



## AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Professional Services Agreement - Bodwe WBK Engineering		
Presenter & Title:	Richard Babica, Director of Public Works		
Date:	July 21, 2025		
<b>Please Check Appropriate Box:</b>			
<input checked="" type="checkbox"/>	Committee of the Whole Meeting	<input type="checkbox"/>	Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting	<input type="checkbox"/>	Special City Council Meeting
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	Other -
Associated Strategic Plan Goal/Objective: PGEV-II, SAWC-III, ES-I, ES-II, QIS-III			
Estimated Cost: \$86,914.44	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>The FY25 Budget includes funds within the Capital Budget to provide engineering services using outside consultants to assist staff due to time constraints, expertise or the size of the project exceeding staff resources. The Gateway Business Center will have over \$6 Million in public improvements installed for this development. In order to meet the aggressive construction schedule proposed by the development, and to ensure the expertise of the inspections, staff secured a professional engineering and construction oversight contractor. In accordance with the City Code, staff published a proposal request, reviewed, interviewed, selected, and negotiated a contract that best served the needs of the City. Staff anticipated a 3-year completion and therefore secured costs through April 2028 with the following years requiring approval pending budget authorization. Attached for your review is a proposal form Bodwe WBK Engineering providing part-time as needed construction oversight. Staff anticipates an average of twenty hours of on-site oversight on a weekly basis.</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution</li> <li>• Proposal</li> </ul>			
<b>Voting Requirements:</b>			
<p><i>This motion requires a simple majority of affirmative votes for passage. (City Council Only)</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the alderpersons has resulted in a tie; (b) when one half of the alderpersons elected have voted in favor of an ordinance, resolution, or motion even though there is no tie vote; 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></p>			
<b>Recommendation / Suggested Action:</b> <i>(how the item should be listed on agenda)</i>			
<p>Recommend Approval of Resolution Authorizing Execution of a Professional Services Agreement with Bodwe WBK Engineering not to exceed \$86,914.44 to provide Construction Oversight for Public Improvements Inspections within the City of Geneva.</p>			

**RESOLUTION NO. 2025-80**

**RESOLUTION AUTHORIZING EXECUTION OF  
A PROFESSIONAL SERVICES AGREEMENT WITH  
BODWE WBK ENGINEERING  
TO PROVIDE CONSTRUCTION OVERSIGHT  
FOR PUBLIC IMPROVEMENTS**

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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 execute, on behalf of the City of Geneva, a Professional Services Agreement to provide construction oversight for public improvements for the Gateway Business Park and City of Geneva, in the form attached hereto at Exhibit "A."

**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 \_\_\_\_ day of \_\_\_\_\_, 2025

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

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Mayor

ATTEST:

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

## **GENEVA SOUTHEAST MASTER PLAN - MIDWEST INDUSTRIAL FUNDS CONSTRUCTION OVERSIGHT**

City of Geneva, IL

July 2, 2025

Mr. Rich Babica  
Director of Public Works  
City of Geneva, Illinois  
1800 South Street  
Geneva, Illinois 60134

Mr. Babica,

WBK Engineering, LLC (WBK) is pleased to provide this proposal for professional engineering and construction oversight services for the Midwest Industrial Funds project, part of the City of Geneva Southeast Master Plan. WBK looks forward to the opportunity to assist the City with construction observation and land development management services. Included below is our understanding of the assignment, scope of services, project assumptions, and estimate of fee.

## **Project Understanding**

WBK is intimately familiar with the City of Geneva Southeast Master Plan developed in 2011/2012. We have also been involved with the development of the Kautz Road corridor roadway geometry and technical engineering review of development plans since 2019. We understand the primary utility routing, earthwork and mass grading schedule challenges, roadway geometry, land development objectives, environmentally sensitive areas and coordination with many stakeholders including the Illinois Department of Transportation (IDOT), Kane County Division of Transportation (KDOT), DuPage County Division of Transportation (DuDOT), City of Batavia, Union Pacific Railroad and adjacent landowners. We have also been working with City staff on land development projects for decades and have a clear understanding of the Public Works Department staff organization and operations.

We understand the City is looking to supplement the construction oversight services that have begun on this land development project with City staff. The primary goals of our services include:

- Ensure critical infrastructure is constructed in accordance with approved plans
- Coordinate construction conflicts with contractor, developer, and City staff
- Document materials and operations to provide a record for future maintenance and operations
- Facilitate third party coordination with City advocacy in mind

We understand the project is to be constructed into two primary phases. Construction has commenced and the project is expected to continue into 2027 with final acceptance of public improvements. We have structured our fee estimate based on the construction phasing, the City fiscal year calendar, and anticipated scope and tasks. The primary tasks are noted hereafter. We understand City staff may request additional services and increase or decrease the field time necessary to complete services under this contract. We stand by ready to assist City staff as warranted and authorized.



# Scope of Services

## TASK 1 | PROJECT SCHEDULE COORDINATION

Understanding that project schedule is important to both the City as well as the developer, we will initiate communication with the developer's representative and contractors to establish a clear and definitive construction schedule. This will allow for proper allocation of our staff as well as City resources involved with the project. Major project milestones and phases will be identified. The schedule will be updated as changes occur and/or monthly to confirm progress. This will be beneficial to ensure timely completion of the project to develop tax increment as well as for City and public information.

## TASK 2 | CONSTRUCTION OBSERVATION & DOCUMENTATION

WBK staff will generally provide daily on-site construction oversight services based on construction schedule on a part-time basis. Certain phases and stages of construction may require full-time daily inspection and as directed by City staff we will perform full-time services. Construction Observation Services Include:

- Observe the progress and quality of the executed work and determine if the work is proceeding in accordance with the approved final engineering plans. The Engineer will keep the City informed of the progress of the work, seek to identify defects and deficiencies in the work, and advise the City of observed and recognized deficiencies of the work.
- Serve as the City liaison with the developer working principally through the developer's primary point of contact.
- Facilitate City coordination with third party agencies.
- Review the Contractor's schedule and their progress on a regular basis. Compare actual progress to Contractor's schedule.
- Maintain orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions or original contract documents including all change order and additional drawings issued after the approval of the project.
- Record the names, address and phone numbers of all contractors, subcontractors and major material suppliers in the daily field report.
- Keep an inspector's daily field report which shall contain a daily report and quantity of hours on the job site, weather conditions, list of visiting officials, daily activities, job decisions and observations as well as general and specific observations and job progress when on-site. In addition, a relevant photo log of the daily activities.
- Except upon written instructions of the City, WBK staff shall not authorize any deviation from the approved final engineering plans.

## TASK 3 | GPS WATER MAIN LAYOUT

WBK will utilize GPS equipment to locate all water main fittings and bends during the construction of the water main to provide an accurate record of these elements. This will ensure the City GIS system is reliable for future repairs or expansion of the water supply system. GIS data can be delivered to the City or as desired uploaded directly into the City GIS system.

## TASK 4 | PRIMARY STAGE PRE-CONSTRUCTION COORDINATION

Prior to construction starting on primary elements including the retaining wall at the north end of the Kautz Road corridor, roadway construction, Fabyan Parkway and IL Route 38 improvements, WBK will host a pre-



construction conference with the relevant subcontractors to verify schedule, material requirements, testing requirements and communication protocols. Meetings will be documented with meeting minutes and preserved for the project record.

#### **TASK 5 | EROSION CONTROL PERFORMANCE VERIFICATION**

While on-site performing daily construction observation duties noted in Task 2, we will observe and record the condition and adequacy of erosion control measures. We will also review the on-going NPDES documentation on a regular basis to verify the inspection and documentation requirements of the permits are being met. We will notify the City, developer, and contractors of any apparent deficiencies. Neither WBK nor the City is assuming direct responsibility for project NPDES NOI compliance as a result of this task.

#### **TASK 6 | UTILITY TESTING DOCUMENTATION**

WBK will witness utility testing as directed by City staff acting in a primary or supplementary role as determined by the City. We will document and record the results of all utility testing including water main, storm sewer and sanitary sewer utilities. All test results will be provided to the City for project record purposes.

#### **TASK 7 | PUNCH LIST & PROJECT CLOSE OUT**

WBK will coordinate final inspection of all City infrastructure except for the City electric utility (by others). Final inspections will be performed and led by WBK staff as determined by the City with coordination and engagement of City staff for each element of infrastructure being inspected. We will develop a written final punch list of items for the developer and contractor to repair noting the deficiency observed and where appropriate a remediation approach or action. Photo logs will be provided when necessary. Subsequent punch list inspections will be coordinated with both City and developer / contractor staff to seek resolution of all open items. Upon completion of all the punch list items we will provide a letter documenting the substantial completion of the improvements. Record drawings are required as part of the punch list project closeout process and will be reviewed prior to or concurrent with field inspections. Improvements to be inspected and approved:

- Public Roadway (Kautz Road)
- Water Main
- Sanitary Sewer
- Storm Sewer (Within Public Roadway)
- Private Stormwater Management System including basins and storm sewer
- Landscaping within ROW
- Street lighting

#### **TASK 8 | PUBLIC IMPROVEMENT ACCEPTANCE & FINANCIAL GUARANTEE MANAGEMENT**

WBK will coordinate formal acceptance of the public improvements with the developer and City staff following typical City protocols. This includes a formal Acceptance Resolution, Bill of Sale, maintenance Guarantee and as warranted Lien waivers. For private improvements such as the stormwater basins, WBK will acknowledge them as complete and note compliance with any third party permitting, volume and vegetative conditions. WBK will also manage any financial guarantee / letter of credit reduction requests providing a recommendation to City staff based on that status of construction.



### TASK 9 | CONSTRUCTION OBSERVATION CONTRACT MANAGEMENT

We will regularly monitor the time spent on-site and, on the tasks, noted herein with monthly evaluation as to construction progress versus estimated budget and contract value. If we see construction not keeping pace with the budget, we will notify the city. At that time, we will also identify opportunities to adjust our responsibilities to fit within the approved budgeted amount. We will coordinate with the city at the end of construction of Phase 1 and as the city develops the budget for the subsequent fiscal year reporting on available budget and anticipated tasks remaining for the project.

## Project Assumptions

We have provided you a scope of services to satisfy the overall goals of the project based on our understanding of City need and the project scope at this point in time. In doing so, WBK has made assumptions and exclusions. Project task and requests scope not consistent with assumptions and exclusions will be reviewed and discussed prior to proceeding.

- On-Site survey
- Material Testing
- Observation of work within IDOT or KDOT/DuDOT ROW (coordination only)
- Private utility coordination (gas, communication, etc.)
- Electric Utility inspections
- Weekly construction meetings
- Direct coordination with the public
- Third Party Permit coordination
- NPDES Inspections (IEPA NOI)

## NOT TO EXCEED - Estimate of Fee

WBK has provided time and material budgets for the tasks outlined in the above scope of services. Actual invoices will be based on the employee’s record of time invested to accomplish each task and will not exceed the budget provided without prior written authorization.

TASK #	TASK NAME	UNIT RATE PER FDH SITE
TASK 1	FY 2025/2026 (July 22,2025 thru April 30, 2026)	\$ 86,914.44
TASK 2	FY 2026/2027 (May 1, 2026 thru April 30, 2027)	\$ 36,152.50
TASK 3	FY 2027/2028 (May 1, 2027 thru April 30, 2028)	\$ 23,214.02
<b>TOTAL</b>		<b>\$ 146,280.96</b>

We propose to bill you 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 revise our billing rates by five percent (5%) on December 31st of each calendar year.



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

Sincerely,

**Greg Chismark, PE  
President**

Encl: 2025 Schedule of Charges  
General Terms and Conditions (February 4, 2016)

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

\_\_\_\_\_  
Authorized By

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

AUTHORIZATION FOR CONSTRUCTION ENGINEERING SERVICES FOR THE GENEVA SOUTHEAST MASTER PLAN – MIDWEST INDUSTRIAL FUNDS CONSTRUCTION OVERSIGHT IN THE CITY OF GENEVA.



## Geneva South East Master Plan - Midwest Industrial Funds Construction Oversight

### Phase I - Construction of Kautz Road from Fabyan Parkway north to IL 38. Includes:

- Mass grading of entire site including embankment for roadway connection to IL 38. Includes retaining wall adjacent to stormwater basin.
- Excavation of all stormwater basins including project outfalls
- Utility Construction
  - Water main from IL 38 crossing UPRR and connecting to Batavia (emergency only) and extension west towards water tower.
  - Sanitary sewer from south to existing trunk line along UPRR.
  - Storm sewer associated with roadways, stormwater basins and project outfalls.
- Roadway and pedestrian improvements from Fabyan Parkway to toe of embankment.
- Widening of Fabyan parkway
- Protection of wetlands and monitoring SESC measures

### Phase I Exclusions

- Electric infrastructure
- KDOT covered inspections

### Phase II - Construction of Kautz Road from end of Phase I to IL 38. Includes:

- Finish grading of roadway embankment to IL 38.
- Restoration and establishment of all stormwater basins including project outfalls
- Utility Construction – Punchlist and Acceptance
- Roadway and pedestrian improvements from Phase I to IL 38.
- IL 38 Improvements
- **Protection of wetlands and monitoring SESC measures**

### Phase II Exclusions

- Electric infrastructure
- IDOT covered inspections

### Future Improvements Not Included – Roadway and Utilities along Cherry Lane corridor

### Tasks/Services Include:

- Coordination with City and Developer Contractor on schedule
- Daily site visits and documentation of construction activities
- GPS of water main fittings for City GIS
- Stage Construction Coordination (pre-con for roadway, retaining wall, Fabyan parkway)
- Erosion Control Verification while on-site
- Witnessing of all Utility Testing and verification of materials testing
- Punch List inspection / preparation of punch list / project closeout
- Prepare complete project construction documentation – daily reports, construction testing report compilation

- Financial Guarantee Management – review reduction requests and release. Procure maintenance guarantee and amount verification
- Public Improvement Acceptance Management, Punchlist, Record Plan review, Financial Guarantees, Bill of Sale, Acceptance Resolution. Council recommendation
- Management of contract budget coordinated with City fiscal year.

### **Tasks Excluded**

- On-Site survey
- Materials Testing
- Observation of work within IDOT or KDOT/DuDOT ROW (coordination only)
- Private utility coordination (gas, communication, etc.)
- Weekly construction meetings
- Direct coordination with the public
- Third Party Permit coordination
- NPDES Inspections

### **Fee Development**

Based on the construction stages and tasks listed herein we have developed a fee structure around the City fiscal year and based on a general part time construction observation role. It is recognized that at times full time inspection will be required and at other times no work and therefore no inspection will be required. We will work with City staff and adjust our involvement to optimize our engagement to assure construction is in compliance with approved construction documents and meets the City, State and other agency (as applicable) construction requirements. All work will be billed on a time and materials basis based only on the time actually spent working on the project and this contract up to the Not To Exceed amount noted. Fee summary:

- FY 2025/26 - \$86,914.44
- FY 2026/27 - \$36,152.50
- FY 2027/28 - \$23,214.02



**Public Improvement Inspections  
Kautz Road Extension - Midwest Industrial Funds  
South of Intersection of Route 38 & Kautz Road**

**Cost Estimate of Consultant's Services in Dollars**

Element of Work	Employee Classification	Man-Hours	Hourly Rate	(MH) x Hourly Rate	Services by Others	In-House Direct Costs (IHDC)	Total	TOTAL COST BY TASK	TOTAL HOURS BY TASK
1 Fiscal Year 2025/2026 (July 21, 2025 thru April 30, 2026)					\$ -	\$ 4,450.00	\$4,450.00	<b>Task: 1</b>	
	Principal	24.0	\$269.49	\$6,467.76			\$6,467.76		
	Engineer V	48.0	\$207.96	\$9,982.08			\$9,982.08		
	Engineer III	400.0	\$161.27	\$64,508.00			\$64,508.00		
	ERS IV	10.0	\$150.66	\$1,506.60			\$1,506.60		
2 Fiscal Year 2026/2027 (May 1, 2026 thru April 30, 2027)					\$ -	\$1,560.00	\$1,560.00	<b>Task: 2</b>	
	Principal	10.0	\$269.49	\$2,694.90			\$2,694.90		
	Engineer V	14.0	\$207.96	\$2,911.44			\$2,911.44		
	Engineer III	176.0	\$161.27	\$28,383.52			\$28,383.52		
	ERS IV	4.0	\$150.66	\$602.64			\$602.64		
3 Fiscal Year 2027/2028 (May 1, 2027 thru December 31, 2027)					\$ -	\$390.00	\$390.00	<b>Task: 3</b>	
	Principal	12.0	\$269.49	\$3,233.88			\$3,233.88		
	Engineer V	12.0	\$207.96	\$2,495.52			\$2,495.52		
	Engineer III	106.0	\$161.27	\$17,094.62			\$17,094.62		
<b>Totals</b>		816.0		\$ 139,880.96	\$ -	\$ 6,400.00	\$ 146,280.96		





**WORK HOUR ESTIMATE FOR CONSULTING SERVICES**  
**Public Improvement Inspections**  
**Kautz Road Extension - Midwest Industrial Funds**

Description	Principal	Engineer V	Engineer III	ERS IV	In House Direct Costs
<b>1 Fiscal Year 2025/2026 (July 21, 2025 thru April 30, 2026)</b>					
1.1 Public Improvement Construction Inspection (Assumed 19 wks @ 3 hr/day on avg)			285		
1.2 Construction Documentation (Assumed 19 wks @ 1 hr/day on avg)			95		
1.3 Weekly Coordination / Conflict Resolution / LOC Reduction Requests (1-2 hr / week avg.)	20	40			
1.4 Wetland / Environmental Coordination				10	
1.5 Punchlist / Winter Shutdown	4	8	20		
<b>SUB-TOTAL</b>	<b>482.0</b>	<b>24.0</b>	<b>48.0</b>	<b>400.0</b>	<b>\$ 4,450.00</b>
<b>PERCENT</b>		<b>5%</b>	<b>10%</b>	<b>83%</b>	<b>2%</b>
<b>2 Fiscal Year 2026/2027 (May 1, 2026 thru April 30, 2027)</b>					
2.1 Public Improvement Construction Inspection (Assumed 8 wks @ 3 hr/day on avg)			120		
2.2 Construction Documentation (Assumed 8 wks @ 1 hr/day on avg)			40		
2.3 Weekly Coordination / Conflict Resolution / LOC Reduction Requests (1-2 hr / week avg.)	8	8			
2.4 Wetland / Environmental Coordination				4	
2.5 Punchlist / Record Drawings / Closeout	2	6	16		
<b>SUB-TOTAL</b>	<b>204.0</b>	<b>10.0</b>	<b>14.0</b>	<b>176.0</b>	<b>\$ 1,560.00</b>
<b>PERCENT</b>		<b>5%</b>	<b>7%</b>	<b>86%</b>	<b>2%</b>
<b>3 Fiscal Year 2027/2028 (May 1, 2027 thru December 31, 2027)</b>					
3.1 Public Improvement Construction Inspection (Assumed 4 wks @ 3 hr/day on avg)			60		
3.2 Construction Documentation (Assumed 4 wks @ 1 hr/day on avg)			20		
3.3 Weekly Coordination / Conflict Resolution / LOC Reduction Requests (1-2 hr / week avg.)	8	8			
3.4 Punchlist / Record Drawings / Closeout			10		
3.5 One-Year Maintenance Inspection / Resolution	4	4	16		
<b>SUB-TOTAL</b>	<b>130.0</b>	<b>12.0</b>	<b>12.0</b>	<b>106.0</b>	<b>\$ 390.00</b>
<b>PERCENT</b>		<b>9%</b>	<b>9%</b>	<b>82%</b>	
<b>TOTALS</b>	<b>816.0</b>	<b>46.0</b>	<b>74.0</b>	<b>682.0</b>	<b>\$ 6,400.00</b>
<b>PERCENT</b>		<b>6%</b>	<b>9%</b>	<b>84%</b>	<b>2%</b>



**WBK ENGINEERING, LLC**  
**2025 Standard Charges for Professional Services**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 254
Engineer VI	\$ 215
Engineer V	\$ 196
Engineer IV	\$ 170
Engineer III	\$ 152
Engineer II	\$ 135
Engineer I	\$ 120
Urban Planner VI	\$ 242
Urban Planner V	\$ 195
Urban Planner IV	\$ 172
Urban Planner III	\$ 149
Urban Planner II	\$ 125
Environmental Resource Specialist V	\$ 158
Environmental Resource Specialist IV	\$ 142
Environmental Resource Specialist III	\$ 125
Environmental Resource Specialist II	\$ 110
Environmental Resource Specialist I	\$ 99
Technician V	\$ 182
Technician IV	\$ 160
Technician III	\$ 145
Technician II	\$ 110
Technician I	\$ 98
Intern	\$ 75
Administrative	\$ 85
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.*

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 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 of 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. 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 this contract fee (for services) 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, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
19. **Force Majeure:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
20. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
21. **Access and Permits:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, 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 total Engineer's fee for professional engineering services rendered on this project as made part of 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 eighteen (18) 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.

31. 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.