



## AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	2020 Citywide Culvert/Bridge Inventory Study and Maintenance Plan		
Presenter & Title:	Brian L. Schiber, P.E. Assistant Director of Public Works/City Engineer		
Date:	October 5, 2020		
<b>Please Check Appropriate Box:</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
	Public Hearing		Other -
Associated Strategic Plan Goal/Objective: EMS-II / ES-III/ ES-IV			
Estimated Cost: \$ 39,840.90	Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Other Funding," please explain how the item will be funded:</i>			
<b>Executive Summary:</b>			
<p>In July of this year, staff conducted a Request For Proposals (RFP) process to evaluate the various structural consultants interested in conducting a Citywide Culvert/Bridge Inventory Study and Maintenance Plan. Eight consultants responded, and staff evaluated their materials and similar projects, and interviewed the top rated finalist. Based on the materials and interview, staff determined that WBK Engineering would provide the best culvert/bridge study. WBK is currently doing the Citywide Drainage Study, so they are already familiar with the locations where culverts/bridges cross roadways. This study will evaluate the City's numerous culverts/bridges for structural integrity, prepare a list of recommended repairs, and an estimate a cost for resolving those repairs, prioritize the repairs, and develop a recommended capital improvement program. This information will be utilized in future budget planning. The proposal has been reviewed and approved (as amended) by City legal counsel. Staff is recommending that a 10% contingency be included in the overall not-to-exceed amount to account for any unforeseen field changes that may occur. Any field changes (Change Orders) must be approved by the City Administrator to be applied to the contingency.</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution</li> <li>• WBK Proposal</li> </ul>			
<b>Voting Requirements:</b>			
<i>This motion requires <u>6</u> affirmative votes for passage.</i>			
<i>The Mayor may vote on three occasions: (a) when the vote of the aldermen or trustees has resulted in a tie; (b) when one half of the aldermen or trustees elected have voted in favor of an ordinance, resolution, or motion even though there is no tie votes; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i>			
<b>Recommendation / Suggested Action:</b> <i>(how item should be listed on agenda)</i>			
Recommend approval of a resolution authorizing the City Administrator to execute a contract for the 2020 Citywide Culvert/Bridge Inventory Study and Maintenance Plan with WBK Engineering LLC of St. Charles, IL at cost of \$36,219 and allow the City Administrator to approve up to \$3,621.90 in change orders for a total not-to-exceed amount of \$39,840.90.			

**RESOLUTION NO. 2020-78**

**RESOLUTION AUTHORIZING EXECUTION OF  
Contract with WBK Engineering, LLC for the 2020 Citywide Culvert/Bridge Inventory Study  
and Maintenance Plan**

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

**SECTION 1:** The City Administrator is hereby authorized to execute the contract, on behalf of the City of Geneva, for the 2020 Citywide Culvert/Bridge Inventory Study and Maintenance Plan with WBK Engineering, LLC as it relates to identifying, evaluating, estimating, and prioritizing culvert/bridge structures projects throughout the City.

**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 19th day of October, 2020

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

Approved by me this 19th day of October, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

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



## **Proposal for City of Geneva Citywide Culvert/Bridge Inventory Study and Maintenance Plan (2020)**

September 14, 2020

Mr. Brian Schiber, PE  
Assistant Director of Public Works/City Engineer  
City of Geneva, Public Works Department  
1800 South Street  
Geneva, IL 60134

Dear Mr Schiber:

WBK Engineering, LLC (WBK) is pleased to provide this proposal to City of Geneva (Client) for professional engineering services for Citywide Culvert/Bridge Inventory Study and Maintenance Plan (2020). WBK looks forward to the opportunity to continue our relationship with the City on this project. Included below is our understanding of the assignment, scope of services, project assumptions, and estimate of fees.

### **Understanding of the Assignment**

The City of Geneva is interested in engaging a structural/civil engineering consultant to help with determining existing conditions of major structures throughout the City. For each of the City's structures, WBK will perform a visual inspection and provide an inspection report. In addition to documenting existing conditions and significant findings, recommendations for repair, rehabilitation or replacement will be included in the deliverables along with concept level estimates of cost and prioritized maintenance/repair schedule. Based on the initial inspection data, WBK Team will identify the structures that require further evaluation or monitoring and provide the associated cost estimate and maintenance/repair schedule.

This type of comprehensive approach will help Public Works/City Engineer prioritize projects and serve as a budgeting tool for the City staff and elected officials. The goal and philosophy of an inspection program is that condition awareness and programmed maintenance will extend the useful life of infrastructure and is the most cost-effective approach in the long run. Establishing an inspection program with scheduled routine inspections will detect structural and functional deficiencies, minimize the probability of structural failure and ensure the public safety.

#### Deliverables and Schedule (tentative):

NTP (anticipated)	10/15/2020
Draft Inspection Report	11/13/2020
Final Inspection Report	12/18/2020

**WBK Engineering, LLC**  
WBKEngineering.com  
 Part of the Mno-Bmadsen Family

**St. Charles Office**  
116 West Main Street, Suite 201  
St. Charles, IL 60174  
630.443.7755

**Aurora Office**  
8 East Galena Boulevard, Suite 402  
Aurora, IL 60506  
630.701.2245

## Scope of Services

WBK will utilize the City's known GIS map of culverts and bridges as well as the City's storm sewer GIS atlas map to determine the initial structure inventory and inspection list. We will utilize our direct knowledge of the City's drainage system and infrastructure to identify structures that have not been previously recorded (if any), ensuring a complete and up-to-date inventory. Based on our initial review we have identified twenty (20) structures to be inspected (see attached map):

No.	Structure Type	Location
1	Culvert	Kautz Road (between Pillsbury & Averill Rd)
2	CMP	Elm Street (Division & East Side Dr)
3	Culvert	Sandholm Street & Simpson St
4	Culvert	Kaneville and Burgess Road
5	Foot Bridge	Kaneville and Burgess Road
6	Culvert	Kaneville Rd and Southampton Dr
7	Culvert	South Street & Southampton
8	Foot Bridge	South Street & Southampton
9	Culvert	South Street (between S 7th & S 8th St)
10	Culvert	South St & Creekside Dr
11	Culvert	Cheever Avenue & Shady Ave
12	Golf Cart Culvert	Fargo Blvd & Loran Dr (Eagle Brook)
13	Golf Cart Culvert	Keim Cir & Fairway Cir (Eagle Brook)
14	Culvert	Fargo Blvd (Eagle Brook)
15	Culvert	Fargo Blvd & Bent Tree Dr (Eagle Brook)
16	Culvert	Bent Tree Dr & Eldorado Dr (Eagle Brook)
17	Culvert	Fargo Blvd & Randall Ct/Merchants Dr
18	Culvert	Fisher Dr & Keslinger Rd
19*	Culvert	Pepper Valley Dr & S. Northampton Dr
20*	Culvert	Fargo Blvd & 31st (not City owned but critical)

\* WBK identified additional structures not shown on the City Owned Bridges map

**Task 1 –Structural Field Inspections:** WBK will coordinate with the City staff to review the inspection procedures, finalize the structure locations and to review access and notification procedures. Inspections will be performed by an IDOT certified bridge/culvert inspector and under guidance from a licensed Structural Engineer. Culvert and bridge inspections will conform to the requirements of the National Bridge Inspection Standards and the Illinois Department of Transportation's Structure Information and Procedure Manual.

As part of WBK's safety procedures, inspections will be performed by a two-man crew equipped with safety gear, digital camera and other equipment necessary to perform the inspections.

WBK's preliminary evaluation of the City's structure inventory has identified a variety of pipe and box culvert sizes. A visual inspection will be completed for the structures that are accessible and not within confined space. For pipe culverts which are inaccessible due to size or location, an "end-of-pipe" visual inspection will be completed, and observations will be documented. WBK will use this "end-of-pipe" inspection as a screening tool to determine if a more comprehensive inspection is warranted via CCTV or other enhanced inspection techniques.

**Task 2 – Inspection Documentation:** WBK will prepare a detailed structure inspection report that includes:

- Executive summary documenting critical findings, providing overall ratings and rehabilitation/maintenance recommendations with estimated costs
- Inspection results discussing the rating and inspection results of the structure elements
- Structure priority ranking matrix
- Culvert/Bridge Inspection Report (form) and photo log for each structure

The overall condition rating will be expanded to include the various components of the structure and documented on concise one-page report with numeric ratings for each primary component. An overall numeric rating will be assigned to each inspected structure based on the Illinois Highway Information System Information and Procedure Manual. In addition, inspector remarks will be captured, and photo documentation will support the conditions observed.

The WBK team will identify the structures required for further evaluation or monitoring and provide cost effective recommendation, innovative repair alternatives and the associated cost estimate as well as prioritized repair schedule.

The City's GIS map can be updated with information such as ratings, photos, recommendations, budget, repair priority and schedule.

**Task 3 – Ranking Matrix & Program Development:** The ranking matrix from Task 2 will be expanded to create a Culvert/Bridge Maintenance Program. The program will include estimated cost for the City's structure maintenance/repair activities, a recommended budget year for expenditure of funds and a recommended re-inspection interval. Based on the observed conditions, the structures will be required re-inspection in a range of one to four years.

**Task 4 – QC/QA and Coordination/Project management:** Prior to submittal, the deliverables will be review by qualified senior engineer for accuracy and completeness. Project coordination, monitoring project progress and preparing invoices are also included in this task.

## Supplemental Services

In preparing this proposal we have made some assumptions which establish the basis for our fees. Any findings which are not consistent with our assumptions may change the engineering budget for this project. We will thoroughly discuss any such findings with you prior to proceeding. Our assumptions are as follows:

- Twenty (20) structures will be inspected.
- No confined space entry is included in inspection activities. Long, poorly ventilated, and small diameter structures will not be entered. "End-of-pipe" inspection techniques will be employed for these structures as a screening tool to determine if a more advanced inspection is required.
- Televising of culverts is not included in the scope of these services. For the structures that require further detailed evaluation, WBK will assist and coordinate with the City and utilize CCTV or other cost-effective televising methods to perform a thorough inspection and evaluation.
- The scope of our investigation does not include environmental assessment, mitigation, clean-up and permitting evaluation. However, WBK has in-house experts to provide these services if necessary, with a separate agreement.
- The cost of wetland assessment, mitigation designs, and flood studies have not been included because typically, maintenance activities do not have any impacts on floodplain and wetlands.
- The City will provide access to all locations and notify the adjacent property owners when necessary.
- Geotechnical borings and analysis is not included in this proposal.

Engineering and surveying services that have not been included in the above detailed scope of work, are usually referred to as "Supplemental Services." If, during the project, it becomes apparent that additional services will be required, or if major changes in the scope of work are made by the City, upon your request, we shall perform or obtain from others such services. WBK will be paid for such services on an hourly basis, or based on subsequent proposal/contract agreements, at the discretion of the City.

Tasks considered as Supplemental Services include, but are not limited to, major changes to the scope of work such as additional structures to be inspected or evaluated, unanticipated improvements (on or off site), engineering design, studies or reports not specifically listed under the Scope of Basic Services, bidding documents, bid assistance, contract writing or administration, review of payment applications, preparation of any plats or record drawings not specifically listed under the Scope of Basic Services.

## Estimate of Fees

Due to the nature of the tasks listed in the above Scope of Basic Services, we have provided engineering fees and direct cost budgets based on twenty (20) structures. The actual amount invoiced will be based on the level of effort required to accomplish the task, but we 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
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## Geneva Citywide Structure Inventory 2020

Task 1	Structural Field Inspections (assume 20 structures with 7 site visits)	\$10,598
Task 2	Inspection Documentation	\$13,915
Task 3	Ranking Matrix and Program Development	\$4,449
Task 4	QC/QA and PM	\$7,257
	<b>Labor Total</b>	<b>\$36,219</b>
Direct Cost	Reimbursable Costs (assume 1 equipment rental @ \$500, mileages and prints)	\$693

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 WBK Engineering, LLC. No portion of this proposal may be shared with another firm providing similar services without our permission.

We propose to bill the City monthly based on the attached Schedule of Charges. We establish our contract in accordance with the attached General Terms and Conditions. These General Terms and Conditions are expressly incorporated into and are made an integral part of this contract for professional services. We reserve the right to increase our fees by five percent (5%) on December 31st of each calendar year.

If this proposal is acceptable, please email us the signed Proposal for our files to serve as a Notice to Proceed. Thank you for the opportunity to provide service to the City of Geneva. If you have any questions, please do not hesitate to email or call at 630-338-8557.

Sincerely,



Joanne Zuo, PE, SE  
Structural Practice Manager



Greg Chismark, PE  
President

Attached: Modified City Owned Bridge Map  
Cost Estimate of Consultant Services  
2020 Schedule of Charges  
General Terms and Conditions (February 4, 2016)

THIS PROPOSAL, SCHEDULE OF CHARGES, AND GENERAL TERMS & CONDITIONS ACCEPTED FOR CITY OF GENEVA:

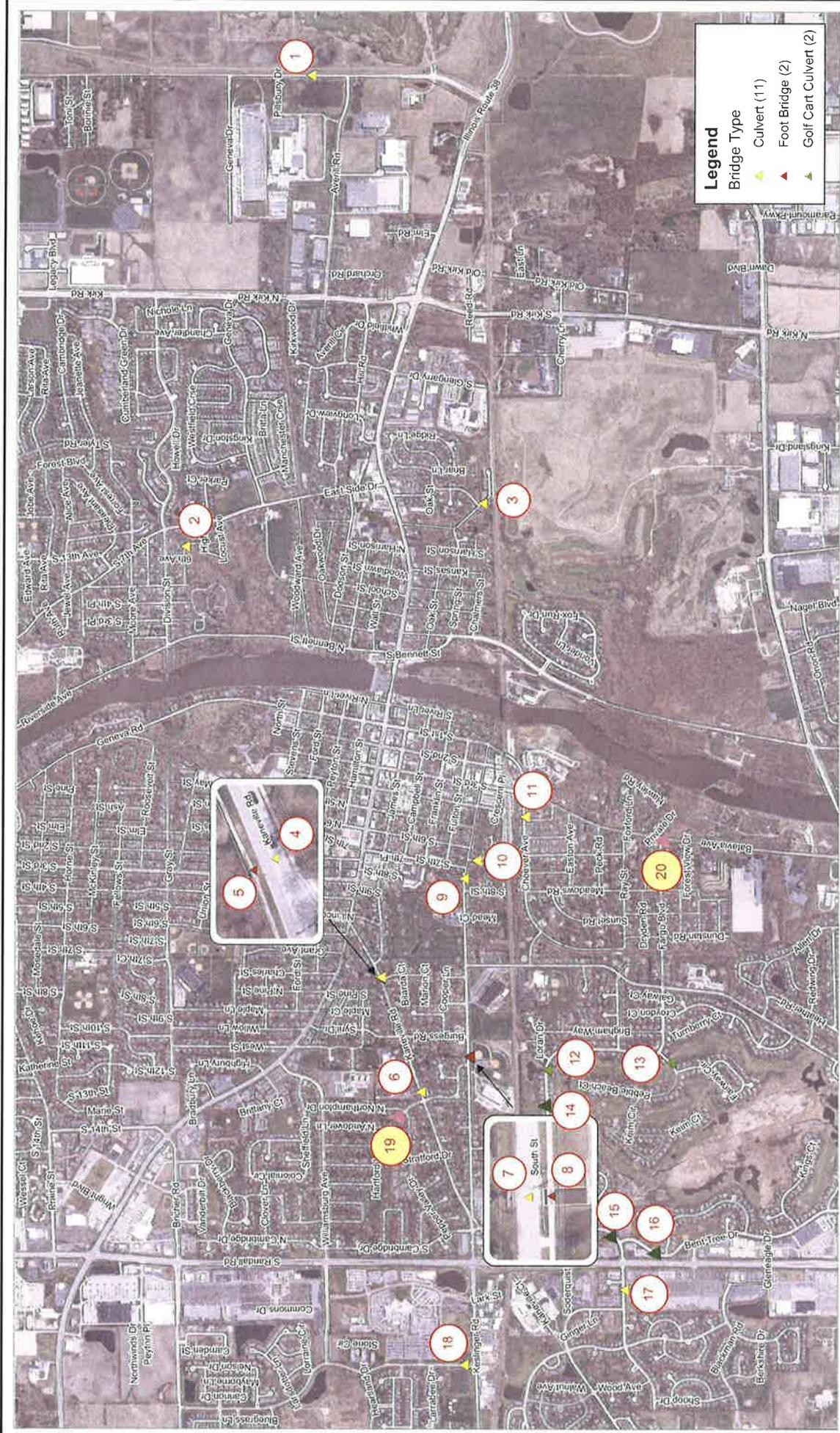
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



GENERATED BY  
City of Geneva  
Engineering Division  
E.E. - September 2020



**Legend**

Bridge Type

- Culvert (11) ▲
- Foot Bridge (2) ▲
- Golf Cart Culvert (2) ▲

Culvert (Eagle Brook) (3)



Culvert (WBK Identified) (2)



# CITY OWNED BRIDGES

NOT TO SCALE



Information shown on this map is warranted in manner and accuracy as best guaranteed. It is the responsibility of the user to fully verify all information shown. Original data maps provided the Inter-governmental Agreement with Kane County GIS. Topographic. Reproduction without permission from the City of Geneva is prohibited.

**COST PLUS FIXED FEE  
COST ESTIMATE OF CONSULTANT SERVICES**

Bureau of Design and Environment  
Prepared By: Consultant  
DATE 09/14/20

FIRM WBK Engineering, LLC  
PTB-ITEM # 189  
PRIME/SUPPLEMENT Prime

OVERHEAD RATE 157.74%  
COMPLEXITY FACTOR 0

DBE DROP BOX	ITEM	MANHOURS (A)	PAYROLL (B)	OVERHEAD & FRINGE BENF (C)	DIRECT COSTS (D)	FIXED FEE (E)	SERVICES BY OTHERS (G)	DBE TOTAL (H)	TOTAL (B-G)	% OF GRAND TOTAL
	Field Inspection	112	3,645	5,750		1,203		-	10,598	29.26%
	Inspection Documentation	140	4,786	7,550		1,579		-	13,915	38.42%
	Ranking Matrix & Program Development	32	1,530	2,414		505		-	4,449	12.28%
	QC/QA and Coordination/Proj Manage	32	2,496	3,937		824		-	7,257	20.04%
	<b>TOTALS</b>	<b>316</b>	<b>12,457</b>	<b>19,651</b>	<b>-</b>	<b>4,111</b>	<b>-</b>	<b>-</b>	<b>36,219</b>	<b>100.00%</b>

32,108

DBE 0.00%

**WORK HOUR ESTIMATE FOR CONSULTING SERVICES**  
**Engineering Services**  
**Geneva Citywide Structure Inventory Study**

Route  
 Local Agency  
 Section  
 Project  
 Job No.  
 Existing Struct

Description		Principal	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer II	Engineer I
<b>1</b>	<b>Field Inspection</b>							
	1.1 Field Inspection			56				56
	<b>SUB-TOTAL PERCENT</b>				<b>56.0</b> 50%			<b>56.0</b> 50%
<b>2</b>	<b>Inspection Documentation</b>							
	2.1 Report			80				40
	2.2 Revise GIS Map			12				8
	<b>SUB-TOTAL PERCENT</b>				<b>92.0</b> 66%			<b>48.0</b> 34%
<b>3</b>	<b>Ranking Matrix &amp; Program Development</b>							
	3.1 Ranking and recommendations		8		24			
	<b>SUB-TOTAL PERCENT</b>		<b>8.0</b> 25%		<b>24.0</b> 75%			
<b>4</b>	<b>QC/QA and Coordination/Project Management</b>							
	4.1 QC/QA		16					
	4.2 Coordination		16					
	<b>SUB-TOTAL PERCENT</b>		<b>32.0</b> 100%					
	<b>TOTALS PERCENT</b>		<b>40.0</b> 13%		<b>172.0</b> 54%			<b>104.0</b> 33%



**WBK ENGINEERING, LLC**  
**2020 Standard Charges for Professional Services**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 215
Engineer VI	\$ 194
Engineer V	\$ 172
Engineer IV	\$ 145
Engineer III	\$ 119
Engineer II	\$ 105
Engineer I	\$ 88
Urban Planner VI	\$ 200
Urban Planner V	\$ 161
Urban Planner IV	\$ 140
Urban Planner III	\$ 106
Urban Planner II	\$ 86
Environmental Resource Specialist V	\$ 152
Environmental Resource Specialist IV	\$ 124
Environmental Resource Specialist III	\$ 105
Environmental Resource Specialist II	\$ 88
Technician IV	\$ 140
Technician III	\$ 117
Technician II	\$ 93
Technician I	\$ 78
Intern	\$ 49
Administrative	\$ 64
Direct Costs: Copies & Prints, Messenger & Delivery Services, Mileage, etc.	Cost +10%

*Charges include overhead and profit.*

*WBK Engineering, LLC reserves the right to increase these rates by 5% annually.*

**WBK ENGINEERING, LLC GENERAL TERMS AND  
CONDITIONS**

City of Geneva Culvert Inspection Program 9-18-2020

1. **Relationship Between Engineer and Client:** WBK ENGINEERING, LLC (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 or employee 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:** Engineer will strive to 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. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services 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
  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. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Reasonable cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
  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 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 Engineer.
- The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.
- 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.
- 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, including but not limited to attorney's fees, 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, and costs, including but not limited to attorney's fees, 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, for additions to this Project, or for completion of this Project by others, 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. They cannot be used by Client or others on extensions of the Project or any other project. 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, and expenses including attorney's fees 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 if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.
  8. **Standard of Practice:** The Engineer will strive to 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 strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance 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. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.
- Further to the law and code compliance, the Client understands that the Engineer will strive to 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. **Indemnification:** Engineer shall indemnify and hold harmless Client up to the amount of the insurance set forth in the Certificate of insurance attached hereto as Exhibit "A", from loss or expense, including reasonable attorney's fees 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, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error 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.
- ~~Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.~~
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 judgement 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.
- Any claim, dispute or other matter in question arising out of or related to this Agreement, which cannot be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
- The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
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, county 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, overhead and fee) 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. **Limit of Liability:** The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the Engineer's limit of general liability insurance included in this agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
25. **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 furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.~~

~~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 Contract 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.

26. **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 (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
27. **Payment:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) 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 thirty (30) day period at the rate of six (6) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

**Collection Costs:** In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

**Suspension of Services:** If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

28. 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.

29. **Job Site Safety/Supervision & Construction Observation:** The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

30. ~~**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.~~

~~The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.~~

30. **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 a operation, maintenance and repair activity for which the Engineer is not responsible.