

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) *Waiver of First Requested*
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: September 26, 2005 (BOT) Date: October 6, 2005

TITLE: Agreement with SPACECO, Inc. to Provide Engineering Services for the Lombard Hotel and Convention Center (Resolution)

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development staff transmits for your consideration its recommendation regarding the above-referenced resolution. This resolution would authorize the President and Clerk to sign an agreement with SPACECO, Inc. to provide engineering services to the Village.

The Department has had formal agreements with consultants in the past to assist with the engineering of major development proposals. However, all engineering has been done in-house for the past four years. The subject agreement is limited to the Hotel & Convention Center project and it is necessary due to a recent departure of a staff engineer who had been handling this project. The Department selected SPACECO since they now employ that former staff engineer and this will enable a smooth continuation of the project. The agreement is for hourly services and it would be in effect until the project is completed.

Staff recommends approval of this resolution.

FISCAL IMPACT/FUNDING SOURCE:

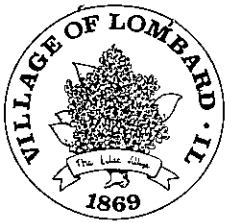
The costs of this agreement will be covered by fees collected for engineering review and inspection for the project per Village Code §36.21 (Fee Schedule). The Village's Development Engineer will keep the consultant's time to the minimum necessary and payments shall not exceed the fees collected.

REVIEW (AS NECESSARY):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X *W.T. Lichter* _____ Date *9/28/05*



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development *DAH*

DATE: September 26, 2005

SUBJECT: Proposed Resolutions Regarding Engineering Services Contracts

Attached for your consideration and submittal to the Village President and Board of Trustees are two proposed resolutions. Please place these resolutions on the agenda for October 6th. The resolutions would authorize the President and Clerk to sign two agreements with SPACECO Inc. to provide engineering services to the Village.

The Department has had formal agreements with consultants in the past to assist with the engineering of major development proposals. However, all engineering has been done in-house for the past four years. The subject agreements are limited to the Hotel & Convention Center and Yorktown Mall's Shops on Butterfield. The agreements are necessary due to a recent departure of a staff engineer who had been handling these projects. The Department selected SPACECO since they now employ that former staff engineer and this will enable a smooth continuation of the projects. The agreements are for hourly services and they would be in effect until the projects are completed.

The costs of these agreements will be covered by fees collected for engineering review and inspection for the projects per Village Code §36.21 (Fee Schedule). The Village's Development Engineer will keep the consultant's time to the minimum necessary and payments shall not exceed the fees collected.

The Village Attorney has reviewed the agreements. The Department of Community Development recommends approval of the resolutions.

DAH/DG:dg H:\CD\WORDUSER\PE\Consultant\Contract\VM Memo - SPACECO.doc
attachments

cc: David Gorman, PE, Development Engineer

RESOLUTION

R _____ 06

RESOLUTION AUTHORIZING THE SIGNATURE OF PRESIDENT AND CLERK ON AN AGREEMENT BETWEEN THE VILLAGE OF LOMBARD AND SPACECO, INC.

WHEREAS, The Corporate Authorities of the Village of Lombard have received an agreement between the Village of Lombard and SPACECO Inc., an Illinois Corporation, as attached hereto and marked as Exhibit "A" regarding engineering services for the Lombard Hotel and Convention Center; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

Section 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

Section 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this _____ day of _____, 2005.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____ 2005.

William J. Mueller
Village President

Attest:

Brigitte O'Brien
Village Clerk



CONSULTING ENGINEERS

SITE DEVELOPMENT ENGINEERS

LAND SURVEYORS

9575 W. Higgins Road, Suite 700, Rosemont, Illinois 60018
Phone: (847) 696-4060 Fax: (847) 696-4065

August 12, 2005

VIA MAIL & FAX

Mr. David Hulseberg, AICP
Director of Community Development
255 E. Wilson Ave.
Lombard, IL 60148

Phone: (630) 620-5700
Fax: (630) 620-8222

**RE: PROFESSIONAL ENGINEERING SERVICES PROPOSAL
LOMBARD HOTEL AND CONVENTION CENTER
LOMBARD, ILLINOIS**
SPACECO Project No. 4235

Dear Mr. Hulseberg:

In response to your request, SPACECO, Inc. is pleased to provide you with this proposal for professional engineering services related to the development of the Lombard Hotel and Convention Center in Lombard, Illinois. We will perform the following services per your request:

1. Plan review and approval, reviews are to be coordinated with various Village of Lombard Divisions, i.e. Underground Utilities, BIS/Fire Marshall, Planning Services. Traffic Signal Plans for the intersection of 22nd Street with Convention Way still need to be submitted. These need not be approved prior to the full site permit being issued.
2. Arrange for Village signature on New IEPA permits if the current permits expire prior to a full site permit being issued.
3. Coordinate the review and approval of all shop drawings for the lift station modifications by the Villages underground utility division.
4. Review Plat of Subdivision with regards to easement locations.
5. Attend coordination meetings prior to permit issuance, and attend the pre-construction meeting once permit is issued.
6. Attend any field meetings or weekly jobsite meetings to resolve any utility conflicts or constructability issues. Primary field inspections will still be performed by the Village of Lombard's Private Engineering Services Division.
7. Coordinate construction activities between the contractor working on the Convention Center and the contractor working on the Yorktown Watermain Replacement for the Village of Lombard's Public Works Department when conflicts occur.

8. Prepare the necessary documentation for the Village of Lombard's acceptance.

FEES

	<u>Amount</u>
Items 1 – 8	Hourly (\$86.00/Hour)

For the purposes of continuity, Matthew Fisetto will perform the above tasks on behalf of the Village. His hourly billing rate will be that of Design Engineer II, \$86.00. Please see the attached rate sheet.

Our services will be invoiced monthly on a percent complete basis. Payments are due within thirty days after invoicing.

Work identified, as payable on an hourly basis will be billed to you at the rates specified on the enclosed Schedule of Charges for Professional Services. We will establish our contract in accordance with the enclosed General Terms and Conditions, which are expressly incorporated into and are an integral part of this contract for professional services. If you wish to discuss the terms, conditions and provisions of this agreement, I would be pleased to do so at your earliest convenience. We reserve the right to increase our fees by 5% on each annual anniversary of this Agreement. All reproductions and delivery services will be billed to the Client on a cost plus 10% basis.

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

Sincerely,

SPACECO, Inc.



William B. Loftus, P.E.
President

c: R. Stawik, D. Newman, - SPACECO, Inc.
M. Fisetto – Village of Lombard

ACCEPTED FOR: _____

BY: _____

TITLE: _____

DATE: _____



9575 W. Higgins Road, Suite 700, Rosemont, Illinois 60018
 Phone: (847) 696-4060 Fax: (847) 696-4065



STANDARD CHARGES FOR PROFESSIONAL SERVICES

January 1, 2005

	<u>Hourly Rate</u>
Principal	\$195.00
Senior Engineer	\$158.00
Engineering Group Manager	\$135.00
Senior Project Manager	\$115.00
Land Development Resource Manager.....	\$115.00
Senior Design Engineer	\$105.00
Project Manager	\$100.00
Design Engineer III.....	\$100.00
* Design Engineer II.....	\$ 86.00
Design Engineer I	\$ 74.00
Technician.....	\$ 86.00
Drafter	\$ 79.00
CAD Manager	\$ 95.00
Senior Professional Land Surveyor	\$135.00
Surveying Group Manager	\$110.00
Professional Land Surveyor.....	\$105.00
Survey Manager.....	\$97.00
Two Man Crew	\$140.00
Three Man Crew	\$190.00
Survey Robotic Equipment Surcharge.....	\$53.00/day
Survey GPS Equipment Surcharge.....	\$97.00/day
Hydrographic Survey Boat with Equipment	\$550.00/day
Word Processor	\$71.00
Clerk.....	\$48.00
Engineering Intern	\$50.00
Director of IT Services.....	\$115.00

REIMBURSABLE EXPENSES

Fax	\$0.50/page
Outside copy service, messenger, overnight delivery, photos	Cost + 10%
Mileage	\$0.33/mile
Electronic Transfer	\$ 40.00

A surcharge of 50 percent will be added to hourly rates for expert witness testimony and depositions. SPACECO, Inc. reserves the right to increase these rates and costs by 5% after December 31, 2005.



9575 W. Higgins Road, Suite 700, Rosemont, Illinois 60018
Phone: (847) 696-4060 Fax: (847) 696-4065

SPACECO, INC.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: SPACECO, Inc. (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 or failure 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 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.

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 inaccuracies, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted.

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.

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.

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 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 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.

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

10. Indemnification: Engineer shall indemnify and hold harmless Client (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the negligent act, error or omission of Engineer, or its officers, agents or employees.

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 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.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

12. Governing Law: 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.
13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
17. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.

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.

22. 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 further agrees to require the Contractor to name the Engineer, its agents and consultants 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.

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.

23. 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.
24. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within sixty (60) 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 judgment 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.

25. 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 agrees to indemnify 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 subcontractors entered into in furtherance of the general contract.

26. Jobsite 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 familiar with and to keep the Client informed about the progress and quality of the Work; 2) bring to the Client's attention defects and deficiencies in the Work and; 3) to determine 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.

27. 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.

28. Hazardous Materials: 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 in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.