it may deem appropriate.

4.5.3 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

4.6 **CONSULTANT's Accounting Records.** Records of CONSULTANT's personnel time, reimbursable expenses, and accounts between parties shall be kept on a generally-recognized accounting basis.

4.7 **Separate Provisions.** If any provisions of this Agreement shall be held to be invalid or unenforceable, remaining provisions shall be valid and binding.

4.8 **Waiver.** No waiver shall constitute a waiver of any subsequent breach.

#### 4.9 Warranty.

4.9.1 CONSULTANT shall use reasonable care to reflect requirements of all applicable laws, rules, or regulations of which CONSULTANT has knowledge or about which CLIENT specifically advises in writing, which are in effect on date of Agreement. CONSULTANT INTENDS TO RENDER SERVICES IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS, BUT NO OTHER WARRANTY IS EXTENDED, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH SUCH SERVICES. CLIENT's rights and remedies in this Agreement are exclusive.

4.9.2 CONSULTANT shall not be responsible for contractors' construction means, methods, techniques, sequences, or procedures, or for contractors' safety precautions and programs, or for contractors' failure to perform according to contract documents.

4.9.3 The CONSULTANT believes that any computer software provided under this Agreement is suitable for the intended purpose, however, it does not warrant the suitability, merchantability, or fitness for a particular purpose of this software.

4.9.4 Subject to the standard of care set forth in Paragraph 4.9.1, CONSULTANT and its Subconsultants may use or rely upon design elements, work, and information ordinarily or customarily furnished by others, including, but not limited to, CLIENT or his authorized representatives, public record, specialty contractors, manufacturers, suppliers, and publishers of technical standards.

4.10 **Period of Repose.** Any applicable Illinois statute of limitations or repose shall commence to run and any alleged cause of action shall be deemed to have accrued not later than completion of services to be performed by CONSULTANT.

4.11 **Indemnification.** To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT, CLIENT's officers, elected &



appointed officers and alderman, employees, and agents from and against any and all third party claims for bodily injury and for damage to tangible property to the extent caused by the negligent acts or omissions of CONSULTANT or CONSULTANT's officers, directors, partners, employees, agents, and CONSULTANT's consultants in the performance and furnishing of CONSULTANT's services under this Agreement. Any indemnification shall be limited to the terms and amounts of coverage of the CONSULTANT's insurance policies listed in 4.14.

To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT, CONSULTANT's officers, directors, partners, employees, and agents and CONSULTANT's consultants from and against any and all third party claims for bodily injury and for damage to tangible property to the extent caused by the negligent acts or omissions of CLIENT or CLIENT's officers, elected & appointed officers and alderman, employees, agents, and CLIENT's consultants with respect to this Agreement on the Project.

**4.12 Limitation of Liability.** IN NO EVENT SHALL CONSULTANT BE LIABLE TO CLIENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT. CONSULTANT SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES THAT ARISE OUT OF ITS PERFORMANCE ON THIS PROJECT.

**4.13 Extent of Agreement.** This Agreement represents the entire agreement between the parties and may be amended only by written instrument signed by both parties.

**4.14 INSURANCE.** CONSULTANT shall purchase and maintain insurance for the coverages and for not less than the limits of liability set forth below:

(a) Workers' Compensation: workers' compensation insurance as required by the laws of the states or countries with jurisdiction of the services to be performed, including employer's liability insurance, with a limit of \$1,000,000 per accident.

(b) Commercial General Liability: commercial general liability, including coverage for all premises, operations, operations of independent contractors, products and completed operations, and contractual liability. Coverage shall have limits of not less than \$5,000,000 for each occurrence and aggregate.

(c) Commercial Automobile Liability: commercial automobile liability covering the use of all owned, non-owned, and hired automobiles with minimum combined single limits of \$5,000,000.

(d) Professional Liability: professional liability insurance for claims arising out of performance of professional services caused by any negligent error,

omission, or act for which the insured is legally liable, with a minimum limit of \$5,000,000, to be kept in force for two (2) years after completion of project.

CONSULTANT shall provide certificates or other evidence from insurance carriers of the required insurance coverages, if requested by CLIENT in writing within 30 days of start of performance. All insurance except workers' compensation and professional liability shall designate CLIENT as additional insured.

**4.15 Subrogation Waiver.** The parties waive all rights against each other, and against contractors, consultants, agents, and employees of the other for damages covered by any property insurance during construction, and each shall require similar waivers from their contractors, consultants, and agents.

**4.16 Force Majeure.** Parties will not be liable for delays in delivery or for failure to perform obligations, other than payment, due to causes beyond their reasonable control, including, but not limited to, product allocations, material shortages, labor disputes, transportation delays, unforeseen circumstances, acts of God, acts or omissions of other parties, acts or omissions of civil or military authorities, government priorities, fire, strikes, floods, epidemics, quarantine restrictions, riots, terrorists acts, or war. CONSULTANT's time for delivery or performance will be automatically extended by the period of such delay or CONSULTANT may, at its option, cancel any services, in whole or in part, without liability by giving notice to CLIENT.

**4.17 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE.** When applicable, the CONSULTANT and SUBCONSULTANT shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a) and Appendix A of Subpart A of 29 CFR 471. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime CONSULTANTS and SUBCONSULTANTS take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.