RESOLUTION 2015-073

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO SIGN AN ENGINEERING AND PLANNING SERVICES AGREEMENT AT DIRECT COSTS WITH WILLS BURKE KELSEY ASSOCIATES, LTD. FOR RESIDENTIAL ENGINEERING SERVICES, AUTHORIZING THE EXECUTION OF A PROFESSIONAL FEE REIMBURSEMENT AGREEMENT WITH THE PROJECT DEVELOPER, AND AUTHORIZING THE EXECUTION OF AN AT-RISK GRADED AGREEMENT.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an Engineering Services Agreement with Wills Burke Kelsey for plan review and inspection services for Project Black Bear, Exhibit "A," subject to such changes as shall be recommended by the City Engineer or City Attorney. Such services shall be provided at the hourly rates included therein, with a not to exceed figure, but such figure shall be modified upon mutual agreement of both parties. The total expenditure shall be limited by the budgeted sums available for such purposes.

Section 2. That the Mayor is authorized and directed to approve and execute a Professional Fee Reimbursement Agreement with the developer at issue, in form and content acceptable to him with the recommendation of the City Manager. Said agreement shall cover all costs associated with the performance of services contemplated in the agreement with Engineer, and shall include a 3% administrative fee to the City of DeKalb for administration of the professional services agreement.

Section 3. That the City Manager is authorized to negotiate and execute an At-Risk Mass Grading Agreement with the developer, providing that the developer can commence mass grading operations on the facility, in compliance with all state regulations and all regulations applicable to stormwater control and silt control, at the developer's sole risk, prior to final approval of a revised plat and plans for the site. Such agreement shall provide that the City shall have the right to reject any proposed plans and require reversion back to the current condition of the property, and the developer may proceed forward at its risk.

Section 4. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 22nd day of June, 2015 and approved by me as Mayor on the same day. Passed by a roll call vote of 7-0-1. Aye: Finucane, Marquardt, Snow, Noreiko, Baker, O'Leary, Rey. Nay: None. Absent: Jacobson

ATTEST:

Julie Abraham, City Clerk

John A. Rey, Mayor
PROFESSIONAL SERVICE AGREEMENT CITY OF DEKALB

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the “City” and “Wills Burke Kelsey” hereinafter referred to as the “Contractor”, with the City and Contractor agreeing as follows

A. Services:

Contractor agrees to furnish to the City the following services:

See attached Exhibit A

Contractor represents that it possesses the skills and knowledge necessary to provide all such services and understands that the City is relying upon such representation. Contractor further acknowledges that Exhibit A is an integral part of this Agreement and may not be modified except in accordance with a modification to the terms of this Agreement.

B. Term:

Services will be provided as needed and directed by the City beginning on the date of execution of this agreement and continuing, until terminated by either party upon 7 days written notice to the non-terminating party. Upon termination the Contractor shall be compensated for all work performed for the City prior to termination and shall provide to the City all work completed through the date of termination. The City’s issuance of a notice of termination shall function as a stop work order, beyond which the Contractor shall not incur any additional costs without the City’s express, written permission.

C. Compensation:

Contractor shall receive as compensation for all work and services to be performed herein, an amount based on the fee schedule attached hereto as Exhibit B. All payments will be made according to the Illinois State Prompt Payment Act.

Any payment made to the Contractor shall be strictly on the basis of quantum meruit. The Contractor shall submit to the City a detailed breakdown and invoice of all charges, including detail of past payments and amounts still remaining due, accurate to the date of the invoice, with each request for payment. Any additions to or deductions from the approved total amount of the contract, and any out of scope work shall require prior, written approval from the City. Any work performed without the City’s express, written consent shall be solely at the expense of the Contractor. The following optional provisions, if checked, shall apply:

- This work is to be completed on a time and materials basis in accordance with the rate schedule attached in Exhibit B.
This work is to be completed subject to a not-to-exceed price of $80,000 as identified in the Letter of Engagement, Exhibit D.

Unless and until the City provides written notice to Contractor that this agreement has been ratified, approved or amended by the City Council this Agreement shall be deemed to terminate automatically, without any obligation for further notice, work or payment, upon reaching the threshold. Contractor shall provide the City with written notice when the total amount charged hereunder has reached or exceeded $50,000.

D. Changes in Rates of Compensation:

If the Contractor seeks to impose any change in the fee schedule (whether in terms of hourly fee or lump sum fees), then the Contractor shall provide not less than ninety days written notice of its intent to change its fee schedule, and any such change in fee schedule shall require the approval of the City. The Parties acknowledge that this Agreement is for professional services and is not subject to the Illinois Prevailing Wage Act.

E. Ownership of Records and Documents / Confidential Information:

Contractor agrees to keep and maintain all books and records and other recorded information required to comply with any applicable laws. Contractor agrees to keep such information confidential and not to disclose or disseminate the information to third parties without the consent of the City. Contractor further agrees to keep as confidential any information belonging or relating to the City which is of a confidential nature, including without limitation information which is proprietary, personal, required by law to be confidential, or relates to the business, operations or accounts of the City. This confidentiality shall not apply to material or information, which would otherwise be subject to public disclosure through the freedom of information act or if already previously disclosed by a third party. Contractor acknowledges that the Freedom of Information Act, 5 ILCS 140/1 et seq. (the "Act") places an obligation on the City to produce certain records that may be in the possession of Contractor. Contractor shall comply with the record retention and documentation requirements of the Local Records Act 50 ILCS 205/1 et seq. and the Act and shall maintain all records relating to this Agreement in compliance with the Local Records Retention Act and the Act (complying in all respects as if the Contractor was, in fact, the City). Contractor shall review its records promptly and produce to the City within two business days of contact from the City the required documents responsive to a request under the Act. If additional time is necessary to comply with the request, the Contractor may request the City to extend the time so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.

The Contractor intends to deliver all project documents and records to the City upon completion of services for this project and will not keep any permanent record subsequent to such delivery.
F. Governing Law:

This contract shall be governed and construed in accordance with the laws of the State of Illinois. Venue and jurisdiction for any legal action arising out of or related to this Agreement shall be exclusively fixed in the DeKalb County Circuit Court, DeKalb County, Illinois.

G. Independent Contractor:

Contractor shall have sole control over the manner and means of providing the work and services performed under this agreement. The City's relationship to the Contractor under this agreement shall be that of an independent contractor. Contractor will not be considered an employee to the City for any purpose. The parties agree that the Contractor is exclusively responsible for the determination of what work is required to complete the tasks outlined in Exhibit A, and for the means and methods of completing such work. The City's compensation to Contractor shall be limited to that described in Exhibit B, and the City shall not reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with Contractor other than payment of the stated compensation. The Contractor shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.

Contractor shall be responsible for its' own personnel, training, instruction and related matters. Contractor shall be responsible for determining its sequence of performance for required work. Contractor's work shall be evaluated by the City based upon the end result of such work. Contractor shall be responsible for any expenses incurred by Contractor in the performance of its work, and shall not be authorized, expressly or impliedly, to obligate the City on any debt, contract or other agreement whatsoever. In the event that Contractor is compensated on an hourly basis under the terms of this Agreement, the City and Contractor agree that Contractor's compensation is usual and customary, based on the terms that Contractor offers its services to the market in general.

The Contractor acknowledges that neither it nor its personnel shall be acting as an employee or official representative of the City for purposes of being offered any protection or coverage under City insurance policies for tort immunity or other legal purposes.

H. Certifications:

Executing this Agreement constitutes acknowledgment, acceptance, and certification of the accuracy of the following certifications, and any other certifications required under any applicable law relating to the performance of this
Agreement. The Contractor is responsible for identifying all such applicable regulations and certifications, and for compliance with the same.

Authorized in Illinois: The Contractor that it is authorized to lawfully transact business and perform the services contemplated herein in the State of Illinois, under all applicable Illinois laws and regulations.

General Compliance and Certification: The Contractor certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the contracting process, agreement, or any services or materials provided in connection therewith. The Contractor acknowledges that it is responsible for identifying and complying with all applicable laws, ordinances, rules and regulations, and that it shall indemnify and hold harmless the City of DeKalb from any claim, liability or damages arising out of the failure to identify or comply with any such applicable legal restriction.

I. Insurance, Licensure and Intellectual Property:

The Contractor shall comply with all insurance requirements described on the attached Exhibit C. The Contractor agrees and warrants that it has procured all licenses, permits or other official permissions required by any applicable law to perform the services contemplated herein, that it will procure all additional licenses, permits or other official permissions hereafter required by law during the term of this Agreement, and that it will keep all such licenses in effect during the term of this Agreement. The Contractor shall provide a copy of any such licenses or permits upon request. All such insurance and licensure shall be provided at the Contractor’s sole expense. Contractor also warrants that it has complete ownership or authorization/entitlement to any intellectual property, software, images or other such items used in the performance of its work under this Agreement, and that it shall transfer to the City, unrestricted, the ability to modify, amend, publicize or otherwise utilize any intellectual property provided to the City under this Agreement unless the City expressly preapproves in writing a limitation to these provisions.

The Contractor shall not commence work under this Contract until they have obtained all insurance required and such insurance has been submitted to and approved by the City. The Contractor shall maintain its insurance in place for not less than two (2) years following completion of all work required under this Contract.

All drawings, specifications, reports and any other project documents prepared by the Contractor in connection with any or all of the services to be furnished thereunder shall be delivered to the City for the expressed use of the City. The Contractor shall have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans and specifications shall be the sole property of the City unless
otherwise specified in the negotiated agreement. The Contractor agrees that basic survey notes and sketches, charts, computations and other data prepared or obtained by the Contractor pursuant to this Agreement shall be made available, upon request, to the City without cost and without restriction or limitation as to their use. All field notes, test records, and reports shall be available to the City upon request.

J. Additional Terms or Modification:

The terms of this agreement shall be further modified as provided on the attached Exhibit A, Exhibit B and Exhibit C. Except for those terms included on Exhibit A, Exhibit B and Exhibit C, no additional terms are included as a part of this agreement. All prior understandings and agreements between the parties are merged into this agreement, and this agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties. The City reserves the right by written amendment to make changes in requirements, amount of work, or time schedule adjustments. The Contractor shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes. The City may, at any time by written order, require the Contractor to stop all or part of the services required by this Agreement. Upon receipt of such an order, the Contractor shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. If the Contractor identifies any costs associated with the suspension of services, such costs must be expressly approved by the City in writing, or they shall be the sole expense of the Contractor.

K. Notices:

All notices required to be given under the terms of this License shall be given by US mail, postage prepaid, or by e-mail, addressed to the parties as follows:

For the City:                           For the Contractor:

City Manager                         __________________________
City of DeKalb                        __________________________
200 S. Fourth Street                 __________________________
DeKalb, IL 60115                      __________________________
annemarie.gaura@cityofdekalb.com     __________________________

Either of the parties may designate in writing from time to time substitute addresses or persons in connection with required notices.

L. Subcontractors and Third Parties:

Contractor shall not assign or subcontract for the performance of any obligation under this Agreement, except with the express, written preapproval of the City, which consent may be withheld in the City's sole and absolute discretion. Should
Contractor assign any obligation arising under this Agreement with the consent of the City, the Contractor shall remain to be primarily liable to the City for the performance of the obligation in question, and further shall be liable for ensuring that the subcontractor(s) comply with all obligations arising under this Agreement as if the subcontractor(s) was/were the Contractor itself. Further, should Contractor request to assign the performance of any obligation arising hereunder to a subcontractor, Contractor expressly provides its consent to the City contracting directly with such proposed subcontractor (or another subcontractor acceptable to the City) for the performance of such work, and to the amendment of this Agreement to reduce the scope and cost accordingly.

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall it inure to the benefit of any third party.

M. Progress Reports:

Contractor shall report to the City Manager or her designee, and shall submit written progress reports identifying, in detail, the extent of work completed, the percentage of project completion, and project status, accompanying any invoice submitted to the City. Contractor shall also provide additional written or verbal progress reports to the City upon request, at any time, without additional charge. The Contractor shall attend conferences and visit the City at any reasonable, mutually acceptable time when requested to do so by the City.

N. Conflicts:

Contractor may continue to represent or undertake to represent existing or new clients in those matters that are not substantially related to Contractor’s work for the City, even if the interests of such clients in those matters are directly adverse to City. Contractor agrees however that the City’s prospective consent to conflicting representation contained in this paragraph shall not apply in any instance where, as a result of Contractor’s representation of the City, Contractor has obtained sensitive proprietary or other confidential information of a non-public nature that, if known to any such other client of Contractor, could be used in any such other matter by such client to the material disadvantage of the City. Contractor and the City covenant to work in good faith to identify any current or prospective conflicts, and to negotiate in good faith to resolve or waive such conflicts, or to limit or terminate services under this Agreement so as to avoid such conflicts.

Agreed to this 22nd day of June, 2015.

City of DeKalb

Contractor
Ity

City Mayor/Manager

Julie Abraham
Deputy City Clerk

Greg Chetkovc
Vice President
VIE Associates, LTD.
Exhibit A:

Description of Work

SCOPE OF SERVICES

Given our understanding of the assignment described above, we envision the following scope of services:

**TASK 1 - PLANING REVIEW:** Review and evaluate the planning submittal relative to code requirements. Prepare a comprehensive report to City staff for presentation to Plan Commission and City Council. We do not anticipate public meeting participation or attendance. Coordination of other City departments into the staff report will be performed by City staff. Zoning or Land Use ordinances will be prepared by the City.

**TASK 2 - FINAL ENGINEERING REVIEW:** Review the final site plan, final engineering design plan consisting of the storm sewers, water distribution, sanitary sewer, private roadways, pavement, and grading for the site and building improvements. Review the following documents against the Subdivision and the Stormwater Ordinances as well as any other applicable zoning and land use requirements. Evaluate the submittal relative to City of DeKalb standards / policies, DeKalb Sanitary District standards, IEPA standards and general engineering and construction practices. Identify third party permits including IEPA, and the DeKalb Sanitary District. Review the following documents during the final review phase of planning and building permit processes including but not limited to:

- The Final Site Geometry
- Final Engineering Plans including Mass Grading, Stormwater Facilities, Storm Sewer, Sanitary Sewer, Water Mains, and Roadway Construction
- Final Landscape Plans
- Final Stormwater Management Report
- Engineer’s Opinion of Probable Construction Cost
- Final Subdivision Plat

Draft a plan review for the Community Development staff to use in the final approval process. Provide a plan review for each final plan resubmittal to the assigned City staff and development team.

Meetings: Attend meetings as needed with the Developer’s team, third party review agencies and the municipal staff (Fire Chief, Planner, Public Works and Utility Managers) to determine the standards to be used in the design as well as the adequacy of existing or proposed infrastructure to serve the project. No public meeting attendance is anticipated.

Public Works / Coordination Engineering: Coordinate final plan comments with Public Works / Engineering Staff considering interests from water supply, wastewater collection and streets perspectives. The objective is to eliminate conflicting comments providing a unified consistent response to development submittals.

**TASK 3 – CONSTRUCTION SERVICES:** Provide services which may include site visits for construction observation or progress verification, contractor consultation, conflict resolution, letter of credit reduction reviews, punch list preparation and review of as-built information (provided by surveyor), review of final record drawings (utilizing surveyor provided information), etc. Please note that for any of the construction observation tasks which WBK may be performing, the Contractor(s) shall be informed by the City that neither the presence of WBK field staff nor the observation by our firm or sub-consultant of our firm shall excuse the Contractor in any way for defects discovered in the work. It is understood that WBK will not be responsible for job and site
safety of any project; job and site safety shall be the sole responsibility of the Contractor(s). WBK does not have the right to stop work and will not advise/schedule/coordinate/supervise the Contractor(s) nor the Contractor's means and methods of their work. Construction observation services provided by WBK staff shall be limited to and for general compliance with the Contract Documents, plans and specifications. WBK will not perform construction materials inspection. It is understood the Developer will contract with a testing/inspection firm to provide both on-site and laboratory testing/inspection for this project.

Construction observation is anticipated to be part time consisting of an average of four hours per day including travel and documentation tasks. Duration of physical construction for site work construction is anticipated to be three months. It is acknowledged that some pre-construction activities as well as project close out will extend beyond this three month period.

SUPPLEMENTAL SERVICES

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

Tasks considered as Supplemental Services include, but are not limited to, construction observation services beyond the three month duration noted, major changes to the scope of work, public meeting attendance, expert witness testimony in any litigation or other court proceedings involving this project, revisions to previously approved studies and/or design documents, major revisions to the site plan or building footprints, unanticipated improvements (on or off site), mechanical design, studies or reports not specifically listed under the Scope of Basic Services, bidding documents, bid assistance, contract writing or administration, review of payment applications, preparation of any plats or record drawings not specifically listed under the Scope of Basic Services, design of buildings, landscaping, lighting, etc., and construction staking or re-staking not specifically listed in the Scope of Basic Services.

SCHEDULE FOR SERVICES

WK will complete plan reviews within 5 to 7 business days of WBK receipt of a complete application, set of plans and calculations. WBK will endeavor to provide an initial review of documents within 2 to 3 business days of receipt to determine if the submittal is complete to continue with a comprehensive review. WBK understands that this project is on an expedited basis and will endeavor to work with the City and the applicant to provide as timely response as reasonably possible. If for any reason the afore-noted timeframes cannot be achieved WBK shall advise the City prior to proceeding with further services.
Exhibit B:

Fee Schedule

As outlined in the attached engagement letter, WBK estimates the following fees:

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<thead>
<tr>
<th>TASK</th>
<th>Fees</th>
</tr>
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<tbody>
<tr>
<td>1 - PLANNING REVIEW</td>
<td>$2,880</td>
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<tr>
<td>2 - FINAL ENGINEERING REVIEW</td>
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<tr>
<td>3 - CONSTRUCTION INSPECTION</td>
<td>$31,220</td>
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The actual amount invoiced will be based on the level of effort required, but we will not exceed the agreed upon budget without mutual approval. Reimbursable expenses, such as postage, overnight delivery, printing, copying, etc. are not included in our budget/fee amounts, and will be invoiced to you at our cost plus 10%.

WILLS BURKE KELSEY ASSOCIATES, LTD.

2015 Standard Charges for Professional Services Classification

<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Rate</th>
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<tbody>
<tr>
<td>Principal</td>
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<td>Engineer V</td>
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<td>Senior Soil / Environmental Scientist V</td>
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</table>

Direct Costs: Copies & Prints, Messenger & Delivery Services, Mileage, etc. Cost +10%
Exhibit C:

Insurance Requirements:

1. **All Contractors and All Contracts.**

   Contractor shall provide any and all insurance required under any applicable law, regulation, statute or ordinance, including but not limited to workers’ compensation insurance, unemployment insurance, automobile liability insurance and other legally required insurance. Contractor shall produce a certificate evidencing current coverage, upon request from the City. Contractor shall indemnify and hold harmless the City from any and all liability, damage, cost or expense which the City may incur or be liable to pay as a result of any and all accidental injuries or damages suffered by the Consultant or its employees (in addition to any other required indemnification or insurance from Consultant).

   The Contractor shall indemnify and hold harmless the client up to the amount of this contract fee plus all applicable insurance coverage to the extent caused by the sole negligent act, error or omission of the Contractor. The Contractor shall name the City as additional primary insured on CGL and vehicle liability and shall carry at least $1M in E&O/malpractice coverage. To the fullest extent permitted by law the Contractor’s total aggregate liability shall be limited to the contract fee plus applicable insurance coverage, provided that the Contractor obtains and maintains insurance as required herein.

2. **Professional Liability Insurance Coverage / Errors & Omissions Insurance Coverage:**

   Professional Liability / Malpractice: Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains professional liability or malpractice insurance with policy limits of not less than One Million Dollars ($1,000,000.00) per person / per occurrence. Said policy need not identify the City as additional primary insured.

3. **Indemnification.**

   The policy limits, availability or inavailability of insurance coverage or the applicability of claims, defenses or limitations based upon applicable law (including but not limited to the Illinois Worker’s Compensation Act or similar laws or statutes) shall in no way limit the Contractor’s obligation to indemnify and hold harmless the City from any claims for damage, liabilities or other costs arising out of or relating to the Contractor’s work or this Agreement.
Exhibit D:

WBK Letter of Engagement