

**A RESOLUTION APPROVING
A PROFESSIONAL SERVICES AGREEMENT
WITH WBK ENGINEERING, LLC
(2550 Golf Road Demolition Engineering Review)**

WHEREAS, the City desires to retain a firm to provide professional engineering plan review and inspection services in connection with the upcoming demolition of the commercial office tower located at 2550 Golf Road, Rolling Meadows, Illinois ("**Services**"); and

WHEREAS, as a home rule municipality, the City is not subject to the Local Government Professional Services Selection Act (50 ILCS 510/1 *et seq.*) and may select a firm to provide the Services that, in its judgement, is the best and most favorable to the interests of the City and the public after considering qualifications, price, and other factors; and

WHEREAS, the City has received a proposal to provide the Services from WBK Engineering, LLC, and the City has determined that it is in its best interests to enter into an agreement with WBK Engineering, LLC for the Services.

NOW THEREFORE, be it resolved by the City Council of the City of Rolling Meadows, Illinois, as follows:

Section 1: The facts and statements contained in the preambles to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

Section 2: The City Manager is hereby authorized and directed to enter into an agreement with WBK Engineering, LLC to provide engineering plan review and inspection services to the City in connection with the upcoming demolition of the commercial office tower located at 2550 Golf Road, Rolling Meadows, in substantially the form attached hereto as **Exhibit A**.

Section 3: This Resolution shall be in full force and effect upon its passage and approval in accordance with law.

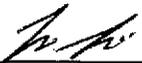
[Signature page follows.]

PASSED AND APPROVED by the City Council of Rolling Meadows, Cook County, Illinois this 13th day of June, 2023.

AYES: Reyez, Koehler, McHale, Budmats, O'Brien, Boucher

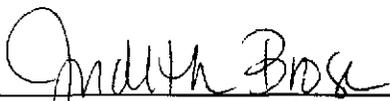
NAYS: 0

ABSENT: Vinezeano



Lara Sanoica, Mayor

ATTEST:



Judith Brose, Deputy City Clerk

Exhibit A
Proposal and Terms



Proposal for Plan Review & Inspection Services

2550 Golf Road

City of Rolling Meadows, IL

May 31, 2023

Mr. Glen Cole
Assistant City Manager &
Community Development Director
City of Rolling Meadows
3600 Kirchoff Road
Rolling Meadows, IL 60008

Mr. Cole:

WBK Engineering, LLC (WBK) is pleased to provide this proposal to the City of Rolling Meadows for development review and inspection services related to the redevelopment of the property at 2550 Golf Road. WBK looks forward to the opportunity to represent and assist the City of Rolling Meadows on this project. Included below is our understanding of the assignment, scope of services, project assumptions, and estimate of fee.

Our staff serves as primary review engineers and construction inspectors for several municipalities in northeast Illinois. We understand the necessary balance of managing development to meet community objectives with achieving code compliance and engineering standards. We bring a staff of engineering professionals with both design and construction expertise. Our staff are immediately available, and our current workload will allow us to provide review engineering and construction inspection services on behalf of the City as needed for this project.

I will serve as the primary contact for the City of Rolling Meadows, managing WBK team assignments and overseeing project management. I have over 30 years of professional experience related to a wide variety of civil engineering projects including plan review for municipalities in Cook, DuPage and Kane County, site inspection/construction oversight, and project design experience related to stormwater management, underground utilities, roadways, and all facets of site development. In addition, we have assembled a very experienced project team to support the City on this project. Our company information, project team organizational chart, staff resumes, representative projects and references are attached for your review. Our goal is to become an extension of your staff, collaborating and successfully completing reviews and construction inspections in a timely and effective manner.

We believe that our technical abilities combined with our experience working with local municipalities, contractors, and engineers throughout the region, puts WBK in a unique position to successfully collaborate and complete the engineering plan reviews and construction inspection services to satisfy the City's goals and objectives. WBK staff has the experience to perform these services with the best interest of the City in mind. Our team has worked on both sides of the table, so we understand how to move projects forward in a mutually beneficial fashion, while also looking at the short- and long-term impacts of decisions made during design and construction.

PROJECT UNDERSTANDING

It is our understanding that the City of Rolling Meadows wishes to contract for plan review and inspection services for the redevelopment of the property at 2550 Golf Road, within the City of Rolling Meadows. We understand that the City wants a qualified professional consultant to provide the following services.

SCOPE OF SERVICES

WBK will provide the following services on an as-needed basis as requested by the City of Rolling Meadows.

TASK 1 | FINAL ENGINEERING REVIEW

At the request of the City, we will review the final site improvement plans, consisting of demolition, grading, soil erosion/sediment control, and restoration for the site improvements. We will review the following documents against the Stormwater Ordinance, City Building Codes and general engineering and construction practices. We will identify third party permits that may be required. We will review the following documents during the final review phase of planning and building permit processes including but not limited to:

- Final Engineering Plans including demolition, grading, soil erosion/sediment control, and restoration
- Permit determination letter from the MWRD
- Engineer's Opinion of Probable Construction Cost

TASK 2 | CONSTRUCTION INSPECTION

At the request of the City, we will serve as the City's representative related to land development improvements and construction inspections of the same. We understand that construction inspections may be requested on a part-time or full-time basis depending on the scope of the work being performed. Land Improvements typically include, but may not be limited to:

- Soil Erosion/Sediment Control measures
- Demolition
- Mass grading operations
- Final restoration

Construction inspection services typically include the following elements:

- Preconstruction meeting coordination and facilitation
- Utility and third-party permit coordination
- Daily site inspections and documentation for plan and City specification compliance
- Inspection of site material deliveries
- Testing coordination and documentation
- Conflict resolution facilitation with Developer and City

- Final Inspection and Punch List

TASK 3 | PUBLIC IMPROVEMENT ACCEPTANCE & FINANCIAL GUARANTEE ADMINISTRATION

At the request of the City, WBK will assist the City in managing the financial guarantees it holds for the development. Typically, these guarantees relate to completion of land improvements or are held as a one-year warranty on performance of land improvements subsequent to acceptance. Tasks may include punchlist resolution, coordination with developers and financial institutions. We will also facilitate acceptance of public improvements including review of acceptance documents, financial guarantees and coordination with City staff. We will assist with data updates and management of Public Improvement Acceptance and Financial Guarantees within the City's current system.

TASK 4 | MEETINGS

We will attend meetings as needed with the Developer's team, third party review agencies, and City staff. We will attend meetings for public hearings, Zoning Board of Appeals, Plan Commission, or Board meetings as requested.

SCHEDULE FOR SERVICES

We will typically complete plan reviews within 10 business days of WBK receipt of a complete application, set of plans and calculations. We will endeavor to provide an initial review of documents within 3 business days of receipt to determine if the submittal is complete to continue with a comprehensive review. We understand that some reviews may require a response quicker than 10 business days and we will endeavor to work with the City and the applicant to provide as timely a response as reasonably possible. If for any reason the aforementioned timeframes cannot be achieved, WBK shall advise the City prior to proceeding with further services.

PROJECT ASSUMPTIONS

In preparing this proposal, we have attempted to provide you with a scope of services based on the needs of the City. The following are not included in this proposed scope of services:

- Geotechnical services
- Environmental services
- Survey services
- Building inspection services, including utility inspections required by the State of Illinois to be performed by a licensed plumber

We can provide many additional services through WBK staff or subconsultants with whom we have a strong business relationship. Should the City require additional services, these can be handled under an amendment to this agreement, or through a separate agreement.

ESTIMATE OF FEES

Due to the uncertain nature of the scope of services required for this project, we will provide these services on a time and materials basis. The actual amount invoiced will be based on the level of effort required. Reimbursable expenses, such as postage, overnight delivery, printing, copying, etc. will be invoiced to you at our cost plus 10%.

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 increase our fees 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 the City of Rolling Meadows. If you have any questions, please do not hesitate to call.

Please note that preparing this proposal requires the exercise of professional knowledge and judgment, and as such, this proposal remains the proprietary instrument of service of the firm WBK Engineering, LLC. No portion of this proposal may be shared with another firm providing similar services without our permission.

Sincerely,



Andy Sikich, PE, CFM
Civil Engineering Manager

Encl: 2023 Schedule of Charges
General Terms and Conditions (February 4, 2016)

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

Authorized By

Position

Date

WBK ENGINEERING, LLC
2023 Standard Charges for Professional Services

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 235
Engineer VI	\$ 200
Engineer V	\$ 180
Engineer IV	\$ 160
Engineer III	\$ 140
Engineer II	\$ 125
Engineer I	\$ 115
Urban Planner VI	\$ 215
Urban Planner V	\$ 185
Urban Planner IV	\$ 160
Urban Planner III	\$ 125
Urban Planner II	\$ 105
Environmental Resource Specialist V	\$ 152
Environmental Resource Specialist IV	\$ 130
Environmental Resource Specialist III	\$ 112
Environmental Resource Specialist II	\$ 100
Environmental Resource Specialist I	\$ 90
Technician V	\$ 170
Technician IV	\$ 140
Technician III	\$ 135
Technician II	\$ 105
Technician I	\$ 90
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.

**General Terms and Conditions for the Professional Services Engagement Between
WBK ENGINEERING, LLC (Engineer) and THE CITY OF ROLLING MEADOWS (Client)
Dated June 2, 2023**

1. **Relationship Between Engineer and Client:** WBK ENGINEERING, LLC (*Engineer*) shall serve as THE CITY OF ROLLING MEADOWS, ILLINOIS's (*Client*) 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.

References to *Contractor* throughout this document refer to one or more contractors and their subcontractors, if any, retained by Client to perform work in connection with Engineer's services provided under this *Agreement*. *Contractor* shall not be deemed to apply to a private permittee whom the Engineer is performing municipal review services, including construction inspection, on behalf of Client.

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 inaccuracies, 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.

Notwithstanding the foregoing, Client and Engineer acknowledge and agree that the *Project* Documentation and any other work product of Engineer under this *Agreement* may constitute public records that are subject to retention and disclosure under the Illinois Local Records Act (50 ILCS 205/1 *et seq.*) and the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*). Client and Engineer mutually agree that, in connection with any such disclosure to or use by a party that is not Client, Engineer, or Contractor, neither party can: guarantee confidentiality; prohibit reuse; or hold harmless and indemnify the other party pursuant to this Section 6.

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:

- a. 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.
- b. All employment decisions shall be consistent with the principle of equal employment opportunity, and only job-related qualifications will be required.
- c. 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 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.

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.

14. **Successors and Assigns:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.

15. **Waiver of Contract Breach:** The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

16. **Entire Understanding of Agreement:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

17. **Amendment:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

18. **Severability of Invalid Provisions:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, county or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.

19. **Force Majeure:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.

20. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.

21. **Access and Permits:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer performs such services.

22. **Designation of Authorized Representative:** Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.

23. **Notices:** Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.

24. **Reserved.**

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:

- a. **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.
- b. **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. **Kotecki Waiver.**

- a. Engineer hereby agrees to waive any limitation as to the amount of contribution recoverable against them by Client. This specifically includes any limitation imposed by any state statute, regulation, or case law including any Workers' Compensation Act provision that applies a limitation to the amount recoverable in contribution such as *Kotecki v. Cyclops Welding*.
- b. 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.

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 an operation, maintenance and repair activity for which the Engineer is not responsible.

30. Insurance and Indemnification:

- a. Engineer's Insurance. Engineer shall provide certificates of insurance evidencing the following minimum insurance coverage and limits. Insurance coverage shall be in form, and from companies, acceptable to Client and shall name "*The City of Rolling Meadows and its elected and appointed officials, officers, employees, agents, attorneys, consultants, and representatives,*" as Additional Insured on a primary and non-contributory basis. The insurance coverage and limits set forth below shall be deemed to be minimum coverage and limits and shall not be construed in any way as a limitation on Engineer's duty to carry adequate insurance or upon Engineer's liability for losses or damages arising from this Contract. The minimum insurance coverage and limits that shall be maintained at all times by Engineer while providing, performing, or completing services under this Agreement are as follows:
- i. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, and property damage and \$1,000,000 per occurrence for personal injury. The general aggregate shall be twice the required occurrence limit. Minimum General Aggregate shall be no less than \$2,000,000 or a project/contract specific aggregate of \$1,000,000.
 - ii. Business Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - iii. Workers' Compensation and Employers' Liability: Workers' Compensation coverage with statutory limits and Employers' Liability limits of \$500,000 per accident.
 - iv. Professional Liability Insurance: \$1,000,000 per claim with respect to injury or damage arising out of acts, errors, or omissions in providing the professional services under this Agreement, but not limited to the following:
 1. Preparing, approving or failure to prepare or approve maps, drawings, opinions, report, surveys, change orders, designs or specifications;
 2. Providing direction, instruction, supervision, inspection, engineering services or failing to provide them if that is the primary cause of injury or damage.
- b. 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.
- c. 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.

[Remainder of page intentionally left blank.]