

## Kathy Miller

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**From:** Karl Tisberger  
**Sent:** Thursday, June 24, 2021 11:07 AM  
**To:** Kathy Miller  
**Subject:** Fw: Plano\_2021 Sidewalk Project\_21-00000-01-GM\_Engineering Agreement\_210814  
**Attachments:** BLR 5520\_Plano\_21-00000-01-GM\_MFT Sidewalk Project\_final-signed.pdf; BLR 14222 Maintenance Cost Estimate.pdf

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**From:** Lirot, Chris <clirot@hrgreen.com>  
**Sent:** Thursday, June 24, 2021 10:56  
**To:** Karl Tisberger  
**Cc:** Jereb, Matthew; Berry, Kevin; Chaudhry, Akram  
**Subject:** Plano\_2021 Sidewalk Project\_21-00000-01-GM\_Engineering Agreement\_210814

Karl, Attached please find the Engineering Agreement for the 2021 Sidewalk Project, 21-00000-01-GM, in the Lump Sum amount of \$4,900 and BLR 14222 Estimate of Maintenance Costs that has been revised to reflect the Engineering Cost.

Please send the your sidewalk list when completed. With \$70,000 for construction, at \$9 to \$10 per square feet, we should have a list with a total of 7,000 to 8,000 square feet. Thank you,

### Chris Lirot, P.E.

Construction Engineer | Transportation

HR Green® | Building Communities. Improving Lives.



2363 Sequoia Drive | Suite 101 | Aurora, IL 60506

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Maintenance Engineering to be Performed by a Consulting Engineer



Local Public Agency City of Plano	County Kendall	Section Number 21-00000-01 .GM
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The services to be performed by the consulting engineer, pertaining to the various items of work included in the estimated cost of the maintenance operations (BLR 14222), shall consist of the following:

**PRELIMINARY ENGINEERING** shall include:

Investigation of the condition of the streets or highways for determination (in consultation with the local highway authority) of the maintenance operations to be included in the maintenance program; preparation of the maintenance resolution (BLR 14220 for municipalities and counties), maintenance estimate of cost and, if applicable, proposal; attendance at meetings of the governing body as may reasonably be required; attendance at public letting; preparation of the contract, quotations, and/or acceptance (BLR 12330) form. Also, preparation of the maintenance expenditure statement which must be submitted to IDOT within 3 months of the end of the maintenance period.

**ENGINEERING INSPECTION** shall include:

Furnishing the engineering field inspection, including preparation of payment estimate for contract, material proposal and/or deliver and install proposal and/or checking material invoices of those maintenance operations requiring engineering field inspection. For operations requiring material testing ensure the testing is completed by a qualified firm.

For furnishing preliminary engineering, the engineer will be paid a base fee PLUS a negotiated fee percentage. Only one base fee can be charged per maintenance period. For furnishing engineering inspection, the engineer will be paid a negotiated fee percentage. The negotiated preliminary engineering fee percentage for each maintenance group shown in the "Schedule of Fees" shall be applied to the total estimated costs of that group. The negotiated fee for engineering inspection for each maintenance group shall be applied to the total final cost of that group for the times which required engineering inspections. In no case shall this be construed to include supervision of the contractor operations.

**SCHEDULE OF FEES**

Total of all Maintenance Operations:

<= \$20,000 Base Fee \$0.00       > \$20,000 Base Fee = \$1,250.00

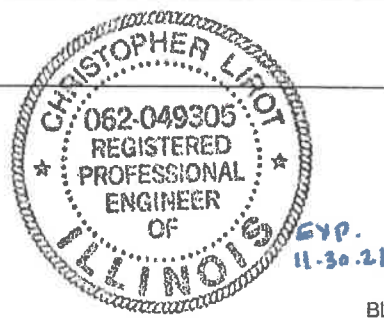
PLUS					
Maintenance Engineering Category	Preliminary Engineering		Engineering Inspection		Operation(s) to be Inspected
	Maximum Fee %	Negotiated Fee %	Maximum Fee %	Negotiated Fee %	
I	NA	NA	NA	NA	NA
IIA	2%		1%		
IIB	3%		3%		
III	4%		4%		
IV	5%	3% (\$2,100) L SUM *	6%	4% (\$2,800) *	

The LPA certifies that the selection of the ENGINEER was performed in accordance with the Local Government Professional Service Selection Act 50 (ILCS 510/1-510/8) and procedures outlined in Chapter 5 of the DEPARTMENT's Bureau of Local Roads and Streets Manual.

BY:  
Local Public Agency Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title  
Mayor

BY:  
Consulting Engineer Signature \_\_\_\_\_ Date 6/24/2021  
Title  
Vice President

P.E. Seal \_\_\_\_\_ Date 6/24/2021



\* See Attachment A for Professional Services Agreement

Approved:  
Regional Engineer, IDOT \_\_\_\_\_ Date \_\_\_\_\_



## **ATTACHMENT A**

### **PROFESSIONAL SERVICES AGREEMENT**

**For**

**City of Plano  
2021 Sidewalk Removal & Replacement Project - MFT Funds  
Preliminary Engineering and Construction Engineering Services**

**MFT Section 21-00000-01-GM**

Mr. Karl Tisberger  
City of Plano  
17 E Main Street  
Plano, IL 60545  
630.669.0315

Chris Lirot, P.E.  
HR Green, Inc.  
2363 Sequoia Drive, Suite 101  
Aurora, IL, 60506

HR Green Project Number: 210814

June 21, 2021

## **TABLE OF CONTENTS**

- 1.0 PROJECT UNDERSTANDING
- 2.0 SCOPE OF SERVICES
- 3.0 DELIVERABLES AND SCHEDULES INCLUDED IN THIS AGREEMENT
- 4.0 ITEMS NOT INCLUDED IN AGREEMENT/SUPPLEMENTAL SERVICES
- 5.0 SERVICES BY OTHERS
- 6.0 CLIENT RESPONSIBILITIES
- 7.0 PROFESSIONAL SERVICES FEE
- 8.0 TERMS AND CONDITIONS



THIS **AGREEMENT** is between CITY OF PLANO (hereafter "CLIENT") and HR GREEN, INC. (hereafter "COMPANY").

## 1.0 Project Understanding

### 1.1 General Understanding

The project is located on various streets within the jurisdiction of the CLIENT and includes the Removal and Replacement of Sidewalk at the locations as provided by the CLIENT. The improvement will consist of sidewalk repairs and miscellaneous items necessary to complete the project.

COMPANY understands that the CLIENT requires Preliminary Engineering and Construction Engineering services for the proposed improvements.

This work will include Preliminary Engineering tasks required for the preparation of proposal documents, quantities of work, typical sections, construction details, project specifications, construction cost estimates, preparation of proposal booklet for bidding, and all other related work necessary to complete the proposal documents. Preparation of Preliminary Engineering documents will follow CLIENT and Illinois Department of Transportation (IDOT) MFT standards and procedures.

COMPANY will also provide a qualified Construction Engineer to observe and verify that items being constructed and materials being utilized are in general conformance with the approved plans and specifications, the IDOT Standard Specifications for Road and Bridge Construction, and the Manual on Uniform Traffic Control Devices for Streets and Highways; latest edition.

### 1.2 Design Criteria/Assumptions

The engineering and contract documents will be developed according to the applicable requirements within the following design guidelines:

- a) Bureau of Local Roads and Streets (BLR) Manual; and
- b) City of Plano ordinances (as applicable).

## 2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

### 2.1 PRELIMINARY ENGINEERING

- A. Initial Kickoff Meeting  
COMPANY and the CLIENT will meet to ascertain that the scope of services is clearly defined to maintain the project schedule.
- B. Design  
COMPANY will perform a cursory review of the sidewalk list provided by the CLIENT. The field evaluation will obtain measurements and define the improvement strategy.



C. **Special Provisions**  
COMPANY will prepare contract special provisions for the project. The document will include Supplemental, Recurring, BLR, BDE, and project specific special provisions, as necessary. The project specific special provisions will be written to cover any items not covered by the Standard Specifications for Road and Bridge Construction.

D. **Maintenance of Traffic**  
An analysis of how the proposed improvements will be constructed and the maintenance of traffic and facilities will be discussed with the CLIENT. It is assumed applicable IDOT Highway Standards will be used for traffic control and protection during construction.

It is anticipated that construction may require day-time lane closures. Maintenance of traffic specifications and notes will identify and define the allowable contractor operations, and the required traffic control devices will be included in the bidding documents. Construction sequencing procedures will be detailed in the plans and specifications to ensure that temporary access to driveways are provided at the end of each work day.

E. **Construction Cost Estimates**  
Opinions of probable construction cost will be developed and refined throughout the design process so that the CLIENT has the latest cost estimate. These costs will be determined using pay items and the latest historical unit prices available for the area.

F. **Bidding Assistance and Recommendation to Award**  
COMPANY will prepare the Computer Data form and schedule the advertisement dates through IDOT. COMPANY will prepare reproducible plans and bidding documents and respond to questions during the bidding process.

At the bid opening, COMPANY will attend the opening. Following the bid opening, COMPANY will examine the bid documents and perform calculation checks of each Contractor to confirm the low bidder and generate bid tabulations. Subsequently, COMPANY will coordinate with the low bidder and obtain the Contract and Contract Bond documents from the Contractor. COMPANY will combine and prepare the completed Contract documents and submit to CLIENT for execution and approval from the City Council.

## 2.2 CONSTRUCTION ENGINEERING

A. **Contract Progress**  
COMPANY will be on-site to observe and verify that items being constructed and materials being utilized are in general conformance with the approved plans and specifications and the IDOT Standard Specifications for Road and Bridge Construction. During major items of work and sidewalk installation work, COMPANY will be on-site on a full-time basis and on a part-time basis for the various other minor



preparatory work items. COMPANY will verify that all materials incorporated into this project are IDOT approved, and evidence of material inspection follows the Project Procedures Guide and Special Provisions of this contract. COMPANY shall keep the CLIENT informed as to the progress of construction.

**B. Final Payment Estimate, Punchlist and Project Closeout**

COMPANY will measure and document contract quantities, complete payment estimates, and change orders. COMPANY will verify that all materials incorporated into the project are IDOT approved materials and are in accordance with the Special Provisions of this contract. COMPANY will prepare for approval all change orders and pay estimates following IDOT standards and procedures.

Once substantial completion of the work has been completed by the contractor, COMPANY will review the project on site and produce a punchlist. The punchlist will be submitted to the contractor and will contain a detailed list of ancillary work that needs to be addressed before final acceptance of the project. The list is typically comprised of clean-up work, minor repairs and incidental features.

Project Closeout includes the preparation of final job records. All quantity measurements and calculations will be checked and cross referenced, evidence of material inspection will be finalized, and field books and records will be indexed and boxed for final submittal. COMPANY will prepare final change orders and final pay estimates for approval and coordinate with IDOT to finalize project closeout. In addition, the final report and maintenance expenditure statement as required for IDOT documentation will be prepared and submitted to the CLIENT and IDOT for finalizing the authorized MFT funding.

**C. Project Administration, Coordination and Meetings**

Project Administration and Coordination will involve the management oversight of the project which will include the on-going review of the project execution, documentation, schedule and budget, contract file management, and general correspondence between COMPANY, the CLIENT, and the general contractor. Project coordination work will include:

1. The scheduling of an initial preconstruction meeting with the CLIENT and the Contractor to review the overall project and scope of work to ensure that the goals and objectives of the CLIENT will be satisfied.
2. Project documentation is also critical to project success. COMPANY will prepare/distribute meeting minutes of all meetings attended which will detail the discussions of attendees along with the action required of the attendees.

**3.0 Deliverables and Schedules Included in this Agreement**

COMPANY will prepare the contract documents for an anticipated bid opening in August 2021 with construction to begin shortly thereafter. Fee is based on an assumed construction duration of two (2) weeks.

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes





in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

#### **4.0 Items not included in Agreement/Supplemental Services**

The following items are not included as part of this AGREEMENT:

1. Surveying
2. Environmental permitting
3. QA Material Testing

Supplemental services not included in the AGREEMENT can be provided by COMPANY under separate agreement, if desired

#### **5.0 Services by Others**

COMPANY will not engage services by others.

#### **6.0 Client Responsibilities**

CLIENT shall provide the following items:

1. Review of plans, specifications and information submitted by the Engineer.

#### **7.0 Professional Services Fee**

##### **7.1 Fees**

The fee for services will be based on COMPANY standard hourly rates current at the time the AGREEMENT is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non-salary expenses directly attributable to the project such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.

##### **7.2 Invoices**

Invoices for COMPANY's services shall be submitted, on a monthly basis. Invoices shall be due and payable within 30 days upon receipt.

##### **7.3 Extra Services**

Any service required but not included as part of this AGREEMENT shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

##### **7.4 Exclusion**

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.





7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

Lump sum amount per the following breakdown based on estimated construction cost of \$70,000:

Preliminary Engineering (3%):	\$2,100
<u>Construction Engineering (4%):</u>	<u>\$2,800 *</u>
TOTAL:	\$4,900

\* Construction engineering fee to be based on final construction cost



## 8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

### 8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

### 8.2 Entire Agreement

This AGREEMENT and its attachments constitute the entire understanding between CLIENT and COMPANY relating to COMPANY's services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this AGREEMENT shall be in writing and signed by the parties to this AGREEMENT. If the CLIENT, its officers, agents, or employees request COMPANY to perform extra services pursuant to this AGREEMENT, CLIENT will pay for the additional services even though an additional written agreement is not issued or signed.

### 8.3 Time Limit and Commencement of Services

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The services will be commenced immediately upon receipt of this signed AGREEMENT.

### 8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this AGREEMENT, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this AGREEMENT upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this AGREEMENT, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CLIENT. Upon receipt of payment in full of all outstanding sums due from the CLIENT, or curing of such other breach which caused the COMPANY to suspend services, the COMPANY shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

### 8.5 Books and Accounts

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

### 8.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage, and Professional Liability insurance caused by the negligent performance by COMPANY's employees of the functions and services required under this AGREEMENT.

### 8.7 Termination or Abandonment

Either party has the option to terminate this AGREEMENT. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this AGREEMENT may be terminated upon seven (7) days' written notice. If any portion of the services is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the services not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for



services performed during such phase shall be based on COMPANY's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse COMPANY for termination costs.

8.8 Waiver

COMPANY's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this AGREEMENT is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this AGREEMENT shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this AGREEMENT shall be made without written consent of the parties to this AGREEMENT.

8.11 Third-Party Beneficiaries

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the COMPANY. The COMPANY's services under this AGREEMENT are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against the COMPANY because of this AGREEMENT or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, sub-consultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this AGREEMENT and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Illinois without regard to any conflict of law provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this AGREEMENT or the performance of the services shall be brought in a court of competent jurisdiction in the State of Illinois.

8.13 Dispute Resolution

Mediation. In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and COMPANY agree that all disputes between them arising out of or relating to this AGREEMENT shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The CLIENT and COMPANY further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

8.14 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this AGREEMENT, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.15 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of COMPANY. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times.



#### 8.16 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses including attorneys' fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

#### 8.17 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of service. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT's failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

#### 8.18 Opinion of Probable Construction Cost

As part of the Deliverables, COMPANY may submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of its opinions of cost, and in recognition of that fact, the CLIENT waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

#### 8.19 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY'S express written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30-day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the



submitted electronic materials shall be subject to separate agreement. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

#### 8.20 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this AGREEMENT unless indicated in the Scope of Services.

#### 8.21 Force Majeure

The CLIENT agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this AGREEMENT, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; disease epidemic or pandemic; failure of any government agency to act in a timely manner; failure of performance by the CLIENT or the CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

#### 8.22 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and sub-consultants at a construction site, shall relieve the general contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the general contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the general contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the general contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

#### 8.23 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional services. The compensation to be paid COMPANY for said professional services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold COMPANY, its officers, directors,



employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this AGREEMENT shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

#### 8.24 Certificate of Merit

The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against COMPANY unless the CLIENT has first provided COMPANY with a written certification executed by an independent design professional currently practicing in the same discipline as COMPANY and licensed in the State in which the claim arises. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to COMPANY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

#### 8.25 Limitation of Liability

In recognition of the relative risks and benefits of the Project to both the CLIENT and the COMPANY, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and sub-consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and sub-consultants shall not exceed \$50,000.00, or the COMPANY'S total fee for services rendered on this Project, whichever is greater. 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.

#### 8.26 Construction Observation

COMPANY shall visit the project at appropriate intervals (as described in the scope of services) during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The CLIENT has not retained COMPANY to make detailed inspections or to provide exhaustive or continuous project review and observation services. COMPANY does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project.

If the CLIENT desires more extensive project observation or full-time project representation, the CLIENT shall request in writing such services be provided by COMPANY as Additional Services in accordance with the terms of the AGREEMENT.

#### 8.27 Soliciting Employment

Neither party to this AGREEMENT will solicit an employee of the other nor hire or make an offer of employment to an employee of the other that is working on this PROJECT, without prior written consent of the other party, during the time this AGREEMENT is in effect.



8.28 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CLIENT is a municipal entity as defined by said Act, and the CLIENT requires project financing information for the services performed under this AGREEMENT, the CLIENT will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CLIENT will rely on the advice of such advisor. A sample letter can be provided to the CLIENT upon request.

This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Services will not begin until COMPANY receives a signed agreement. COMPANY's services shall be limited to those expressly set forth in this AGREEMENT and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing.