



ST. CHARLES  
SINCE 1834

## AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Award Contract to WBK for Design Engineering Services for the Fox Glen Creek Investigation and Design
Presenter:	James J. Bernahl

*Please check appropriate box:*

Government Operations	<input checked="" type="checkbox"/>	Government Services 01.24.11
Planning & Development	<input type="checkbox"/>	City Council
Public Hearing	<input type="checkbox"/>	

Estimated Cost:	\$54,500	Budgeted:	<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> X	<input type="checkbox"/> NO	
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If NO, please explain how item will be funded:

**Executive Summary:**

Due to the excessive rainfall events that took place specifically in 2007, 2008, and 2010 a tributary section of the Norton Creek, referred to here as the Fox Glen Creek, has experienced excessive erosion to both the existing spillway (culvert crossing at Fox Glen Dr.) and a 700-foot section of the creek. A joint site investigation consisting of City Staff, representatives from the Kane Dupage Soil and Water Conservation District, and a representative from the St Charles Country Club observed the severe erosion of this section of the creek. Staff met with various Professional Engineering Consultants to determine the best course of action to stabilize this section. In addition to these meetings the PW Engineering Division was successful in obtaining a \$27,000 grant to assist in the re-stabilization program.

In addition to the severe erosion of the Fox Glen Creek, the existing spillway at the Fox Glen Dr. culvert that discharges storm water into the creek has experienced severe erosion and requires immediate attention. Because of the severity of the erosion it is expected that the stabilization of the spillway will be one of the first items to be addressed as part of this program.

To begin to better understand the costs associated with this program the City will need to prepare an overall restoration program. This program will consist of the stabilization and repair of the severely eroded spillway near Fox Glen Drive, removal of fallen vegetation within the creek, coordination with the St. Charles Country Club offering guidance for their re-stabilization where erosion has occurred on private property, obtainment of necessary permits, and additional grant assistance. The preparation of a master plan will also assist the City in pursuing additional grant opportunities that require the submittal of such a plan as a minimum requirement.

In 2005 R.H. Anderson Company performed a Culvert Inspection Program Study. At that time a minor amount of scour at this location was noted. In addition, Christopher Burke West worked with the Country Club on their storm water permitting which helped to put in the pedestrian bridge and the pond on the Country Club property near this creek. Both of these former firms have merged to form Wills Burke Kelsey Associates (WBK). For these reasons much of the original information needed for this

investigation is proprietary to WBK which makes WBK the most appropriate for this design work.

**Attachments:** *(please list)*

- **Copy of Proposal from (WBK) Wills Burke Kelsey Associates**

**Recommendation / Suggested Action** *(briefly explain):*

Staff is recommending to award the Contract for Design Engineering Services for the Fox Glen Creek to Wills Burke Kelsey Associates for an amount Not To Exceed \$54,500.

*For office use only:*

*Agenda Item Number: 4.f*



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Fax: 630.443.0533  
www.wbkengineering.com

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**WILLS BURKE KELSEY ASSOCIATES**

December 6, 2010

Mr. James J. Bernahl, P.E.  
Public Works Engineering Division Manager  
City of St. Charles  
2 East Main Street  
St. Charles, IL 60174

Subject: Proposal for Professional Engineering Services:  
Woods of Fox Glen / Norton Creek Tributary  
Erosion Mitigation (WBK No. 2010.4159)

Dear Mr. Bernahl:

We appreciate your time meeting last week and the opportunity to present a proposal for a concept master plan for stream bank stabilization of a tributary to Norton Creek that traverses through the Woods of Fox Glen Subdivision hereafter referred to as Fox Glen Creek. Included below is our Understanding of the Assignment, Scope of Services and Estimate of Fee. Preparing this proposal requires the exercise of professional engineering judgment and as such this proposal remains the proprietary instrument of service of the firm Wills Burke Kelsey. No portion of this proposal may be shared with another firm providing similar services. Included below is our understanding of the assignment, scope of services, and estimate of fee.

**UNDERSTANDING OF THE ASSIGNMENT**

The Woods of Fox Glen Subdivision was developed in three phases. The First Phase provided for on-line stormwater detention storage on Fox Glen Creek. A control structure was constructed in the main channel of the creek with the intent to control flow and create flood storage and overflow to an abandoned gravel pit to the south. In 1995 a significant rainfall event washed out the control structure and the main channel of the creek was diverted south to the abandoned gravel pit. Significant erosion was observed along the banks of the creek at that time. In 2003 the St. Charles Country Club developed nine golf course holes directly south of Fox Glen Creek. A detention facility was constructed to accommodate the golf course development. A limited portion of the channel section was stabilized as the creek flowed on to Country Club property. A pedestrian bridge identifies where Fox Glen Creek flows on to the Country Club property. Sediment deposits resulting from erosion are observed within the Country Club stormwater basin.

The City owns a portion of Fox Glen Creek and possibly a portion of the failed bank. Adjacent owners include the St. Charles Country Club to the south and St. Charles residents to the North.

The Fox Glen Creek is not mapped floodplain but is considered jurisdictional Waters of the US based on our experience with the St. Charles Country Club. A permit from the USACE will be required for any work within the ordinary high water elevation of the channel.

Based on recent observation, erosion has continued to occur along the creek with a particularly dramatic failure near the previously noted pedestrian bridge. Additionally a dramatic and significant wash out has occurred directly south of the creek crossing at Fox Glen Drive. It is noted that just five years ago some erosion existed but it appears the creek bed has now eroded further and dropped approximately ten feet. The soils are particularly sandy and subject to significant erosion. Additionally the Woods of Fox Glen has no detention storage for the developed watershed to Fox Glen Creek. Therefore peak flows are passed without attenuation creating a more highly erosive flow regime than would be expected with traditional stormwater detention facilities. It appears downcutting of the creek bottom has occurred and could possibly continue to occur until it can be stabilized. The channel downcutting has caused the banks to become unstable resulting in slope stability failures. The culvert crossing at Fox Glen Drive could become unstable and result in the beginning of structural failures.

We believe the City is best served by considering both long term and short term solutions. The short term solution should focus on the stability of the downstream erosion of the Fox Glen Drive crossing. Temporary stabilization of the grade drop should be implemented as soon as reasonably possible.

The long term solution will most likely include hydraulic grade control of the channel bottom in addition to bank stabilization. The extent of the channel reach contemplated for remedial measures appears to be about 700 feet in length. We understand the City is interested in a concept master plan for several purposes, including grant applications, phased remedial construction and use of in house resources to initiate remediation efforts.

We have not included performing geotechnical investigations in our scope but have included coordination with a firm specializing in geotechnical investigations and consulting as part of our work tasks. We have also not included any bid assistance nor construction observation in the following scope.

### **SCOPE OF SERVICES**

Our services will consist of final design and construction civil engineering services described as follows:

#### **TASK 1 – SURVEY**

We will survey Fox Glen Creek from the St. Charles County Club stormwater basin to the Fox Glen Drive culvert crossing. The distance is approximately 700 lineal feet. We will develop one foot contours and display them on a topographic map. We expect the survey to extend approximately 100 feet on either side of the existing channel centerline to capture the top of bank of adjacent side slopes. We will identify and depict utilities or structures and will include abutments for the pedestrian bridge as well as the downstream headwall and apron of the Fox Glen Drive culvert crossing. We will locate all trees 6 inches in diameter and greater. The survey does not include any boundary work or property line determinations. We will establish the centerline of the existing creek, the existing channel section and toe and top of bank. We will locate all locations where geotechnical investigations are performed.

#### **TASK 2 – PRELIMINARY ENGINEERING**

WBK will perform the following tasks during this phase:

- a. Coordinate with the City's geotechnical consultant and evaluate soil conditions and recommendations.

- b. Establish a typical channel cross section and Identify methods of stabilization compatible with soil conditions, modeled hydraulics and stream geomorphology. Evaluate restoration opportunities and engineered solutions.
- c. Establish a proposed channel centerline.
- d. Establish a proposed channel profile.
- e. Evaluate the need for hydraulic grade control and recommended practices.
- f. Prepare a master plan exhibit that will include the following:
  - 1. Overall layout and typical sections
  - 2. Proposed channel centerline and restoration concept plan & channel profile (2 sheets)
- g. Prepare a letter summary report identifying key design parameters, constraints and recommendations.
- h. Prepare a conceptual opinion of probable construction cost based on the master concept plan engineering plans.

We do not anticipate a "structural" solution to the soil stabilization condition; meaning construction of concrete walls and aprons. Structural analysis and design are not included in preliminary engineering.

### **TASK 3 – HYDROLOGIC AND HYDRAULIC MODELING**

#### **HYDROLOGIC MODEL**

We will use the existing hydrologic model that was developed for the St. Charles County Club and update the model according to the scope of work for this project. The model will be completed using the TR-20 hydrologic model and be utilized in the below listed permit submittals.

#### **HYDRAULIC MODEL**

Utilizing the survey that will be completed in Task 1, we will develop a hydraulic model of the existing channel to determine water surface elevations for the 1 year, 2 year, 10 year, and 100 year events. The stream conditions will be modeled using the HEC-RAS hydraulic model as part of the design phase and the final model will then be utilized in the below listed permit submittals.

### **TASK 4 – PERMITTING**

We will prepare the following documents for permitting and reviews based on the Final Engineering Plans (Task 5).

**WETLAND ASSESSMENT:** We will prepare a wetland assessment and delineation of the site in accordance with the requirements of the U.S. Army Corps of Engineers and the Kane County Stormwater Ordinance as administered by the City of St. Charles. An investigation of the project site will be completed to determine the limits of the wetlands present within the provided project boundary. Also, during the site visit, wildlife and plant community qualities will be assessed. The limits of the wetland community will be field staked so that they can be located in relation to the project coordinate system. Pin flags delineating the wetland limits will be surveyed prior to the report being prepared. The results of the field reconnaissance will be summarized in a letter

report. The wetland's generalized quality ratings, according to the Swink and Wilhelm Methodology (1994), will be included along with exhibits depicting the approximate wetland and project boundaries, National Wetland Inventory, soil survey, floodplain, USGS topography, site photographs and their locations, and the U.S. Army Corps of Engineers (USACE) Routine On-site Data Forms. If it appears that wetlands or waters of the United States are present on the site; we will submit our report to the USACE for a Jurisdictional Determination.

**USACE SECTION 404 PERMIT:** WBK will prepare and submit on your behalf, a Section 404 Permit Application to the US Army Corps of Engineers (USACE). The permit application packet will be prepared based on plans prepared by others and the Wetland Assessment prepared by WBK. WBK will submit the permit application which includes a Jurisdictional Determination Request, Authorized Agent Letter, Wetland Assessment, Project Narrative, Wetland Impacts Exhibit, and any other supporting documentation requested by the USACE. The Jurisdictional Determination (JD) Request will require a land owner signature. The JD will provide a written record indicating which, if any, aquatic resources are under the jurisdiction of the USACE. The Authorized Agent Letter will provide the USACE with the Home Owners Association's permission for WBK to communicate regarding your permits. Although WBK will attempt to provide all of the necessary information of sufficient quality to obtain said permits, WBK cannot guarantee their issuance. We will meet with the USACE once to discuss the project and will provide one set of revisions to the permit applications.

**ILLINOIS DEPARTMENT OF NATURAL RESOURCES – OFFICE OF WATER RESOURCES FLOODWAY CONSTRUCTION PERMIT:** WBK will complete the appropriate permit application and submittal requirements for an IDNR-OWR Permit for Floodway Construction. We will provide the necessary hydraulic calculations of the proposed conditions and exhibits for the permit submittal. We will submit the required permit application and coordinate with IDNR-OWR.

**CITY OF ST. CHARLES STORMWATER MANAGEMENT PERMIT:** WBK will assist you in applying for a stormwater permit from the City of St. Charles. Calculations and engineering requirements of the Kane County Stormwater Management Ordinance as administered by St. Charles, will be addressed and submitted to St. Charles for review. Permit fees are not included in our scope of work. Although WBK will attempt to provide all of the necessary information of sufficient quality to obtain said permits, WBK cannot guarantee their issuance. We will meet with the City once to discuss the project and will provide one set of revisions to the permit applications.

**KANE DUPAGE SOIL AND WATER CONSERVATION DISTRICT EROSION CONTROL PLAN REVIEW:** We will prepare a request for review for the Kane DuPage Soil and Water Conservation District (as required by the U.S. Army Corps of Engineers through their memorandum of understanding) of the Soil Erosion and Sediment Control measures based on the plans provided to us by others. This submittal will include a project narrative, a description of the potential impacts, the plan set, and a description of the erosion and sediment control measures to be taken as part of the development of the project. The application will require signature and review fee supplied by the land owner and/or HOA. WBK will provide one set of revisions to the plans as requested by the SWCD. Three copies of the final plans will be submitted for signature upon approval by the SWCD. One set of plans will remain with the SWCD, one set will be kept by WBK for record keeping, and one set must remain on-site (and kept up-to-date based on the current conditions of the site). Permit fees are not included in our scope of work.

**THREATENED AND ENDANGERED SPECIES AND NATURAL AREAS CONSULTATION:**

**Federal/ US Fish and Wildlife Service:** We will perform a threatened and endangered species consultation for the United States Fish and Wildlife Service (USFWS) in compliance with Section 7 of the Endangered Species Act. We will report any Federally-listed threatened or endangered species within the project county and include their common name, scientific name, and a description of their habitat. WBK will assess the project area for potential habitat for the listed species and determined whether or not the project will have adverse effects on Federally-listed threatened or endangered species and their habitat. We will prepare a summary memorandum of the consultation determination to the client.

**State/Illinois Department of Natural Resources:** We will submit an Illinois Department of Natural Resources (IDNR) Section 1075 Consultation for State-listed threatened and endangered species as well as protected natural areas via EcoCAT. EcoCAT is the IDNR's online Ecological Compliance Assessment Tool. We will prepare the initial response to any requests made by IDNR for additional searches for T & E species. If the agencies requests additional assessments, we will assist you in finding consultants qualified to perform the required fieldwork if the required assessments are for species our staff does not have previous experience with. These consultations will be required prior to obtaining permits or authorizations to develop the site.

**ILLINOIS HISTORIC PRESERVATION AGENCY COORDINATION:** WBK will submit a consultation request with the Illinois Historic Preservation Agency (IHPA) in compliance with the Illinois State Historic Resources Preservation Act and Section 106 of the National Historic Preservation Act. The consultation request will require photographs of all standing structures on-site and in the immediate vicinity. We will prepare the initial response to any requests made by IHPA for a Phase 1 Archaeological Survey for Historic or Cultural Resources. If the agency requests additional assessments, we will assist you in finding consultants qualified to perform the required historic preservation field work. This consultation is required prior to obtaining permits or authorizations from the Federal Government for development on this site.

**TASK 5 – FINAL ENGINEERING**

**Final Engineering Plans:** WBK will prepare final engineering plans for the proposed streambank stabilization based on concept plans approved by the City. WBK will also prepare the necessary construction specifications and bid documents based on the plans. We estimate that the following sheets are required:

<u>SHEET</u>	<u>NO. OF SHEETS</u>
1. Title Sheet	1
2. Summary Quantities/ General Notes	1
3. Alignments, Bench Marks, and Ties	1
4. Existing Conditions	1
5. Typical Sections	1
6. Site Plans	2
7. SWPPP	2
8. Erosion Control Details	2
9. Planting Plan & Stabilization Details	2
10. Cross Sections	2
TOTAL:	<u>15</u>

**Bid Documents:** Technical construction specifications will be prepared in a format consistent with IDOT requirements and will be based upon the "Standard Specifications for Road and Bridge

Construction," latest edition adopted by the Illinois Department of Transportation and other engineering standards as appropriate. Quantities will be determined based on IDOT pay items or other standards such as NRCS that may be more consistent with stream bank stabilization projects. Technical construction specifications and a summary of quantities suitable for bid documents will be provided by the City of St. Charles. We will utilize "front end" documents such as bid notice, instructions to bidders, etc.; provided by the City to develop complete project bid documents. The City will also provide insurance requirements, general conditions and prevailing wage rates approved by the City.

Opinion of Probable Construction Cost: Based upon the information contained in the final construction documents, we will prepare an engineer's opinion of probable construction cost for the project.

Plans, Specifications and Estimate submittals: We intend to make two submittals to the City (as owner) to review. We will review specific design concepts, issues and concerns as they arise independent of owner review submittals. The first review submittal will be at 75% complete. This will allow the City to provide comments on design concepts as details, so far as they are developed. The second submittal is at 100% complete. Upon this submittal, Task 5 is complete and no further changes are considered in this scope.

### **SUPPLEMENTAL SERVICES**

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

Tasks considered Supplemental Services include, but are not limited to, major changes to the scope of work, expert witness testimony in any litigation or other court proceedings involving this project, revisions to previously approved studies and/or design documents, major revisions to the site plan or building footprints, unanticipated improvements (on or off site), soil borings, wetland delineation, sanitary sewer, water main, structural design, mechanical design, studies or reports not specifically listed under the Scope of Basic Services, meetings or technical assistance during construction, preparation of any plats or record drawings not specifically listed under the Scope of Basic Services, design of buildings, landscaping, lighting, etc., and construction staking or restaking not specifically listed in the Scope of Basic Services.

### **ESTIMATE OF FEE**

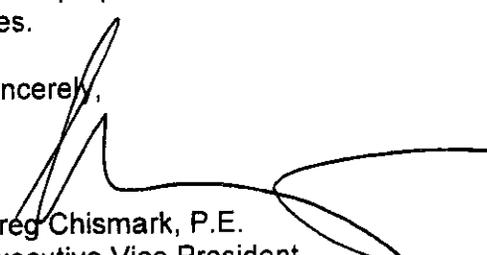
Due to the nature of the tasks above, we have provided time and materials budgets based upon information available at the time of each plan submittal as requested by the City. The actual amount invoiced will be based on the level of effort required, but we will not exceed the budget without your prior approval. Reimbursable expenses, such as postage, overnight delivery, printing, copying, etc. are not included in our budget/fee amounts, and will be invoiced to you at our cost plus 10%. A budget amount has been provided that is limited based on discussions with City staff regarding plan distribution.

	<u>Amount</u>
<u>TASK 1 – SURVEY</u>	\$ 7,500
<u>TASK 2 – PRELIMINARY ENGINEERING</u>	\$ 8,500
<u>TASK 3 – HYDROLOGIC AND HYDRAULIC MODELING</u>	\$ 6,000
<u>TASK 4 – PERMIT COORDINATION</u>	\$ 8,500
<u>TASK 5 – FINAL ENGINEERING</u>	\$ 23,500
Reimbursable Expense	<u>\$500</u>
TOTAL	\$54,500

We propose to bill you monthly based on the attached Schedule of Charges. We establish our contract in accordance with the attached General Terms and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. We reserve the right to increase our fees by 5% on December 31<sup>st</sup> of 2011 and each year thereafter as needed.

If this proposal meets with your approval, please sign both copies and return one to us for our files.

Sincerely,



Greg Chismark, P.E.  
Executive Vice President

CC: Mark Koenen

Encl. Schedule of Charges (January, 2010)  
General Terms and Conditions (Revised September 30, 2010)

THIS PROPOSAL, GENERAL TERMS AND CONDITIONS, AND SCHEDULE OF CHARGES  
ACCEPTED FOR City of St. Charles.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**WILLS BURKE KELSEY ASSOCIATES, LTD.  
GENERAL TERMS AND CONDITIONS**

1. Relationship Between Engineer and Client: WILLS BURKE KELSEY ASSOCIATES, LTD. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the

resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against

all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance with Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement. With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as

previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Affirmative Action: The Engineer is committed to the principles of equal employment opportunity. Moreover, as a government contractor bound by Executive Order 11246, Engineer takes its affirmative action obligations very seriously. Engineer states as its Policy of Affirmative Action the following:

It will be the policy of the Engineer to recruit, hire, train and promote persons in all job titles without regard to race, color, religion, sex, age, disability, veteran status, national origin, or any other characteristic protected by applicable law.

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

All personnel actions, such as compensation, benefits, transfers, tuition assistance, social and recreational programs, etc. will be administered without regard to race, color, religion, sex, age, disability, veteran status, national origin, or any other characteristic protected by applicable law.

11. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

12. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project

Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

13. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

14. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
15. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

16. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
17. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
18. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
19. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
20. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
21. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer performs such services.
22. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
23. Notices: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
24. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the

relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

25. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

26. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
27. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs: In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services: If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages

as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

28. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver: Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third-party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

29. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services

be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

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

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

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

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

**WILLS BURKE KELSEY ASSOCIATES, LTD.  
STANDARD CHARGES FOR PROFESSIONAL SERVICES  
JANUARY 2010**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 199
Engineer VI	\$ 185
Engineer V	\$ 157
Engineer IV	\$ 135
Engineer III	\$ 105
Engineer II	\$ 84
Engineering Technician IV	\$ 129
Engineering Technician III	\$ 110
Engineering Technician II	\$ 92
Engineering Technician I	\$ 79
Senior Structural Engineer	\$ 140
Senior Soil / Environmental Scientist V	\$ 141
Soil / Environmental Scientist	\$ 107
Environmental Resource Specialist IV	\$ 110
Environmental Resource Specialist III	\$ 97
Environmental Resource Specialist II	\$ 79
Environmental Resource Technician	\$ 73
Resource Planner V	\$ 140
Resource Planner IV	\$ 92
Resource Planner III	\$ 84
Resource Planner II	\$ 75
GIS Analyst	\$ 79
Engineering Intern	\$ 44
Administrative	\$ 75
Office Professional	\$ 60
Direct Costs: copies & prints, messenger & delivery services, mileage, etc.	Cost +10%

*Charges include overhead and profit.*

*Wills Burke Kelsey Associates, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2010.*