



# Agenda Item Executive Summary

AGENDA ITEM: Rt 59 Bike Underpass Civil Engineering Services Agreement BOARD OR COMMITTEE: Board

## BUDGET IMPACT

Amount \$33,200 Budgeted \$75,000

Fund: Streets

- Corresponding Activity Measure: Evaluate bike/pedestrian connectivity under/over and along Route 59.

## EXECUTIVE SUMMARY

This agreement is for the civil engineering services for the Rt 59 bike underpass project. Mackie Consultants, LLC is working with DR Horton on the Grasslands Subdivision adjacent to the project and is most familiar with the proposed bike underpass. The design engineering for this project is being funded with a Cook County ARPA grant in the amount of \$150,000 that was recently approved.

We recommend award of the Civil Engineering Services Agreement with Mackie Consultants, LLC.

## ATTACHMENTS (PLEASE LIST)

Memo, Resolution, Agreement

### RELATIONSHIP TO STRATEGIC PLAN GOAL

Strategic Plan Goal: Improve Village bike and pedestrian pathways and routes

Short Term (1-3 Years): Routine  Complex

Long Term (3-5 Years): Routine  Complex

### ACTION REQUESTED

- For Discussion Only
- Resolution
- Ordinance
- Motion

MOTION: I move to approve Resolution 2024-\_\_\_\_\_, a resolution approving the civil engineering services agreement with Mackie Consultants, LLC.

Staff: Dan Dinges, Director of Public Works

Date: March 8, 2024

# Memo

DATE: March 8, 2024

TO: Paula Schumacher  
Village Administrator

FROM: Dan Dinges, PE  
Director of Public Works

SUBJECT: Rt 59 Bike Underpass Civil Engineering Services Agreement

This agreement is for the civil engineering services for the Rt 59 bike underpass project. Mackie Consultants, LLC is working with DR Horton on the Grasslands Subdivision adjacent to the project and is most familiar with the proposed bike underpass. The design engineering for this project is being funded with a Cook County ARPA grant in the amount of \$150,000 that was recently approved.

We recommend award of the Civil Engineering Services Agreement with Mackie Consultants, LLC.

**Motion:** I move to approve Resolution 2024-\_\_\_\_\_, a resolution approving the civil engineering services agreement with Mackie Consultants, LLC.

RESOLUTION 2024 - \_\_\_\_\_

**A RESOLUTION APPROVING THE CIVIL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE VILLAGE OF BARTLETT  
AND MACKIE CONSULTANTS LLC.**

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**BE IT RESOLVED** by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

**SECTION ONE:** The Engineering Services Agreement dated March 5, 2024 for the Rt 59 Bike Underpass Project (the "Project Work") in the amount of \$33,200, as set forth in the agreement attached hereto and incorporated herein, is hereby awarded to Mackie Consultants LLC. subject to the terms and conditions of the defined Agreement.

**SECTION TWO:** that the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

**SECTION THREE: SEVERABILITY.** The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

**SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS.** All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

**SECTION FIVE: EFFECTIVE DATE.** This Resolution shall be in full force and effect upon passage and approval.

**ROLL CALL VOTE:**

**AYES:**

**NAYS:**

**ABSENT:**

**PASSED:** March 19, 2024

**APPROVED:** March 19, 2024

\_\_\_\_\_  
Kevin Wallace, Village President

**ATTEST:**

\_\_\_\_\_  
Lorna Giless, Village Clerk

**CERTIFICATION**

I, Lorna Giless, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2024 - \_\_\_\_\_ enacted on March 19, 2024 and approved on March 19, 2024 as the same appears from the official records of the Village of Bartlett.

\_\_\_\_\_  
Lorna Giless, Village Clerk



REVISED  
E-MAIL

March 5, 2024

Mr. Dan Dinges  
Village of Bartlett  
228 South Main Street  
Bartlett, Illinois 60103  
[ddinges@bartlett.il.gov](mailto:ddinges@bartlett.il.gov)

**Re: Pedestrian Path Extension  
Route 59 Underpass  
Bartlett, Illinois**

Dear Dan:

We are pleased to submit this revised proposal to provide professional civil engineering and land surveying services for the pedestrian path extension associated with the Route 59 underpass in Bartlett, Illinois.

### **PROJECT UNDERSTANDING**

It is our understanding that the Village of Bartlett will be connecting the pedestrian path associated with The Grasslands (residential subdivision) to the proposed Route 59 underpass. The pedestrian path is intended to ultimately connect with the existing path on the south side of West Bartlett Road by others. The Grasslands is located west of Naperville Road, north of West Bartlett Road, and east of Route 59. These proposed improvements will include the hardscape, grading and drainage necessary to connect the subdivision path with the underpass path and stub for future extension. The limits of the improvements will extend approximately 100-feet beyond the IDOT right-of-way in both directions. We offer to complete the following services as indicated below:

#### **Final Engineering Phase**

##### **I. PLAT OF TOPOGRAPHY**

Mackie Consultants will prepare a Plat of Topography of the above-mentioned areas for development of a pedestrian path extension as part of the proposed Route 59 underpass which will include contours at 1-foot intervals; limits of tree lines; locations and elevations of existing visible, above-ground structures; visible above grade utilities and below grade utility structures (with inverts and apparent pipe sizing & material). Limits will include anticipated delineation of pedestrian path and 100-feet beyond the IDOT right-of-way in both directions. GIS contours will be used as reference for areas outside the anticipated limits of improvements. Wetland delineation flags will be included with topographic survey if available. The scope of topography does not anticipate individual tree locations. Revisions requested to the topography will be invoiced at our staff hourly rates.

**Lump Sum Fee - \$ 6,500.00**

Note: A wetland delineation should be completed by a wetland specialist for inclusion with the topographic survey.

**II. FINAL ENGINEERING**

Mackie Consultants, LLC will coordinate with the proposed Route 59 underpass plans (prepared by Gannet Flemming) and complete final engineering plans (outside the limits of the proposed underpass) for review and approval by the Municipality and reviewing agencies. The final engineering plans will contain the following:

- A. Demolition plan identifying construction limits and removals;
- B. Grading plans which show elevations at one-foot contour intervals, finished grades at contour break points and other areas requiring definition;
- C. Stormwater Pollution Prevention Plans in accordance with NPDES regulations;
- D. Paving plans defining geometrics, landscape areas, transitions, and connections;
- E. Construction details and technical specifications which will further define and clarify the above improvements and their appurtenances;

This final engineering design and deliverable documents will include the path connection from The Grasslands Subdivision to the Route 59 underpass and the path stub east of the Route 59 underpass but will not include any path improvements associated with the actual Route 59 underpass. The design does not anticipate site runoff storage, post construction best management practices (PCBMP) or offsite improvements in the scope. Revisions to the final engineering plans shall be completed at staff hourly rates.

**Lump Sum Fee - \$ 10,500.00**

**III. PERMITTING**

Mackie Consultants, LLC will prepare and submit for approval the following permit applications:

- A. Provide assistance with completing the engineering portions of the local municipality site development application;
- B. Illinois Historic Preservation Agency (IHPA) Report;
- C. Illinois Department of Natural Resources (IDNR) Endangered Species Consultation Program Agency Action Report;
- D. Illinois Environmental Protection Agency (IEPA) Notice of Intent for Stormwater Discharge;
- E. DuPage County Stormwater Management Permit;

**Lump Sum Fee - \$ 6,000.00**

**IV. IDOT PERMITTING**

Mackie Consultants will coordinate with Illinois Department of Transportation (IDOT) to complete the required documentation and permitting application associated with construction of the pedestrian path within the limits of the IDOT right-of-way. The applications and permitting will be completed using the proposed path plans (prepared by Mackie Consultants) and the Route 59 underpass plans (prepared by Gannet Fleming). Revisions to the permitting submittal based on land plan revisions shall be completed as additional services.

**Lump Sum Fee - \$ 3,500.00**

**V. METRA PERMITTING**

Mackie Consultants will coordinate with Metra to complete the required documentation and permitting application associated with construction of the pedestrian path within the limits of the Metra right-of-way. The applications and permitting will be completed using the proposed path plans (prepared by Mackie Consultants) and the Route 59 underpass plans (prepared by Gannet Fleming). Revisions to the permitting submittal based on land plan revisions shall be completed as additional services.

**Lump Sum Fee - \$ 3,500.00**

**VI. FINAL MEETINGS**

Meetings include face-to-face, conference calls and/or web-based virtual meetings with the client, other design team members, and consultants to discuss this project. The purpose of these meetings will be to review the project status and key design elements prior to and during the development of final documents.

Included in this task are meeting preparation, attendance and meeting minutes. Meetings will be invoiced at our staff hourly rates indicated below. The fee is based on four (4) meetings.

**Lump Sum Fee - \$ 3,200.00**

**FEES**

**Final Engineering Phase**

PHASE I	Lump Sum Fee -	\$	6,500.00
PHASE II	Lump Sum Fee -	\$	10,500.00
PHASE III	Lump Sum Fee -	\$	6,000.00
PHASE IV	Lump Sum Fee -	\$	3,500.00
PHASE V	Lump Sum Fee -	\$	3,500.00
PHASE VI	Lump Sum Fee -	\$	3,200.00

**CONDITIONS**

- A. The proposed fees for normal engineering and surveying services were developed after careful evaluation of the work involved and the conditions stated in this proposal. Reimbursable expenses for blueprints, photocopying, mileage, overnight delivery, messenger services and report compilation are not included in the fee estimate and will also be invoiced. Additional services that are not included in the proceeding fee estimate will be billed at the staff hourly rates.
- B. The attached General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services.
- C. The staff hourly rates and other approved expenses referred to in this proposal shall not exceed the limits given below:

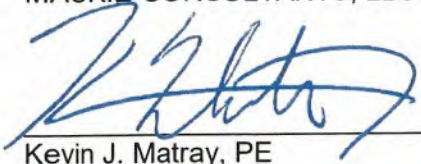
Principals	\$ 250.00
Senior Engineers and Land Surveyors	\$ 205.00 - \$ 240.00
Engineer I – III	\$ 185.00 - \$ 195.00
Engineering Technician I-V	\$ 145.00 - \$ 175.00
Construction Engineer	\$ 145.00 - \$ 180.00
Survey Field Crews	\$ 275.00 – 2 Man Crew \$ 385.00 – 3 Man Crew
CAD Technician I – II	\$ 160.00 - \$ 170.00
Business Personnel	\$ 120.00
Vehicles	\$ 0.70 per mile
Reproductions, Expendable Materials and Other Approved Expenses	At Cost + 12 percent

Mackie Consultants, LLC reserves the right to increase these rates and costs by 5 percent annually.

Mr. Dan Dinges  
March 5, 2024  
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If the above services, fees and conditions are acceptable, please return an executed copy of this proposal to us. The signed copy will serve as our agreement and authorization to proceed.

Very truly yours,  
MACKIE CONSULTANTS, LLC



Kevin J. Matray, PE  
Vice President

**ACCEPTED:**

\_\_\_\_\_  
**VILLAGE OF BARTLETT**

\_\_\_\_\_  
**DATE**



**MACKIE CONSULTANTS, LLC**  
**GENERAL TERMS AND CONDITIONS**  
**EDITED AND APPROVED 3/8/2024 (KJM)**

1. Relationship Between Engineer and Client: Mackie Consultants, 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. Engineer is not responsible for the implementation of the Storm Water Pollution Prevention Plan (SWPPP), including maintenance and/or repair of soil erosion and sediment control measures, for compliance with the General NPDES Permit for storm water discharges from construction site activities. 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 of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Engineer will be entitled to payment for all fees incurred up to the date of termination.

6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to 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. Indemnification: Engineer shall indemnify and hold harmless Client 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 or omission of Client.
- In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage.
- 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.
11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
12. 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**. Venue for any action arising out of this Agreement will be in the Circuit Court of Cook County.
13. 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.
14. 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.
15. 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.
16. 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".
17. 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.
18. 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.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.

20. 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.
21. 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.
22. 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.
23. 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 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.

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.

24. 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.

25. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice in accordance with the provisions of the Illinois Local Government Prompt Payment Act. The client further agrees to pay interest on all amounts invoiced and not paid or objected to in accordance with the Illinois Local Government Prompt Payment Act.

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.

26. Jobsite 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.

27. 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.

28. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.