



Agenda Item Executive Summary

Title: Northwest Winnetka Stormwater Improvements – Authorization to Award Contact(s) for Resident Engineering Services

Presenter: Steven M. Saunders, Director of Public Works/Village Engineer

Agenda Date: 01/06/2015

Consent: YES NO

- | | |
|-------------------------------------|-------------------------|
| <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | Bid Authorization/Award |
| <input type="checkbox"/> | Policy Direction |
| <input type="checkbox"/> | Informational Only |

Item History:

On November 6, 2014, the Village awarded a contract to A Lamp Concrete, Inc. to perform construction services for the proposed Northwest Winnetka Stormwater Improvements project for an amount not to exceed \$6,117,230. The Greenwood and Forest Glen study area is an approximately 170-acre drainage area north of Tower Road roughly bounded by Gordon Terrace on the east and the Skokie River East Diversion Ditch on the west. All of the stormwater runoff in this area currently drains to the Skokie River East Diversion Ditch through a trunk sewer heading west under Tower Road. During large storm events, as the water rises in the Diversion Ditch, the 36-inch outlet to the Diversion Ditch cannot drain by gravity and the pond provides relief via the other 36-inch outlet. The proposed project increases conveyance capacity and using available storage volume in the existing stormwater storage lagoon south of Tower Road and west of Heather Lane. This will provide flood relief for the western portions of the Forest Glen subdivision, along Tower Road, and in areas along Greenwood Avenue, Edgewood Lane, Grove Street, and Asbury Avenue.

Executive Summary:

Due to the scope, size, and complexity of the proposed stormwater project, the Village will require the support of professional engineering consultants to assist with the review and approval of technical shop drawings, assistance with site inspections, project documentation, review and make recommendations for pay requests and potential change orders, and as required, assist in public communications and outreach programs.

As this project has developed over the past few years, the Village has worked closely with the engineering design team of Christopher B. Burke Engineering, Ltd., and engineering consultant Mr. Jim Johnson from AT Group, Inc., who was also involved with the recently completed Northeast Winnetka Relief Sewer Project. Due to the contribution of this team to the development of the project, the Village sought proposals from both firms to assist with the duties and responsibilities of Resident Engineering for the project.

Each of these firms brings a specific contribution to the success of this project. As the designer, Christopher B. Burke Engineering, Ltd., has the historical background and technical understanding of the project. Staff believes that their ongoing involvement with the pre-construction meetings, the technical reviews of the shop drawings, and the development of the final as-built drawings would add significant value to the Village. Christopher B. Burke Engineering has proposed a fee of \$43,050 for their services, as enumerated in their proposal shown as Attachment #1.

Mr. Jim Johnson from AT Group, Inc. continues to be involved with the coordination of the Village's various stormwater improvements. As indicated above, Mr. Johnson has contributed to the site observation duties and the development of required documentation for the recently completed Northeast Winnetka Storm Relief Project. As the proposed Resident Engineer from AT Group, Inc. Mr. Johnson brings his detailed understanding of the project as well as an understanding of the level of service required for the success of this project. Staff is proposing that AT Group, Inc. will perform much of the day to day on-site inspections (approximately 30-hours a week), development of the required documentation and photos, offer recommendations for any required field changes, and assist with public communications and outreach programs. Due to his involvement on a day to day basis, the Village will be providing Mr. Johnson a temporary location at the public works facility to maintain his field notes, and perform his other duties. AT Group has proposed a not to exceed fee of \$73,000, based on a weekly schedule of 30 hours, for providing Resident Engineering services for the project, as enumerated in Attachment #2.

Village Public Works staff is expected to supplement the services offered by both Christopher B. Burke Engineering and AT Group for field inspections, project management and approval, and public relations.

Recommendation:

Consider awarding contract(s) for Residential Engineering Services to:

1. Christopher B. Burke Engineering, Ltd., for a price not-to-exceed \$43,050
2. AT Group, Inc., for a price not-to-exceed \$73,000

Total amount approved for Resident Engineering Services = \$116,050

Attachments:

1. Proposal from Christopher B. Burke Engineering, Ltd.
2. Proposal from AT Group, Inc.



CHRISTOPHER B. BURKE ENGINEERING, LTD.

9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

December 5, 2014

REVISED December 19, 2014

Village of Winnetka
510 Green Bay Road
Winnetka, IL 60093

Attention: Mr. Steve Saunders

Subject: Proposal for Engineering Services
Forest Glen and Greenwood Avenue Stormwater Improvements

Dear Mr. Saunders:

Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to submit this proposal for engineering services for the subject project. The proposal includes our Understanding of the Assignment, Scope of Services, and Estimate of Fee. All work performed under this proposal will be in accordance with the attached Schedule of Charges and General Terms and Conditions.

UNDERSTANDING OF THE ASSIGNMENT

CBBEL understands the Village of Winnetka has contracted with A Lamp Concrete Contractors Inc. to complete the Forest Glen and Greenwood Avenue Stormwater Improvements project. The proposed work is officially known as "FOREST GLEN AND GREENWOOD AVENUE STORMWATER IMPROVEMENTS" and further described as the construction of approximately 6,300 lineal feet of new storm sewer, manholes, junction chambers, casing pipe, drainage structures, pavement removal and replacement, water main and sanitary sewer adjustments and restoration in Winnetka, Illinois.

Scope and fee are based upon CBBEL providing pre-construction services, shop drawing review, project close out and fielding design questions during construction.

SCOPE OF SERVICES

Task 1 – Pre-Construction Services

CBBEL will perform the following tasks prior to the start of construction:

- Facilitate two pre-construction meetings.
- Review shop drawings and catalog cuts for conformance with the plans and specifications.
- Review the Contractor's schedule for compliance with the specifications.
- Review any miscellaneous submittals from the Contractor.

Task 2 – Shop Drawing Review

- Record data received, maintain a file of drawings and submissions.
- Review Contractor's submittals for compliance with contract documents. Notify the Village of any deviations or substitutions. With the notification, provide the Village with a recommendation for acceptance or denial, and request direction from the Village regarding the deviation or substitution.

Task 3 – Field Questions

CBBEL will provide assistance during construction if design questions arise. This may include a field meeting and/or conference calls to resolve any construction issues. This task will be completed on a Time and Material basis as the quantity and frequency cannot be determined.

Task 4 – Project Closeout

CBBEL will perform the following tasks prior to the closeout of the project:

- Prior to final inspection, submit to the Contractor a list of observed items requiring correction and verify that each correction has been made.
- Coordinate and conduct the final inspection with the Village, prepare a final punchlist.
- Verify that all the items on the final punchlist have been corrected and make recommendations to the Village concerning acceptance.
- Determine if the project has been completed in accordance with the Contract Documents and that the Contractor has fulfilled all of his obligations.
- This does not include any final quantities or pay requests for the project.

ESTIMATE OF FEE

CBBEL's proposed fee is for this project is \$43,050, plus the Time and Material (T&M) for Task 3.

| Task | | Hours | Rate | Direct Cost | Total |
|--------|---------------------|-------|-------|-------------|----------|
| Task 1 | Pre-Construction | 30 | \$179 | | \$5,370 |
| Task 2 | Shop Drawing Review | 108 | \$150 | | \$16,200 |
| Task 3 | Field Questions | | | | T & M |
| Task 4 | Project Close-Out | 120 | \$179 | | \$21,480 |

Please note that for any of the observation tasks with CBBEL may be performing, the Contractor(s) shall be informed that neither the presence of CBBEL field staff nor the observation and testing (if any) by our firm or subconsultant of our firm shall excuse the Contractor in any way for defects discovered in the work. It should be understood that CBBEL will not be responsible for any job and site safety on this project; job and site safety shall be the sole responsibility of the Contractor(s). CBBEL does not have the right to stop work and will not advise nor supervise the Contractor(s) means and methods of their work.

We will bill you at the hourly rates specified on the attached Schedule of Charges and establish our contract in accordance with the attached General Terms and Conditions. Direct costs for blueprints, photocopying, mailing, overnight delivery, messenger services and report compilation are not included in the fee estimate. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. Please note that any requested meetings or additional services are not included in the preceding fee estimate and will be billed at the attached hourly rates.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.

Sincerely,



Christopher B. Burke, PhD, PE, D.WRE, Dist.M.ASCE
President

Encl. Schedule of Charges
General Terms and Conditions

THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ACCEPTED FOR THE VILLAGE OF WINNETKA.

BY: _____
TITLE: _____
DATE: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2014

| <u>Personnel</u> | <u>Charges*</u> <u>(\$/Hr)</u> |
|--|-----------------------------------|
| Principal | 248 |
| Engineer VI | 217 |
| Engineer V | 179 |
| Engineer IV | 143 |
| Engineer III | 129 |
| Engineer I/II | 102 |
| Survey V | 200 |
| Survey IV | 169 |
| Survey III | 144 |
| Survey II | 104 |
| Survey I | 81 |
| Resource Planner V | 112 |
| Resource Planner IV | 108 |
| Resource Planner III | 100 |
| Resource Planner I/II | 88 |
| Engineering Technician V | 169 |
| Engineering Technician IV | 137 |
| Engineering Technician III | 123 |
| Engineering Technician I/II | 100 |
| CAD Manager | 149 |
| Assistant CAD Manager | 130 |
| CAD II | 129 |
| CAD I | 101 |
| GIS Specialist III | 124 |
| GIS Specialist I/II | 69 |
| Landscape Architect | 143 |
| Environmental Resource Specialist V | 183 |
| Environmental Resource Specialist IV | 141 |
| Environmental Resource Specialist III | 118 |
| Environmental Resource Specialist I/II | 97 |
| Environmental Resource Technician | 93 |
| Administrative | 92 |
| Engineering Intern | 55 |
| Survey Intern | 53 |
| Information Technician III | 109 |
| Information Technician I/II | 100 |

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2014.

CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (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

resumptions 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. 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. 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.

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 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.
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.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not 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.

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 & 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, country 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 perform 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. **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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. **Insurance and Indemnification:** The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

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

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

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



AT Group, Inc.

Managing the Design & Construction Process

James H. Johnson, P.E.

November 16, 2014

Steven Saunders, PE
Village of Winnetka
1390 Willow Road
Winnetka, IL 60093

Subject: Resident Project Representative Services
NW Winnetka Storm Sewer Improvements

Dear Mr. Saunders:

We sincerely appreciate the opportunity to provide our proposal for resident project management services associated with the NW Winnetka Project.

I. PROJECT SCOPE:

The AT Group (ATG) has been working with the Village throughout the design and permitting process, and therefore understands the Village's intent for and complexity of the proposed improvements. The following proposed services are based on Pre-Construction Services from December 1, 2014 until February 28, 2015, Construction Services from March 1 until September 30, 2015, and Post-Construction Services from October 1 until November 30, 2015.

II. PROJECT MANAGEMENT SERVICES:

Acting as the Village's Resident Project Representative, ATG shall provide representation, negotiation, management, coordination and administrative services as follows:

A. Pre-Construction Phase

1. Meetings

Based on the goals and objectives and the project plans, facilitate pre-construction meetings with the project team, other impacted organizations (e.g., schools, parks), and impacted residents.

2. Submittals

Monitor the shop drawing/submittal process, and assist the Village and Design Engineer in their evaluation of the required submittals.

3. Budget Development

Based on the goals and objectives and the project organization plan, review the Owner's current Master Program Budget so that it appropriately addresses all project and development costs. Prepare a detailed line item budget for the Owner's approval.

4. Schedule Development

Prepare and update, as required, a Master Project Schedule. The schedule shall address all elements of the project.

B. Construction Phase

1. Construction Oversight

Establish, attend and direct, as Village's representative, weekly construction coordination meetings. Review construction progress for conformance with the project budget and schedules. Attend all project construction meetings. Maintain a central file of all contract and construction documents. Review construction operations and advise Owner as to deficiencies uncovered and work that may not conform to the construction documents. Assist with coordination with outside agencies. Monitor daily construction activities and prepare weekly project reports

2. Construction Contract Administration

Prepare and maintain a log of actual and proposed project changes and requests for information that could affect project schedule or cost. Monitor the timely submittal and execution of contract changes and review them for completeness and accuracy. Oversee billings presented for payment. Verify all applications for payment and appropriate lien waivers. Prepare a monthly report of all invoices submitted on the project that summarizes contract status against budgeted costs.

3. Progress Reporting

Visit the site daily to provide the Village with an objective opinion as to actual progress against the Master Budget and Schedule. Provide Owner a monthly report that addresses schedule status, change requests, change orders, information and action required, as well as overall status of the work.

4. Change Request Management

Assist Owner in the evaluation of all change requests. Review and evaluate all pricing associated with the change requests. Make recommendations to Owner if change requests should be processed as an approved change order.

5. Regulatory Agency Coordination

Assure the design/contractor team is communicating with and responding appropriately to all governing agencies having jurisdiction over the project. Maintain a file of all agency reviews, inspection certificates and permits. Attend final occupancy reviews as Owner's representative.

6. Utility Coordination

Monitor the planning and installation of all required utilities into the project. Schedule meetings with the utilities and the contractor to review site requirements and schedule utility installation.

7. Conflict Resolution

Assist Owner in resolving any disputes that may arise between members of the project team, to include the architect, contractor or subcontractors, that might impact the progress or cost of the work.

C. Post Construction Phase

1. Owner Acceptance

Assist Owner in the preparation of preliminary and final punchlists, and monitor the contractor's progress against those lists to ensure timely project completion. Review completion certificates and recommend approval where appropriate.

2. Contract Close-Out

Verify that all close-out requirements and punchlists are completed in a timely and efficient manner. Oversee the completion and execution of all contract requirements, including final payments and release of retainage. Review warrantee submittals and record documents, Coordinate turnover of all project documentation to the Owner.

III. BASIS OF COMPENSATION:

A. Basic Services

Assuming a total project duration of twelve (12) months (commencing on or about December 1, 2014 and ending on or about November 30, 2015), ATG shall provide project management services for a stipulated sum of \$73,000. Phase A (Pre-Construction) and C (Post Construction) to be invoiced in four (5) equal monthly payments of \$2,500. Phase B (Construction) to be invoiced in seven (7) equal monthly amounts of \$9,000.

B. Reimbursable Expenses

The following standard reimbursable expenses are included as part of the basic fee:

- a. Local travel expenses and mileage
- b. Long distance and cellular telephone communication.
- c. Expenses of reproduction, postage, facsimile transmission and receipt and handling of all project related documents.

Any other expenses related to travel and sustenance outside the Chicago metro area shall be authorized in writing by the Owner prior to any expenditure.

C. Invoicing:

ATG shall invoice for basic services monthly by phase, based on a uniform series of equal payments. Should the completion of any phase occur before the above referenced date, the balance of any unpaid phase fee shall be become due upon receipt of a final invoice for that phase. Should any phase duration extend beyond the dates noted above, additional services shall be provided to the end of the phase with the Owner's written authorization on an hourly basis and at the following rates:

Principal and/or Project Manager \$125 per hour

All invoices for ATG services shall be numbered seriatim in chronological order of submission and shall state the phase of services to which the invoices relates and the total amount of ATG's compensation payable that month.

IV. MISCELLANEOUS:

A. Owner agrees to indemnify and hold harmless ATG, its officers, employees or agents against and in respect of, any and all damages, claims, losses, liabilities and expenses, including without limitation reasonable attorney's fees, which may be imposed upon, incurred by or asserted against ATG, its officers, employees or agents arising out of Owner's, their officers', employees' or agents' negligent or willful acts or omissions. ATG agrees to indemnify and hold harmless Owner, their officers, employees or agents against and in respect of, any and all damages, claims, losses, liabilities and expenses, including without limitation reasonable attorney's fees, which may be imposed upon, incurred by or asserted against owner it officers, employees or agents arising out of ATG's, its officers', employees' or agents' negligent or willful acts or omissions.

B. Anything in this Agreement to the contrary notwithstanding, Owner understands and agrees that ATG holds only the following insurance coverage and is not required to purchase or maintain any other insurance unless Owner shall purchase or reimburse ATG for the cost of same and such can be obtained. Certificates of Insurance for the following insurance coverages are to be provided prior to the commencement of consulting services.

| Coverage | Limit |
|---------------------------------|-------------------------|
| Comprehensive General Liability | |
| General Aggregate Limit | \$2,000,000 |
| Each Occurrence Limit | \$1,000,000 |
| Products Aggregate Limit | \$1,000,000 |
| Personal/Advertising Injury | \$1,000,000 |
| Non-Owned/Hired Auto | \$1,000,000 |
| Worker's Compensation and | Statutory |
| Employer's Liability | |
| Bodily Injury by Accident | \$ 500,000 each person |
| Bodily Injury by Disease | \$ 500,000 policy limit |
| Bodily Injury by Disease | \$ 500,000 each person |

ATG shall maintain such insurance coverages for the entire period that ATG is providing services to Owner and that the certificate of insurance shall confirm that notice will be given at least thirty (30) days prior to cancellation or modification of such insurance coverages. Owner shall be named as additional insured on all of the above insurance policies other than workman's compensation & employer's liability, so long as it shall not increase the cost of such coverage to ATG. In any such case which naming Owner as an additional insured shall increase the cost of coverage to ATG, ATG shall so notify Owner in writing.

C. ATG acknowledges that in order to fully perform the services outlined above, it will be necessary to have in its employ certain key personnel. Accordingly, ATG agrees that the staff available to it shall at all times during the term of this Agreement consist of sufficient personnel to enable it to efficiently and effectively carry on its obligations pursuant to this Agreement. Further, ATG warrants that all personnel who will provide services to Owner pursuant to this Agreement are fully qualified and possess the requisite expertise to perform the services enumerated in the agreement.

D. ATG shall use its best efforts, skill, experience and judgment to perform its services specified in this Agreement, diligently and conscientiously performing its duties thereunto, subject to any delays caused by Owner or by strikes, lockouts, acts of God, or other reasons beyond its control.

E. This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination by Owner, Owner's sole liability shall be to compensate ATG for services performed prior to the termination date, for hourly work performed to the date of notice and any other amounts earned for prior months' services but not yet paid, together with any reimbursable expenses which may be then due.

F. ATG shall keep or cause to be kept during the term of this Agreement and for a period of three years from the termination of this agreement, records as may be necessary to accurately indicate all of the business they transact pursuant to this Agreement. All such records shall be open during normal business hours for inspection and examination by Owner and may be audited by Owner at Owner's expense.

G. ATG shall not be responsible for construction means, methods, techniques, sequences and procedures employed by contractors and consultants in performance of their contract, and shall not be responsible for the failure of any contractors or consultants to carry out the work in accordance with their contract and/or contract documents, or applicable standards of safety. ATG shall immediately notify Owner of any known or suspected deficiency in the reasonable performance of the duties of such consultants and contractors.

H. Owner shall purchase or self-insure and maintain insurance (or require the Contractors to purchase or self-insure and maintain insurance) to protect Owner and ATG from third party claims. ATG, as Owner's representative, shall be named as an additional insured on all general liability policies from claims of third parties for damages because of bodily injury or property damage occurring during construction on the site. Evidence of said coverage will be provided ATG by Owner as soon as feasible after execution of the agreement.

I. It is specifically understood that ATG shall not be required at any time to advance its own funds for the payment of any bills for labor, material or services furnished to the Project other than for labor and materials used in the provision of its own services under this Agreement for which ATG is being compensated in accordance with Section III of this Agreement.

J. ATG represents that it is now and shall at all times during this contract continue to be an Equal Opportunity Employer and shall conform to all applicable Equal Opportunity Laws, Executive Orders, Rules and Regulations. ATG will comply with the Immigration Reform and Control Act of 1986. If requested by Owner, ATG will certify or attest in writing within thirty (30) days of Owner's request that no services subject to this Agreement are or will be performed by unauthorized aliens.

K. Owner and ATG agree that the relationship of ATG to Owner is that of independent contractor and that ATG, and Owner shall not be deemed to have any other relationship with regard to any services to be performed by ATG for the Project. Particularly, ATG, and Owner shall not be deemed to be partners, joint venturers, or principal and agent, and ATG shall have no

authority to bind Owner, either individually or jointly with ATG to any obligation to any third party, or to execute any agreements or contracts on behalf of Owner.

L. It is further understood that ATG is not assuming the responsibilities of the Architect, Engineers, Contractor or Subcontractors, Owner, Owner's attorney or other consultants and that ATG is performing only advisory services as set forth in this Agreement. With regard to plans and specifications, it is understood that ATG will give its best efforts in a good workmanlike manner, to review and comment on the work product of other professionals or contractors separately engaged by Owner. In so doing, ATG will not be deemed a sponsor or guarantor of such plans and specifications and any defects, errors or omissions remain the responsibility of the professionals or contractors preparing or executing the same. Any approval or recommendations by ATG of any plans, specifications or other documentation for the Project or any part thereof, or of construction of the Project or any part thereof, shall impose no responsibility, obligations or liability upon ATG or any of its officers or employees to Owner for defects in the plans, specifications or construction, except for defects resulting from the willful misconduct of ATG. ATG shall immediately notify Owner to any known or suspected deficiency uncovered in the reasonable performance of its duties.

M. Any notices or communications required or permitted to be given or made hereunder shall be deemed to be so given or made when in writing and delivered in person or sent by United States registered or certified mail, postage prepaid, directed to the parties at the following addresses or such other addresses as they may from time to time designate in writing. Said notices or communications shall be effective upon receipt.

Owner: Steven Saunders, PE
Village of Winnetka
1390 Willow Road
Winnetka, IL 60093
ATG: James H. Johnson
The AT Group, Inc.
1469 West Fork Drive
Lake Forest, IL 60045

N. ATG shall appoint a Project Manager to perform or directly oversee all services to be performed by ATG under this Agreement. Project Manager shall report directly to and consult with Owner on a regular basis satisfactory to Owner during all phases of said Project. If for any reasons the Project Manager is unable to perform the services to be provided herein for any period, ATG shall provide an individual or individuals acceptable in the sole and uncontrolled opinion of Owner, to perform the duties of Project Manager. This Agreement may not be assigned by ATG without Owner's prior written consent.

O. Owner and ATG agree that the relationship of ATG to Owner is that of independent contractor and that ATG and Owner shall not be deemed to have any other relationship with regard to any services to be performed by ATG for the Project. Particularly, ATG and Owner shall not be deemed to be partners, joint venturers, or principal and agent, and ATG shall have no

11/25/2014

Respectfully submitted
THE AT GROUP, INC.

James H. Johnson
Principal

Accepted by:
The Village of Winnetka

Name _____

Title: _____

Date _____