RESOLUTION 2015-130  PASSED: DECEMBER 14, 2015

AUTHORIZING THE EXECUTION OF PROFESSIONAL SERVICE AGREEMENTS FOR CIVIL ENGINEERING PLAN REVIEW AND INSPECTION SERVICES WITH MISSMAN STANLEY, INC., WILLS BURKE KELSEY ASSOCIATES, LTD., AND STRAND ASSOCIATES, INC.

WHEREAS, the City of DeKalb is a home-rule municipal corporation; and

WHEREAS, the City has received responses to a Request for Proposals for Professional Services, for Civil Engineering Plan Review and Inspection Services, and hereby wishes to authorize the execution of one or more Professional Service Agreements with Missman Stanley, Inc., Wills Burke Kelsey Associates, Ltd., and Strand Associates, Inc., and further finds that such action is necessary and appropriate, and that the conditions attached thereto protect the public health, safety, welfare and morals;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEKALB:

1) With regard to private development or construction projects which are subject to the City's Unified Development Ordinance requirement that the owner/developer pay a civil engineering fee equivalent to 3.5% of the Engineer's Estimate of Probable Costs, the following shall be authorized:

   A) The City Engineer shall be authorized to select a suitable contractor from among the three contractors identified herein, based upon the Engineer's determination as to the best qualified contractor for the project at issue.

   B) Upon selection of a contractor, the City Manager shall be authorized to execute a Professional Services Agreement with said contractor, for an amount up to the total engineering fee to be paid by the owner/developer as reimbursement to the City for engineering plan review and inspection fees. Said fees shall be payable exclusively by the owner/developer (through an account established at the City). This agreement shall be authorized within the City Manager's authority, without regard to otherwise applicable spending limits, provided that the liability for the expenses incurred is limited to amounts due from the owner/developer.

   C) Payments to the contractor shall be made after approval of the invoices through the City's customary invoice approval process, and shall be payable out of the amounts posted by the owner/developer.

   D) In the event that the owner/developer fails to post the fee required herein or otherwise fails to provide funding to cover the engineering plan review/inspection services, the City shall be authorized to issue a stop work order pending resolution of any payment dispute.
2) With regard to private development or construction projects for which the owner/developer agrees to be directly responsible for professional fees for engineering plan review/inspection services incurred by virtue of a professional fee reimbursement agreement, the following shall be authorized:

A) The City Engineer shall be authorized to select a suitable contractor from among the three contractors identified herein, based upon the Engineer’s determination as to the best qualified contractor for the project at issue.

B) Upon selection of a contractor, the City Manager shall be authorized to execute a Professional Services Agreement with said contractor, for an amount up to the total engineering fee to be paid by the owner/developer as reimbursement to the City for engineering plan review and inspection fees. Said fees shall be payable exclusively by the owner/developer (through an account established at the City). This agreement shall be authorized within the City Manager’s authority, without regard to otherwise applicable spending limits, provided that the liability for the expenses incurred is limited to amounts due from the owner/developer.

C) The City Manager shall be authorized to execute a Professional Fee Reimbursement Agreement with the private developer at issue, providing for the owner/developers’ liability to pay fees incurred by the City, without regard to the City Manager’s spending authority.

D) Payments to the contractor shall be made after approval of the invoices through the City’s customary invoice approval process, and shall be payable out of the amounts posted by the owner/developer.

E) In the event that the owner/developer fails to post the fee required herein or otherwise fails to provide funding to cover the engineering plan review/inspection services, the City shall be authorized to issue a stop work order pending resolution of any payment dispute.

3) With regard to other projects that are initiated by another unit of government or by the City of DeKalb, for which the City would be responsible for fees incurred, the following shall be authorized:

A) The City Engineer shall be authorized to select a suitable contractor from among the three contractors identified herein, based upon the Engineer’s determination as to the best qualified contractor for the project at issue.

B) Upon selection of a contractor, the City Manager shall be authorized to execute a Professional Services Agreement with said contractor, for an amount within budgeted amounts and the City Manager’s spending authority. For purposes of establishing the City Manager’s spending authority, work performed under agreements under #2 and #3 above shall not be counted towards the spending
authority. Any agreement not authorized hereunder shall require the approval of the City Council.

C) Payments to the contractor shall be made after approval of the invoices through the City’s customary invoice approval process.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 14th day of December and approved by me as Mayor on the same day. Passed by Omnibus roll call vote of 8-0 under the Consent Agenda. Aye: Jacobson, Finucane, Marquardt, Snow, Norciko, Baker, Faivre, Rey.

ATTEST:

[Signature]
JENNIFER JEEP JOHNSON, City Clerk

[Signature]
JOHN A. REY, Mayor
Independent Contractor
Agreement for Services

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "City" and "MIS
hereinafter referred to as the "Contractor", with the City and Contractor agreeing as follows:

A. Services.

Contractor agrees to furnish to the City the outlined in the scope of services outlined on page 1 and 2 of this document.

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 for 3 years from the date of execution, until terminated by either party upon seven (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 A and 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.

Prior to tendering any payment to Contractor, Contractor shall provide the City with a completed W-9 form.

D. Changes in Rates of Compensation (and Prevailing Wages).

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 (90) 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 Manager. To the extent applicable, the contractor shall further comply with the requirements of the Prevailing Wage Act in that all laborers, mechanics and other workers performing work under this Agreement which is subject to the Prevailing Wage Act shall be paid not less than the general prevailing rate of hourly wage as provided for in 820 ILCS 130/1 et seq.

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, including but not limited to the Prevailing Wage Act. 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 (2) 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 do so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.

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 the scope of work, and for the means and methods of completing such work. The City’s compensation to Contractor shall be limited to that described in Exhibits A and 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.
In the event that the City determines, in its sole discretion, that it is economically advantageous for the City to provide certain supplies or tools for use by Contractor in lieu of paying Contractor to provide the same, the City and Contractor agree that Contractor shall then utilize the City's equipment or supplies according to its own determination of their best and appropriate use. 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.

Sexual Harassment: The Contractor certifies that it is in compliance with the Illinois Human Rights Act 775 ILCS 5/1.101, et seq. including establishment and maintenance of sexual harassment policies and program.

Tax Delinquency: The Contractor certifies that it is not delinquent in payment of any taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1, and is not delinquent in the payment of any tax, charge or obligation to the City of DeKalb.

Employment Status: The Contractor certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.

Anti-Bribery: The Contractor certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

Loan Default: If the Contractor is an individual, the Contractor certifies that he/she is not in default for a period of six months or more in an amount of $600 or more on the repayment of any educational loan guaranteed by the Illinois State Scholarship Commission made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5 ILCS 385/3).

Felony Certification: The Contractor certifies that it is not barred pursuant to 30 ILCS 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.
**Barred from Contracting:** The Contractor certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33-4 (Bid Rotating) or a similar law of another state or of the federal government.

**Prevailing Wage:** The Contractor certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from bidding on this proposal by virtue of a past violation of the Act. A copy of the most recent available list of prevailing wages is attached hereto or has been provided to the Contractor. The Contractor is responsible for regularly updating said list as new prevailing wage rates are made available by the City or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently [www.illinois.gov/idol](http://www.illinois.gov/idol). This notice is given pursuant to 820 ILCS 130/4 and the balance of the Illinois Prevailing Wage Act, which is incorporated herein by reference as if fully restated. In the event that this is a public works project as defined under the Prevailing Wage Act, Proposer agrees to comply with the Substance Abuse Prevention on Public Works Projects Acts, 820 ILCS 265/1 et. seq., and further agrees that all of its subcontractors shall comply with such Act. As required by the Act, Contractor agrees that it will file with the City, prior to commencing work, its written substance abuse prevention program and/or that of its subcontractor(s) which meet or exceed the requirements of the Act.

**Drug Free Workplace:** The Contractor certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this contract. The Drug Free Workplace Act requires, in part, that Contractors, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract. The Contractor further certifies that it maintains a substance-abuse program and provide drug testing in accordance with 820 ILCS 130/11G, Public Act 095-0635. The Contractor shall also comply with the Federal Highway Administrative Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that all of Contractor’s drivers are currently participating in a drug and alcohol testing program pursuant to the Rules.

**Responsible Contractor Requirements:** The Contractor certifies that it complies with the Illinois Procurement Code and the provisions of Section 30-22 thereof relating to apprenticeship and training, if applicable. The Contractor further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either is in compliance or will begin participation in an approved apprenticeship and training program prior to commencing any Work. The Illinois Department of Labor, at any time before or after award, may require production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the Contractor and all of its Subcontractors. Applicable apprenticeship and training programs are those that have been approved or registered with the United States Department of Labor. The Contractor shall provide to the City, upon request, copies of all Certificates of Registration, and copies of all work or craft job category included in the Work, along with such other records as the City may
require. Any records or logs required to be provided by law shall be provided by the Contractor, without requiring a request from the City.

Non-Discrimination, Certification, and Equal Employment Opportunity: The Contractor agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Contractor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The Contractor agrees to incorporate this clause into all subcontracts under this Contract. The Contractor acknowledges that neither it nor the City shall discriminate on the basis of any protected classification.

Record Retention and Audits: If 30 ILCS 500/20-65 requires the Contractor (and any subcontractors) to maintain, for a period of 3 years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the City under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the City and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Contractor agrees to cooperate fully with any audit and to provide full access to all relevant materials.

United States Resident Certification: (This certification must be included in all contracts involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The Contractor certifies that he/she/it is a: ___ United States Citizen or Corporation ___ Resident Alien ___ Non-Resident Alien. The Internal Revenue Service requires that taxes be withheld on payments made to non-resident aliens for the performance of personal services at the rate of 30%.

Tax Payer Certification: Under penalties of perjury, the Contractor certifies that its Federal Tax Payer Identification Number or Social Security Number is ___36-2103793__ and is doing business as a (check one): ___ Individual ___ Real Estate Agent ___ Sole Proprietorship ___ Government Entity ___ Partnership ___ Tax Exempt Organization (IRC 501(a) only) ___ Corporation ___ Not for Profit Corporation ___ Trust or Estate ___ Medical and Health Care Services Provider Corp.

Authorized in Illinois: The Contractor covenants that it is authorized to lawfully transact business in the State of Illinois, under all applicable Illinois laws and regulations. The Contractor certifies that it shall comply with the Corporate Accountability for Tax Administration Act, 20 ILCS 715/1, et. seq. Where applicable, the Contractor certifies that it is not barred from bidding by virtue of having been adjudicated to have committed a willful or knowing violation of Section 42 of the Environmental Protection Act within the five years preceding this bid, pursuant to 415 ILCS 5/1, et. seq. The Contractor further certifies that it is in
compliance with all applicable requirements of the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/1, et. seq.

Export Administration, Supplies, Labor: The Contractor certifies that neither it nor any substantially owned affiliate is participating, nor shall participate, in an international boycott which is in violation of the provisions of the US Export Administration Act of 1979 or the regulations of the US Department of Commerce promulgated under the Act, including but not limited to the requirements of 30 ILCS 582/5. The Contractor further certifies that no foreign made equipment, materials or supplies furnished under the proposal or agreement have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor, nor made in whole or in part by the labor of any child under the age of 12, under penal sanction pursuant to 30 ILCS 583/1 and 30 ILCS 584/1. The Contractor certifies that steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the City Manager grants an exception to said requirement, pursuant to 30 ILCS 565/1, et. seq.

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 bidding 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. The City reserves the right to reject any bid, cancel any contract or pursue any other legal remedy deemed necessary should it become aware of any violation of any laws, ordinances, rules or regulations on the part of the Contractor or any subcontractor.

OSHA Standards: The Contractor certifies that it will identify and comply with all requirements and standards imposed by the Occupational Safety and Health Act. All guards and protectors, all appropriate markings, and all other protections shall be in place prior to delivery of any item, and at all times during performance of any Work.

CERCLA Indemnification: The Contractor certifies that it shall, to the maximum extent permitted by law, indemnify, defend and hold harmless the City, and City Indemnitees from and against any and all liability, including without limitation, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys’ fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, et. seq., as amended from time to time, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Contractor both before and after its disposal.

Buy America: The Contractor certifies that, if required, it shall comply with 49 USC 5323(j), the Federal Transportation Administration’s (FTA) Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by the FTA, with respect to this contract, when financed by Federal funds (through a grant agreement or cooperative agreement), and to submit to the City an executed Buy America Certificate in a form acceptable to the City.
Collusion: The Contractor certifies that it is not colluding with any other party or person in the preparation or submittal of this Agreement.

I. Indemnification

Contractor shall indemnify and hold harmless the City and City’s agents, servants, and employees against all loss, damage, taxes, liabilities, charges or expense, including but not limited to attorneys fees and court costs, which the City may sustain or for which it may become liable on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the performance of work under this agreement by Contractor or its Subcontractors, due to or arising in any manner from the intentional or wrongful act or negligence of Contractor or its Subcontractors or any employee of any of them, or otherwise arising out of this Agreement or the Contractor’s performance of services on behalf of the City.

The Contractor shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Company shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

J. Insurance, Licensure and Intellectual Property

The Contractor shall comply with all insurance requirements described in the Insurance Requirements Section beginning on page 3. 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, nor shall the Contractor permit any Subcontractor to commence work on any subcontract until the same insurance has been obtained by the Subcontractor. The Company and all Subcontractors shall maintain their 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.

The prices included on this Agreement include all royalties and costs arising in the Work. Any items or services provided shall be provided to the City subject to the Contractor's legal right to provide the same. The Contractor shall indemnify and hold harmless the City and City Indemnitees from any and all claims for infringement by reason of the use of any such patent design, device, materials or process, to be performed or used under the Agreement, and shall indemnify and hold harmless the City for any costs, expenses, attorneys' fees and damages which it may be obligated to pay, by reason of any infringement at any time during the prosecution or after completion of the Work.

K. Additional Terms or Modification

The terms of this agreement shall be further modified as provided on the attached Exhibits and the Contract Documents. Except for those Exhibits, 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.

L. Notices

All notices required to be given under the terms of this License shall be given 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

GORDY STOUT, P.E.
MISSMAN, INC.
125 N. FLEET ST.
DEKALB, IL 60115

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

M. 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.

N. 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 site of the work as may be outlined in the Request for Proposal and at any reasonable time when requested to do so by the City, at no additional charge.

O. Document Correction / Supplements

Contractor agrees and acknowledges that the terms of the Contract Documents shall be binding upon this Work, notwithstanding the failure of this Agreement or the actions of the City to the contrary. No act by the City (other than a written amendment to these Contract Documents), including but not limited to payment of Contractor’s invoices, shall waive the City’s ability to later insist on strict compliance with the terms of these Contract Documents. Contractor agrees and acknowledges that it shall execute corrected documents upon request by the City if any error or discrepancy is identified by the City, and shall provide certificates of insurance or other security required hereunder at any time, upon request of the City, notwithstanding the City’s failure to previously demand the same.

Agreed to this 14th day of December, 2015.

City of DeKalb

City Mayor/Manager

City Clerk

Contractor

Title: Vice President

Attest: COREY J. STOUT

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Exhibit A – Compensation

The contractor will be compensated for the complete review of plans and inspection services on an hourly basis, with a not-to-exceed cap per project. The review would be considered complete at the time the applicant is issued a permit, or when the application has been withdrawn. The inspection services would be considered complete at the time final occupancy is granted and a Notice of Termination is submitted with the IEPA (if applicable).

Compensation for the proposed plan review and inspection services shall be based upon the Engineers Opinion of Probable Cost. The City will collect 3.5% of the Engineers Opinion of Probable Cost (EOPC), inclusive of all of the required public and private land improvements. The City will retain 0.5% of the EOPC for City administrative costs. The consulting engineer shall bill the City at the consulting engineers’ hourly rates for work performed on the project. The total amount billed by the consulting engineer shall not exceed 3% of the EOPC (“Not-To-Exceed Cap”).

Under City Code, an additional review fee of 0.5% of the EOPC may be applied for certain additional submittals, where determined to be appropriate by the City Engineer. Each resubmittal fee shall increase the Not-To-Exceed Cap by the amount of the increased fee (0.5% of the EOPC). The additional fee may be waived by the City Engineer based on recommendation by the consulting engineer if the revisions are minor.

The EOPC shall be reviewed by the consulting engineer to determine its accuracy. If the EOPC is inaccurate or incomplete the consulting engineer shall notify the City Engineer and discuss the concerns prior to beginning the review process. It is not anticipated that the consulting engineer shall bill the City at an amount equal to the Not-To-Exceed Cap in all instances; any funds left in the amount collected from the developer based upon the formula described above which are not utilized in the payment of the consulting engineers’ hourly services shall be retained by the City. For purposes of calculating the sums to be collected by the City, the EOPC does not include certain project costs. Excluded costs are: the cost of topsoil removal and stockpile; 75% of the estimated cost of the Sanitary Sewer; and, buildings.
### Project Hourly Rate Schedule

<table>
<thead>
<tr>
<th>Classification</th>
<th>Rate</th>
</tr>
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<tbody>
<tr>
<td>Principal</td>
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</tr>
<tr>
<td>Senior Project Manager</td>
<td>$148.00</td>
</tr>
<tr>
<td>Project Manager</td>
<td>$138.00</td>
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<td>Project Engineer</td>
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<td>Land Survey Manager</td>
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<td>Land Surveyor</td>
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January 1, 2016  
Missman, Inc.

The above standard hourly rates include overhead, profit, insurance, and normal costs for readiness to serve. Reasonable travel costs are also included. Lodging and per diem in excess of 50 miles from the office servicing the project will result in additional charges.
Independent Contractor Agreement for Services

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "City" and "Wills Burke Kelsey Associated, Ltd." hereinafter referred to as the "Contractor", with the City and Contractor agreeing as follows:

A. Services.

Contractor agrees to furnish to the City the outlined in the scope of services on page 1 and 2 of this document.

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 for 3 years from the date of execution, until terminated by either party upon seven (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 A and 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.

Prior to tendering any payment to Contractor, Contractor shall provide the City with a completed W-9 form.

D. Changes in Rates of Compensation (and Prevailing Wages).

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 (90) 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 Manager. To the extent applicable, the contractor shall further comply with the requirements of the Prevailing Wage Act in that all laborers, mechanics and other workers performing work under this Agreement which is subject to the Prevailing Wage Act shall be paid not less than the general prevailing rate of hourly wage as provided for in 820 ILCS 130/1 et seq.

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, including but not limited to the Prevailing Wage Act. 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 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 for active projects. The Contractor shall provide and the City shall accept all Contractor project documents for completed or closed projects within 30 days of project completion or closure. Contractor shall comply with the record retention and documentation requirements of the Local Records Act 50 ILCS 205/1 et seq. and the Act for all active projects 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) for all active projects. Contractor shall review its records promptly and produce to the City within two (2) business days of contact from the City the required documents responsive to a request under the Act for all active projects. The Contractor shall be compensated for all costs associated with retrieving documents and responding to requests under the Act. If additional time is necessary to comply with the request, the Contractor may request the City to extend the time do so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.

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 the scope of work, and for the means and methods of completing such work. The City's compensation to Contractor shall be limited to that described in Exhibits A and 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.

In the event that the City determines, in its sole discretion, that it is economically advantageous for the City to provide certain supplies or tools for use by Contractor in lieu of paying Contractor to provide the same, the City and Contractor agree that Contractor shall then utilize the City’s equipment or supplies according to its own determination of their best and appropriate use. 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.

**Sexual Harassment:** The Contractor certifies that it is in compliance with the Illinois Human Rights Act 775 ILCS 5/1.101, et seq. including establishment and maintenance of sexual harassment policies and program.

**Tax Delinquency:** The Contractor certifies that it is not delinquent in payment of any taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1, and is not delinquent in the payment of any tax, charge or obligation to the City of DeKalb.

**Employment Status:** The Contractor certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.

**Anti-Bribery:** The Contractor certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

**Felony Certification:** The Contractor certifies that it is not barred pursuant to 30 ILCS 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.
Barred from Contracting: The Contractor certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33-4 (Bid Rotating) or a similar law of another state or of the federal government.

Prevailing Wage: The Contractor certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from bidding on this proposal by virtue of a past violation of the Act. A copy of the most recent available list of prevailing wages is attached hereto or has been provided to the Contractor. The Contractor is responsible for regularly updating said list as new prevailing wage rates are made available by the City or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently www.illinois.gov/idol. This notice is given pursuant to 820 ILCS 130/4 and the balance of the Illinois Prevailing Wage Act, which is incorporated herein by reference as if fully restated.

Drug Free Workplace: The Contractor certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this contract. The Drug Free Workplace Act requires, in part, that Contractors, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract. The Contractor further certifies that it maintains a substance-abuse program and provide drug testing in accordance with 820 ILCS 130/11G, Public Act 095-0635.

Non-Discrimination, Certification, and Equal Employment Opportunity: The Contractor agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Contractor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The Contractor agrees to incorporate this clause into all subcontracts under this Contract. The Contractor acknowledges that neither it nor the City shall discriminate on the basis of any protected classification.

Record Retention and Audits: If 30 ILCS 500/20-65 requires the Contractor (and any subcontractors) to maintain, for a period of 3 years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the City under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the City and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General.
of the federal sponsoring agency. The Contractor agrees to cooperate fully with any audit and to provide full access to all relevant materials.

United States Resident Certification: (This certification must be included in all contracts involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The Contractor certifies that he/she/it is a: ☒ United States Citizen or Corporation __ Resident Alien ___ Non-Resident Alien. The Internal Revenue Service requires that taxes be withheld on payments made to non-resident aliens for the performance of personal services at the rate of 30%.

Tax Payor Certification: Under penalties of perjury, the Contractor certifies that its Federal Tax Payor Identification Number or Social Security Number is 96-4251536 and is doing business as a (check one): ___ Individual ___ Real Estate Agent ___ Sole Proprietorship ___ Government Entity ___ Partnership ___ Tax Exempt Organization (IRC 501(a) only) ___ Corporation ___ Not for Profit Corporation ___ Trust or Estate ___ Medical and Health Care Services Provider Corp.

Authorized in Illinois: The Contractor that it is authorized to lawfully transact business in the State of Illinois, under all applicable Illinois laws and regulations. The Contractor certifies that it shall comply with the Corporate Accountability for Tax Administration Act, 20 ILCS 715/1, et. seq. Where applicable, the Contractor certifies that it is not barred from bidding by virtue of having been adjudicated to have committed a willing or knowing violation of Section 42 of the Environmental Protection Act within the five years preceding this bid, pursuant to 415 ILCS 5/1, et. seq. The Contractor further certifies that it is in compliance with all applicable requirements of the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/1, et. seq.

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 bidding 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. The City reserves the right to reject any bid, cancel any contract or pursue any other legal remedy deemed necessary should it become aware of any violation of any laws, ordinances, rules or regulations on the part of the Contractor or any subcontractor.

OSHA Standards: The Contractor certifies that it will identify and comply with all requirements and standards imposed by the Occupational Safety and Health Act. All guards and protectors, all appropriate markings, and all other protections shall be in place prior to delivery of any item, and at all times during performance of any Work.

Collusion: The Contractor certifies that it is not colluding with any other party or person in the preparation or submittal of this Agreement.
I. Indemnification

Contractor shall indemnify and hold harmless the City and City’s agents, servants, and employees against all loss, damage, taxes, liabilities, charges or expense, including but not limited to attorneys fees and court costs, which the City may sustain or for which it may become liable on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the performance of work under this agreement by Contractor or its Subcontractors, due to or arising in any manner from the intentional or wrongful act or negligence of Contractor or its Subcontractors of any employee of any of them.

The Contractor shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Company shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

J. Insurance, Licensure and Intellectual Property

The Contractor shall comply with all insurance requirements described in the Insurance Requirements Section beginning on page 3. 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, nor shall the Contractor permit any Subcontractor to commence work on any subcontract until the same insurance has been obtained by the Subcontractor. The Company and all Subcontractors shall maintain their 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 delivered to the City upon completion or closure of the project or periodically
during the project at request of the City. All field notes, test records, and reports shall be delivered to the City upon completion or closure of the project.

The prices included on this Agreement include all royalties and costs arising in the Work. Any items or services provided shall be provided to the City subject to the Contractor's legal right to provide the same. The Contractor shall indemnify and hold harmless the City and City Indemnities from any and all claims for infringement by reason of the use of any such patent design, device, materials or process, to be performed or used under the Agreement, and shall indemnify and hold harmless the City for any costs, expenses, attorneys' fees and damages which it may be obligated to pay, by reason of any infringement at any time during the prosecution or after completion of the Work.

K. Job Site Safety/Supervision & Construction Observation: The Contractor 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 any construction Work since they are solely the rights and responsibilities of others. The City agrees that the Contractor shall not supervise and direct the work in any capacity; and that the others shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The City further agrees that the Contractor shall not be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with construction activities; and that others 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 Contractor shall have no authority to stop the work of the project or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Contractor shall visit the site at intervals appropriate to the stage of the project operation, or as otherwise agreed to by the City and the Contractor to: 1) become generally familiar with and to keep the City informed about the progress and quality of the Work; 2) to strive to bring to the City's attention defects and deficiencies in the Work and; 3) identify subpar and Work not completed in accordance with applicable standards or otherwise not in compliance with the design documents and bring this to the attention of the City immediately 4) 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 Contractor shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the City desires more extensive project observation, the City shall request that such services be provided by the Contractor 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 any entity performing any portions of the Work, or any agents or employees of any of them. The Contractor does not guarantee the performance of any other entity and shall not be responsible for the any other entity’s failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When the Contractor (acting on behalf of the City), and 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. The Contractor shall be entitled to
all defenses and municipal immunities that are, or would be, available to the City, to the extent such policies are applicable to an independent contractor working on behalf of the City.

L. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Contractor and any sub-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.

M. Limit of Liability: The City and the Contractor have discussed the risks, rewards, and benefits of the project and the Contractor’s total fee for services. In recognition of the relative risks and benefits of the Project to both the City and the Contractor, the risks have been allocated such that the City agrees that to the fullest extent permitted by law, the Contractor’s total aggregate liability to the City 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, for claims which are within the coverage afforded by the Contractor’s Insurance, shall not exceed the Contractor’s Insurance Coverage for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Contractor’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. If the contractor’s insurance coverage does not apply to a claim whether by virtue of policy exclusion/exemption or contractor’s failure to procure or maintain coverage that the limit included therein will not apply.

N. Additional Terms or Modification

The terms of this agreement shall be further modified as provided on the attached Exhibits and the Contract Documents. Except for those Exhibits, 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.

O. Notices

All notices required to be given under the terms of this License shall be given mail, addressed to the parties as follows:
Either of the parties may designate in writing from time to time substitute addresses or persons in connection with required notices.

P. 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.

Q. 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 site of the work as may be outlined in the Request for Proposal and at any reasonable time when requested to do so by the City, at no additional charge.

R. Document Correction / Supplements

Contractor agrees and acknowledges that the terms of the Contract Documents shall be binding upon this Work, notwithstanding the failure of this Agreement or the actions of the City to the contrary. No act by the City (other than a written amendment to these Contract Documents), including but not limited to payment of Contractor’s invoices, shall waive the City’s ability to later insist on strict compliance with the terms of these Contract Documents. Contractor agrees and acknowledges that it shall execute corrected documents upon request by the City if any error or discrepancy is identified by the City, and shall provide certificates of insurance or other security required hereunder at any time, upon request of the City, notwithstanding the City’s failure to previously demand the same.
Agreed to this 14th day of December, 2015.

City of DeKalb
City Mayor/Manager
City Clerk

Contractor
Title: Municipal Practice Principals
Attest
Exhibit A – Compensation

The consulting engineer will be compensated for the complete review of plans and inspection services on an hourly basis, with a not-to-exceed cap per project. The review would be considered complete at the time the applicant is issued a permit, or when the application has been withdrawn. The inspection services will be completed at the time final occupancy is granted and a Notice of Termination is submitted with the IEPA (if applicable).

Compensation for the proposed plan review and inspection services shall be based upon the Engineers Opinion of Probable Cost. The City will collect 3.5% of the Engineers Opinion of Probable Cost (EOPC), inclusive of all of the required public and private land improvements. The City will retain 0.5% of the EOPC for City administrative costs. The consulting engineer shall bill the City at the consulting engineers’ hourly rates for work performed on the project. The total amount billed by the consulting engineer shall not exceed 3% of the EOPC (“Not-To-Exceed Cap”) In the event that the inspection cannot be completed within the Not-To-Exceed Cap, the consulting engineer shall notify the City and the parties shall negotiate in good faith as to the resolution of such matter.

Construction inspection fees are established based on part time site visits and not full time daily inspections. Inspections will include observation of operations and compliance at the time of the site visit. It is not anticipated site visits will exceed one hour unless extenuating circumstances require the inspector’s presence. The inspector shall coordinate with City staff or other agencies (i.e. Dekalb Sanitary District) if project conditions require significantly more inspection effort than anticipated herein and included in the aforesaid fees.

Under City Code, an additional review fee of 0.5% of the EOPC may be applied for certain additional submittals, where determined to be appropriate by the City Engineer. Each resubmittal fee shall increase the Not-To-Exceed Cap by the amount of the increased fee (0.5% of the EOPC). The additional fee may be waived by the City Engineer based on recommendation by the consulting engineer if the revisions are minor.

The EOPC shall be reviewed by the consulting engineer to determine its accuracy. If the EOPC is inaccurate or incomplete the consulting engineer shall notify the City Engineer and discuss the concerns prior to beginning the review process. It is not anticipated that the consulting engineer shall bill the City at an amount equal to the Not-To-Exceed Cap in all instances; any funds left in the amount collected from the developer based upon the formula described above which are not utilized in the payment of the consulting engineers’ hourly services shall be retained by the City.

For purposes of calculating the sums to be collected by the City, the EOPC does not include certain project costs. Excluded costs are: the cost of topsoil removal and stockpile; 75% of the estimated cost of the Sanitary Sewer; and, buildings.
Exhibit B – Compensation: Consulting Engineer’s Fee Schedule
## WILLS BURKE KELSEY ASSOCIATES, LTD.
### 2016 Standard Charges for Professional Services

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

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*Charges include overhead and profit.*

*Wills Burke Kelsey Associates, Ltd. reserves the right to increase rates and costs by 5% annually.*
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Corkill Insurance Agency, Inc.
25 Northwest PI Blvd Ste 625
Elk Grove Village, IL 60007
Carolyn Hanna

CONTACT NAME
Certificates Department
PHONE 847-758-1000
FAX 847-758-1200
E-MAIL Certs@Corkillinsurance.com

INSURER(S) AFFORDING COVERAGE
NAIC #
INSURER A: Harleysville Insurance
23582
INSURER B: Hartford Accident & Indemnity
22357
INSURER C: The Hanover Insurance Company
22292
INSURER D:
INSURER E:
INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<table>
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<th>INSERT</th>
<th>TYPE OF INSURANCE</th>
<th>ADD'L SUBRO AGG LOC</th>
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<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of DeKalb, its employees, appointed and elected officers, its committees, its attorneys and all corporate bodies that exist as a subsidiary to the City are Additional Insured for General Liability on a primary and non-contributory basis if required by written contract.

CERTIFICATE HOLDER
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115

CANCELLATION

DEKALBC

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2010/05) The ACORD name and logo are registered marks of ACORD
Independent Consultant
Agreement for Services

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "City" and "Strand Associates, Inc." hereinafter referred to as the "Consultant", with the City and Consultant agreeing as follows:

A. Services.

Consultant agrees to furnish to the City the outlined in the scope of services on page 1 and 2 of this document.

Consultant represents that it possesses the skills and knowledge necessary to provide all such services and understands that the City is relying upon such representation. Consultant 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 for 3 years from the date of execution, until terminated by either party upon seven (7) days written notice to the non-terminating party. Upon termination, the Consultant 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 Consultant shall not incur any additional costs without the City’s express, written permission.

C. Compensation.

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

Any payment made to the Consultant shall be strictly on the basis of quantum meruit. The Consultant 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 Consultant.

Prior to tendering any payment to Consultant, Consultant shall provide the City with a completed W-9 form.

D. Changes in Rates of Compensation (and Prevailing Wages).

If the Consultant seeks to impose any change in the fee schedule (whether in terms of hourly fee or lump sum fees), then the Consultant shall provide not less than ninety (90) 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 Manager. To the extent applicable, the contractor shall further comply with the requirements of the Prevailing Wage Act in that all laborers, mechanics and other workers performing work under this Agreement which is subject to the Prevailing Wage Act shall be paid not less than the general prevailing rate of hourly wage as provided for in 820 ILCS 130/1 et seq.

E. Ownership of Records and Documents / Confidential Information.

Consultant agrees to keep and maintain all books and records and other recorded information required to comply with any applicable laws, including but not limited to the Prevailing Wage Act. Consultant agrees to keep such information confidential and not to disclose or disseminate the information to third parties without the consent of the City. Consultant 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. Consultant 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 Consultant. Consultant 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 Consultant was, in fact, the City). Consultant shall review its records promptly and produce to the City within two (2) 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 Consultant may request the City to extend the time do so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.

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.

Consultant 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 Consultant under this Agreement shall be that of an independent contractor. Consultant will not be considered an employee to the City for any purpose. The parties agree that the Consultant is exclusively responsible for the determination of what work is required to complete the tasks outlined in the scope of work, and for the means and methods of completing such work. The City’s compensation to Consultant shall be limited to that described in Exhibits A and B, and the City shall not reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with Consultant other than payment of the stated compensation. The Consultant shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.
In the event that the City determines, in its sole discretion, that it is economically advantageous for the City to provide certain supplies or tools for use by Consultant in lieu of paying Consultant to provide the same, the City and Consultant agree that Consultant shall then utilize the City’s equipment or supplies according to its own determination of their best and appropriate use. Consultant shall be responsible for its own personnel, training, instruction and related matters. Consultant shall be responsible for determining its sequence of performance for required work. Consultant’s work shall be evaluated by the City based upon the end result of such work. Consultant shall be responsible for any expenses incurred by Consultant 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 Consultant is compensated on an hourly basis under the terms of this Agreement, the City and Consultant agree that Consultant’s compensation is usual and customary, based on the terms that Consultant offers its services to the market in general.

The Consultant 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 Consultant is responsible for identifying all such applicable regulations and certifications, and for compliance with the same.

Sexual Harassment: The Consultant certifies that it is in compliance with the Illinois Human Rights Act 775 ILCS 5/1.101, et seq. including establishment and maintenance of sexual harassment policies and program.

Tax Delinquency: The Consultant certifies that it is not delinquent in payment of any taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1, and is not delinquent in the payment of any tax, charge or obligation to the City of DeKalb.

Employment Status: The Consultant certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.

Anti-Bribery: The Consultant certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

Loan Default: If the Consultant is an individual, the Consultant certifies that he/she is not in default for a period of six months or more in an amount of $600 or more on the repayment of any educational loan guaranteed by the Illinois State Scholarship Commission made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5 ILCS 385/3).

Felony Certification: The Consultant certifies that it is not barred pursuant to 30 ILCS 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.
Barred from Contracting: The Consultant certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33-4 (Bid Rotating) or a similar law of another state or of the federal government.

Prevailing Wage: The Consultant certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from bidding on this proposal by virtue of a past violation of the Act. A copy of the most recent available list of prevailing wages is attached hereto or has been provided to the Consultant. The Consultant is responsible for regularly updating said list as new prevailing wage rates are made available by the City or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently www.illinois.gov/idol. This notice is given pursuant to 820 ILCS 130/4 and the balance of the Illinois Prevailing Wage Act, which is incorporated herein by reference as if fully restated. In the event that this is a public works project as defined under the Prevailing Wage Act, Proposer agrees to comply with the Substance Abuse Prevention on Public Works Projects Acts, 820 ILCS 265/1 et. seq., and further agrees that all of its subcontractors shall comply with such Act. As required by the Act, Consultant agrees that it will file with the City, prior to commencing work, its written substance abuse prevention program and/or that of its subcontractor(s) which meet or exceed the requirements of the Act.

Drug Free Workplace: The Consultant certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this contract. The Drug Free Workplace Act requires, in part, that Contractors, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract. The Consultant further certifies that it maintains a substance-abuse program and provide drug testing in accordance with 820 ILCS 130/11G, Public Act 095-0635. The Consultant shall also comply with the Federal Highway Administrative Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that all of Consultant’s drivers are currently participating in a drug and alcohol testing program pursuant to the Rules.

Responsible Consultant Requirements: The Consultant certifies that it complies with the Illinois Procurement Code and the provisions of Section 30-22 thereof relating to apprenticeship and training, if applicable. The Consultant further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either is in compliance or will begin participation in an approved apprenticeship and training program prior to commencing any Work. The Illinois Department of Labor, at any time before or after award, may require production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the Consultant and all of its Subcontractors. Applicable apprenticeship and training programs are those that have been approved or registered with the United States Department of Labor. The Consultant shall provide to the City, upon request, copies of all Certificates of Registration, and copies of all work or craft job category included in the Work,
along with such other records as the City may require. Any records or logs required to be provided by law shall be provided by the Consultant, without requiring a request from the City.

**Non-Discrimination, Certification, and Equal Employment Opportunity:** The Consultant agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Consultant shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The Consultant agrees to incorporate this clause into all subcontracts under this Contract. The Consultant acknowledges that neither it nor the City shall discriminate on the basis of any protected classification.

**Record Retention and Audits:** If 30 ILCS 500/20-65 requires the Consultant (and any subcontractors) to maintain, for a period of 3 years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the City under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the City and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Consultant agrees to cooperate fully with any audit and to provide full access to all relevant materials.

**United States Resident Certification:** (This certification must be included in all contracts involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The Consultant certifies that he/she/it is a: **X** United States Citizen or Corporation **_** Resident Alien **_** Non-Resident Alien. The Internal Revenue Service requires that taxes be withheld on payments made to non-resident aliens for the performance of personal services at the rate of 30%.

**Tax Payer Certification:** Under penalties of perjury, the Consultant certifies that its Federal Tax Payer Identification Number or Social Security Number is 39-1020418 and is doing business as a (check one): **_** Individual **_** Real Estate Agent **_** Sole Proprietorship **_** Government Entity **_** Partnership **_** Tax Exempt Organization (IRC 501(a) only) **X** Corporation **_** Not for Profit Corporation **_** Trust or Estate **_** Medical and Health Care Services Provider Corp.

**Authorized in Illinois:** The Consultant that it is authorized to lawfully transact business in the State of Illinois, under all applicable Illinois laws and regulations. The Consultant certifies that it shall comply with the Corporate Accountability for Tax Administration Act, 20 ILCS 715/1, _et. seq._ Where applicable, the Consultant certifies that it is not barred from bidding by virtue of having been adjudicated to have committed a willing or knowing violation of Section 42 of the Environmental Protection Act within the five years preceding this bid, pursuant to 415 ILCS 5/1, _et. seq._ The Consultant further certifies that it is in compliance with all applicable requirements of
the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/1, et. seq.

**Export Administration, Supplies, Labor:** The Consultant certifies that neither it nor any substantially owned affiliate is participating, nor shall participate, in an international boycott which is in violation of the provisions of the US Export Administration Act of 1979 or the regulations of the US Department of Commerce promulgated under the Act, including but not limited to the requirements of 30 ILCS 582/5. The Consultant further certifies that no foreign made equipment, materials or supplies furnished under the proposal or agreement have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor, nor made in whole or in part by the labor of any child under the age of 12, under penal sanction pursuant to 30 ILCS 583/1 and 30 ILCS 584/1. The Consultant certifies that steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the City Manager grants an exception to said requirement, pursuant to 30 ILCS 565/1, et. seq.

**General Compliance and Certification:** The Consultant certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the bidding process, agreement, or any services or materials provided in connection therewith. The Consultant 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. The City reserves the right to reject any bid, cancel any contract or pursue any other legal remedy deemed necessary should it become aware of any violation of any laws, ordinances, rules or regulations on the part of the Consultant or any subcontractor.

**OSHA Standards:** The Consultant certifies that it will identify and comply with all requirements and standards imposed by the Occupational Safety and Health Act. All guards and protectors, all appropriate markings, and all other protections shall be in place prior to delivery of any item, and at all times during performance of any Work.

**CERCLA Indemnification:** The Consultant certifies that it shall, to the maximum extent permitted by law, indemnify, defend and hold harmless the City, and City Indemnitees from and against any and all liability, including without limitation, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys’ fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, et. seq., as amended from time to time, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Consultant both before and after its disposal.

**Buy America:** The Consultant certifies that, if required, it shall comply with 49 USC 5323(j), the Federal Transportation Administration’s (FTA) Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by the FTA, with respect to this contract, when financed by Federal funds (through a grant agreement or cooperative agreement), and to submit to the City an executed Buy America Certificate in a form acceptable to the City.
Collusion: The Consultant certifies that it is not colluding with any other party or person in the preparation or submittal of this Agreement.

I. Indemnification

Consultant shall indemnify and hold harmless the City against all loss, damage, taxes, liabilities, charges or expense, including but not limited to reasonable attorneys fees and court costs, which the City may sustain or for which it may become liable on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the negligent performance of services under this agreement by Consultant or its Subcontractors, due to or arising from the negligent act, intentional misconduct or error or omission of Consultant or its Subcontractors of any employee of any of them, or otherwise arising out of this Agreement or the Consultant’s performance of services on behalf of the City.

The Consultant shall be responsible for any and all damages to property or persons arising out of a negligent act, intentional misconduct, and error or omission in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Company shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

J. Insurance, Licensure and Intellectual Property

The Consultant shall comply with all insurance requirements described in the Insurance Requirements Section beginning on page 3. The Consultant 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 Consultant shall provide a copy of any such licenses or permits upon request. All such insurance and licensure shall be provided at the Consultant’s sole expense. Consultant 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 Consultant 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, nor shall the Consultant permit any Subcontractor to commence work on any subcontract until the same insurance has been obtained by the Subcontractor. The Company and all Subcontractors shall maintain their 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 Consultant 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 Consultant 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 Consultant agrees that basic survey notes and sketches, charts, computations and other data prepared or obtained by the Consultant 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.

The prices included on this Agreement include all royalties and costs arising in the Work. Any items or services provided shall be provided to the City subject to the Consultant’s legal right to provide the same. The Consultant shall indemnify and hold harmless the City and City Indemnitees from any and all claims for infringement by reason of the use of any such patent design, device, materials or process, to be performed or used under the Agreement, and shall indemnify and hold harmless the City for any costs, expenses, attorneys’ fees and damages which it may be obligated to pay, by reason of any infringement at any time during the prosecution or after completion of the Work.

K. Additional Terms or Modification

The terms of this agreement shall be further modified as provided on the attached Exhibits and the Contract Documents. Except for those Exhibits, 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 Consultant shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes. The City may, at any time by written order, require the Consultant to stop all or part of the services required by this Agreement. Upon receipt of such an order, the Consultant shall immediately comply with its terms.

L. Notices

All notices required to be given under the terms of this License shall be given mail, addressed to the parties as follows:

For the City: For the Consultant:
City Manager Mike Waldron
City of DeKalb Strand Associates, Inc.
200 S. Fourth Street 1170 South Houbolt Road
DeKalb, IL 60115 Joliet, IL 60431-9063

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

M. Subcontractors and Third Parties:
Consultant 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 Consultant assign any obligation arising under this Agreement with the consent of the City, the Consultant 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 Consultant itself. Further, should Consultant request to assign the performance of any obligation arising hereunder to a subcontractor, Consultant 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.

N. Progress Reports

Consultant 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. Consultant shall also provide additional written or verbal progress reports to the City upon request, at any time, without additional charge. The Consultant shall attend conferences and visit the site of the work as may be outlined in the Request for Proposal and at any reasonable time when requested to do so by the City, at no additional charge.

O. Document Correction / Supplements

Consultant agrees and acknowledges that the terms of the Contract Documents shall be binding upon this Work, notwithstanding the failure of this Agreement or the actions of the City to the contrary. No act by the City (other than a written amendment to these Contract Documents), including but not limited to payment of Consultant’s invoices, shall waive the City’s ability to later insist on strict compliance with the terms of these Contract Documents. Consultant agrees and acknowledges that it shall execute corrected documents upon request by the City if any error or discrepancy is identified by the City, and shall provide certificates of insurance or other security required hereunder at any time, upon request of the City, notwithstanding the City’s failure to previously demand the same.

Agreed to this 14th day of December, 2015.

City of DeKalb

City Clerk

City Mayor/Manager

Consultant

Title: Corporate Secretary

Attest

14
Exhibit A – Compensation

The consulting engineer will be compensated for the complete review of plans (up to a total of three reviews per site) and inspection services on an hourly basis, with a not-to-exceed cap per project. Additional reviews beyond the first three shall be paid for at actual time and expense. The review would be considered complete at the time the applicant is issued a permit, or when the application has been withdrawn. The inspection services will be completed at the time final occupancy is granted and a Notice of Termination is submitted with the IEPA (if applicable).

Compensation for the proposed plan review and inspection services shall be based upon the Engineers Opinion of Probable Cost. The City will collect 3.5% of the Engineers Opinion of Probable Cost (EOPC), inclusive of all of the required public and private land improvements. The City will retain 0.5% of the EOPC for City administrative costs. The consulting engineer shall bill the City at the consulting engineers’ hourly rates for work performed on the project. The total amount billed by the consulting engineer shall not exceed 3% of the EOPC (“Not-To-Exceed Cap”).

Under City Code, an additional review fee of 0.5% of the EOPC may be applied for certain additional submittals, where determined to be appropriate by the City Engineer. Each resubmittal fee shall increase the Not-To-Exceed Cap by the amount of the increased fee (0.5% of the EOPC). The additional fee may be waived by the City Engineer based on recommendation by the consulting engineer if the revisions are minor.

The EOPC shall be reviewed by the consulting engineer to determine its accuracy. If the EOPC is inaccurate or incomplete the consulting engineer shall notify the City Engineer and discuss the concerns prior to beginning the review process. It is not anticipated that the consulting engineer shall bill the City at an amount equal to the Not-To-Exceed Cap in all instances; any funds left in the amount collected from the developer based upon the formula described above which are not utilized in the payment of the consulting engineers’ hourly services shall be retained by the City. For purposes of calculating the sums to be collected by the City, the EOPC does not include certain project costs. Excluded costs are: the cost of topsoil removal and stockpile; 75% of the estimated cost of the Sanitary Sewer; and, buildings.
## Exhibit B – Compensation: Consulting Engineer’s Fee Schedule

<table>
<thead>
<tr>
<th>Position</th>
<th>Hourly Billing Rates*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Engineer</td>
<td>$234 to $414</td>
</tr>
<tr>
<td>Senior Project Manager</td>
<td>$156 to $214</td>
</tr>
<tr>
<td>Project Managers</td>
<td>$82 to $154</td>
</tr>
<tr>
<td>Project Engineers and Scientists</td>
<td>$80 to $99</td>
</tr>
<tr>
<td>Engineering Technicians and Draftspersons</td>
<td>$34 to $122</td>
</tr>
<tr>
<td>Office Production</td>
<td>$82 Average</td>
</tr>
</tbody>
</table>

* Updated annually on July 1