

Legislative Summary

Resolution 17-04

AUTHORIZING THE APPROVAL AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY (VILLAGE OF MORTON GROVE, VILLAGE OF NILES, AND STANLEY CONSULTANTS, INC.)

Introduced: January 23, 2017

Synopsis: This Resolution will authorize an Agreement among the Villages of Niles and Morton Grove and Stanley Consultants, Inc., to provide professional consulting and engineering services in order to prepare a water supply corridor and a water route study to evaluate, identify, and recommend options for the design, finance, and construction of water transmission lines, pumping and storage, and other water delivery and receiving infrastructure for the delivery of water from Evanston to Morton Grove and Niles.

Background: On October 12, 2016, an RFP was issued to engineering firms to provide professional consulting and engineering services for a water supply corridor and water route study to evaluate, identify, and recommend water transmission route options as well as evaluate, identify, and recommend options for the design, finance, and construction of water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure extending from the City of Evanston's point of delivery to existing water receiving points owned and operated by the Village of Morton Grove and the Village of Niles. The Village's received four responses to the RFP. An interview team comprised of the Village Administrator of Morton Grove, the Village Manager of Niles, the Public Work Directors, Engineers, and Corporation Counsels from both Morton Grove and Niles conducted extensive interviews of the applicants and have recommended that the Villages engage the services of Stanley Consultants, Inc. for these services in large part due to the firms knowledge of water systems in Morton Grove, Niles, Skokie and Evanston, and their experience with projects of this size and scope.

Departs Affected: Legal, Administration, and Finance Departments

Fiscal Impact: Stanley Consultants, Inc.'s fees will be based on the actual amount of work performed. The Village's share for services performed will not exceed \$359,000. The total contract costs will be paid equally by Morton Grove and Niles.

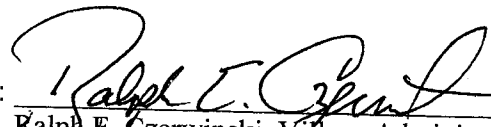
Source of Funds: Enterprise Fund, to be reimbursed from bond proceeds

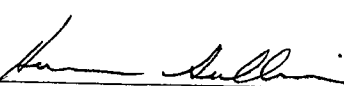
Work Impact: The Village Administrator, Public Works Director and Village Engineer will oversee the implementation of the Agreement.

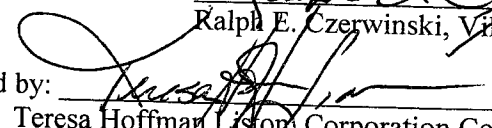
Admin Recommend: Approval as presented.

First Reading: Not required.

Special Consider or Requirements: The Exhibits are too voluminous to attach to the agenda documents, but will be incorporated into the final contract documents and are available for review and inspection in the Village Administrator's office.

Respectfully submitted: 
Ralph E. Czerwinski, Village Administrator

Reviewed by: 
Hanna Sullivan, Finance Director

Prepared by: 
Teresa Hoffman Liston, Corporation Counsel

Reviewed by: 
Andy DeMonte, Public Works Director

RESOLUTION 17-04

A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY (VILLAGE OF MORTON GROVE, VILLAGE OF NILES AND STANLEY CONSULTANTS, INC.)

WHEREAS, the Village of Morton Grove (Village), located in Cook County, Illinois, is a home rule government under the provision of Article 7 of the 1970 Constitution of the State of Illinois, can exercise any power and perform any function pertaining to its government affairs, including but not limited to the power to tax and incur debt; and

WHEREAS, the President and Board of Trustees of the Village of Morton Grove, a home rule Illinois municipal corporation (Morton Grove), desire to approve and enter into an agreement entitled "*Professional Services Agreement for Engineering Services for Preparation of Water Supply Corridor and Water Route Study (Village of Morton Grove, Village of Niles, and Stanley Consultants, Inc.)*" in substantially the same form as the Agreement is attached hereto as Exhibit "A" and made a part hereof; (the Agreement); and

WHEREAS, on October 12, 2016, the Village of Morton Grove and the Village of Niles, an Illinois home rule municipal corporation (Niles), issued a Request for Proposal, entitled "RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study, Issue Date: October 12, 2016" (the MGN RFP), to engineering firms to provide professional consulting and engineering services to prepare a water supply corridor and water route study to evaluate, identify, and recommend water transmission route options as well as evaluate, identify, and recommend options for the design, finance, and construction of water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure that will extend from the City of Evanston's (Evanston) point of delivery near the intersection of Emerson Street and McCormick Boulevard, which is Evanston's western border, to existing water receiving points (e.g., reservoirs and pumping facilities) owned and operated respectively by Morton Grove and Niles, and located in Niles near the intersection of Harlem Avenue and Touhy Avenue, and located in Morton Grove near the intersection of Caldwell Avenue and Oakton Street, for Morton Grove and Niles (the Services); and

WHEREAS, the construction of the water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure between Evanston's point of delivery to the existing water receiving points of Niles and Morton Grove is referred to as the Project, as further defined and set forth in the Agreement; and

WHEREAS, Stanley Consultants, Inc. (Consultant) submitted a response to the MGN RFP, dated November 2, 2016, to perform the Services relative to the Project, and Morton Grove, Niles, and the Consultant further negotiated and refined the Services to be performed as set forth in the Agreement; and

WHEREAS, Morton Grove agrees to retain the Consultant to perform the Services with Niles, in accordance with the terms of the Agreement; and

WHEREAS, the Consultant has agreed to perform the Services in accordance with the terms of the Agreement; and

WHEREAS, the President and Board of Trustees of the Village of Morton Grove have the authority to enter into the Agreement pursuant to Morton Grove's home rule powers as provided by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*), and find that entering into the Agreement is in the best interests of the Village of Morton Grove.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MORTON GROVE, ILLINOIS, AS FOLLOWS:

SECTION 1: The Corporate Authorities do hereby incorporate the foregoing whereas clauses into this Resolution as though fully set forth therein thereby making the findings as hereinabove set forth.

SECTION 2: The President and Board of Trustees of the Village of Morton Grove authorize the approval and execution of an Agreement entitled "*Professional Services Agreement for Engineering Services for Preparation of Water Supply Corridor and Water Route Study (Village of Morton Grove, Village of Niles, and Stanley Consultants, Inc.)*" for the purposes set forth in the Agreement, attached hereto as Exhibit "A".

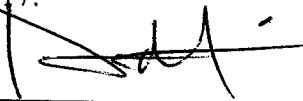
SECTION 3: The President and Board of Trustees of the Village of Morton Grove authorize and direct the Village Administrator, or his designee, to execute the final version of the Agreement, which may contain certain non-substantive and non-financial modifications that are approved by the Village Attorney, and to execute and deliver all other instruments and documents and pay all costs that are

SECTION 4: This resolution shall be in full force and effect upon its passage and approval.

PASSED THIS 23rd day of January 2017

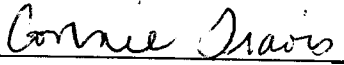
Trustee Grear	<u>AYE</u>
Trustee Minx	<u>AYE</u>
Trustee Pietron	<u>AYE</u>
Trustee Ramos	<u>AYE</u>
Trustee Thill	<u>AYE</u>
Trustee Witko	<u>AYE</u>

APPROVED by me this 23rd day of January 2017.



Daniel P. DiMaria, Village President
Village of Morton Grove
Cook County, Illinois

APPROVED and FILED in my office this
24th day of January 2017.



Connie Travis, Village Clerk
Village of Morton Grove
Cook County, Illinois

EXHIBIT "A"

**PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES
FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY
(VILLAGE OF MORTON GROVE, VILLAGE OF NILES,
AND STANLEY CONSULTANTS, INC.)**

(attached)

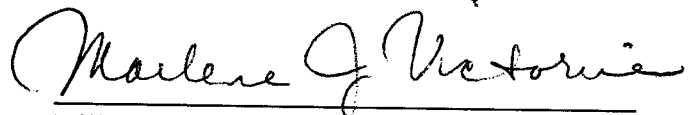
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, MARLENE J. VICTORINE, do hereby certify that I am the duly appointed and qualified Village Clerk of the Village of Niles, County of Cook and State of Illinois, and, as such, am the keeper of the records, legal documents and files of said Village.

I DO FURTHER CERTIFY that the attached and foregoing is a true, correct, and complete copy of a legal document duly adopted by the Board of Trustees of the Village of Niles on the 24th day of January, 2017 entitled:

RESOLUTION 2017-03R AUTHORIZING THE APPROVAL AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY (VILLAGE OF MORTON GROVE, VILLAGE OF NILES AND STANLEY CONSULTANTS, INC.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Niles, this 22nd day of February, 2017.



Village Clerk of the Village of Niles
Cook County, State of Illinois

(SEAL)

RESOLUTION 2017-03R

RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY (VILLAGE OF MORTON GROVE, VILLAGE OF NILES AND STANLEY CONSULTANTS, INC.)

WHEREAS, the President and Board of Trustees of the Village of Niles, a home rule Illinois municipal corporation (“Niles”), desire to approve and enter into an agreement entitled “Professional Services Agreement For Engineering Services For Preparation Of Water Supply Corridor And Water Route Study (Village of Morton Grove, Village of Niles and Stanley Consultants, Inc.)” (the “Agreement”) in substantially the same form as the copy of the Agreement is attached hereto as **Exhibit “A”** and made a part hereof; and

WHEREAS, on October 12, 2016, Morton Grove and the Village of Niles, an Illinois home rule municipal corporation (“Niles”), issued a Request for Proposals, entitled “RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study, Issue Date: October 12, 2016” (the “MGN RFP”), to engineering firms to provide professional consulting and engineering services to prepare a water supply corridor and water route study to evaluate, identify and recommend water transmission route options as well as evaluate, identify and recommend options for the design, finance and construction of water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure that will extend from the City of Evanston’s (“Evanston”) point of delivery near the intersection of Emerson Street and McCormick Boulevard, which is Evanston's western border, to existing water receiving points (e.g., reservoirs and pumping facilities) owned and operated respectively by Morton Grove and Niles, and located in Niles near the intersection of Harlem Avenue and Touhy Avenue, and located in Morton Grove near the intersection of Caldwell Avenue and Oakton Street, for Morton Grove and Niles (the “Services”); and

WHEREAS, the construction of the water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure between Evanston’s point of delivery to the existing water receiving points of Niles and Morton Grove is referred to as the “Project,” as further defined and set forth in the Agreement; and

WHEREAS, Stanley Consultants, Inc. (“Consultant”) submitted a response to the MGN RFP, dated November 2, 2016, to perform the Services relative to the Project, and Morton Grove, Niles and the Consultant further negotiated and refined the Services that are to be performed as set forth in the Agreement; and

WHEREAS, Niles agrees to retain the Consultant to perform the Services with Morton Grove, in accordance with the terms of the Agreement; and

WHEREAS, the Consultant has agreed to perform the Services in accordance with the terms of the Agreement; and

WHEREAS, the President and Board of Trustees of the Village of Niles have the authority to enter into the Agreement pursuant to Niles's home rule powers as provided by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*), and find that entering into the Agreement is in the best interests of Niles.


NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Niles, Illinois, as follows:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The President and Board of Trustees of the Village of Niles authorize the approval of the economic terms and the attached form of an agreement entitled "Professional Services Agreement For Engineering Services For Preparation Of Water Supply Corridor And Water Route Study (Village of Morton Grove, Village of Niles and Stanley Consultants, Inc.)" (the "Agreement") for the purposes set forth in the Agreement, attached hereto as **Exhibit "A"**. The President and Board of Trustees of the Village of Niles authorize and direct the Village Manager, or his designee, to execute the final version of the Agreement, which may contain certain non-substantive and non-financial modifications that are approved by the Village Attorney, and to execute and deliver all other instruments and documents and pay all costs that are necessary to fulfill Niles's obligations under the Agreement.

PASSED: This 24th day of January, 2017
YEAS: 6 Alpogianis, Jekot, LoVerde, Matyas, McCreery, Strzelecki
NAYS: 0
ABSENT: 0
ABSTAIN: 0

APPROVED by me this 24th day of January, 2017.



President of the Village of Niles
Cook County, Illinois

ATTESTED AND FILED in my office this 24th day of January, 2017, and published in pamphlet form as provided by law in the Village of Niles, Illinois.



Village Clerk

Exhibit "A"

**Professional Services Agreement For Engineering Services
For Preparation Of Water Supply Corridor And Water Route Study
(Village Of Morton Grove, Village Of Niles And Stanley Consultants, Inc.)**

(attached)

**PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES
FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY**

(Village of Morton Grove, Village of Niles and Stanley Consultants, Inc.)

This **PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES FOR PREPARATION OF WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY** ("Agreement") is made by and between **Stanley Consultants, Inc.**, an Iowa corporation, authorized to conduct business in the State of Illinois, whose mailing address is 8501 West Higgins Road, Suite 730, Chicago, Illinois 60631 (the "Consultant") and the **Village of Morton Grove**, an Illinois home rule municipal corporation, whose mailing address is 6101 Capulina Avenue, Morton Grove, Illinois 60053 ("Morton Grove") and the **Village of Niles**, an Illinois home rule municipal corporation, whose mailing address is 1000 Civic Center Drive, Niles, Illinois 60714 ("Niles"). The Consultant and the Villages are at times referred to herein individually as a "Party" and collectively as the "Parties." Morton Grove and Niles are at times referred to collectively as "MGN" or the "Villages".

RECITALS

WHEREAS, on October 12, 2016, MGN issued a Request for Proposals, entitled "RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study, Issue Date: October 12, 2016" (the "MGN RFP"), to engineering firms to provide professional consulting and engineering services to prepare a **water supply corridor and water route study** to evaluate, identify and recommend water transmission route options as well as evaluate, identify and recommend options for the design, finance and construction of water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure that will extend from the City of Evanston's point of delivery near the intersection of Emerson Street and McCormick Boulevard, which is Evanston's western border, to existing water receiving points (e.g., reservoirs and pumping facilities) owned and operated respectively by Morton Grove and Niles, and located in Niles near the intersection of Harlem Avenue and Touhy Avenue and in Morton Grove near the intersection of Caldwell Avenue and Oakton Street for MGN (the "Services", as further defined below). The construction of the water transmission lines, pumping and storage, and other related water delivery and receiving infrastructure between the City of Evanston's point of delivery to the existing water receiving points of Niles and Morton Grove is referred to as the "Project." A copy of the MGN RFP is incorporated by reference as **Exhibit "A"** into this Agreement and made a part hereof; and

WHEREAS, the Consultant submitted a response to the RFP, dated, November 2, 2016, to perform the Services (the "Proposal"). A copy of the Proposal is incorporated by reference into this Agreement as **Group Exhibit "B"** and made a part hereof. MGN and the Consultant further negotiated and refined the Scope of Services that are to be performed by the Consultant under this Agreement. A copy of the agreed-upon final version of the Scope of Services dated January 4, 2017 is attached hereto as **Group Exhibit "B"** and made a part hereof, the terms of which shall govern over any other Exhibit to or provision of this Agreement. In addition, a copy of the Projected Labor and Budget dated December 12, 2016 is attached hereto as **Group Exhibit "B"** and made a part hereof; and

WHEREAS, MGN agrees to retain the Consultant to perform the Services in accordance with the terms of this Agreement; and

WHEREAS, the Consultant agrees to perform the Services in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the recitals, mutual covenants and representations set forth in this Agreement, the Parties mutually agree that the Consultant shall perform the Services described below, and MGN shall pay the Consultant for said performance, under the following terms and conditions:

SECTION 1. INCORPORATION AND DEFINITIONS.

Each of the above Whereas paragraphs are incorporated into this Section 1 as material provisions of this Agreement.

Whenever used in this Agreement, the following terms shall have the meanings indicated and the singular shall be read to include the plural and vice versa, and pronouns stated herein shall be construed to include all genders.

- A. The term "Agreement" includes the Recitals set forth above, which are incorporated into Section 1 of this Agreement, and shall mean this Agreement and its attached Exhibits as entered into by the Consultant and MGN setting forth the terms and conditions governing the Services.
- B. The term "Morton Grove Affiliates" means Morton Grove's former, current and future appointed and elected officials, officers, president and trustees, employees, engineers, attorneys, consultants, authorized representatives and volunteers.
- C. The term "Niles Affiliates" means Niles' former, current and future appointed and elected officials, officers, president and trustees, employees, engineers, attorneys, consultants, authorized representatives and volunteers.
- D. The term "Services" means the professional consulting and engineering services that are listed in the Scope of Services dated January 4, 2017 and attached hereto as **Group Exhibit "B"**. The term "Work" has the same meaning as the term "Services" as used in the MGN RFP and this Agreement.
- E. The term "Scope of Work" is defined in the Scope of Services dated January 4, 2017 and attached hereto as **Group Exhibit "B"**. The term "Scope of Work" has the same meaning as the term "Scope of Services" as used in the MGN RFP and this Agreement.
- F. The terms "sub-consultant" and "sub-contractor" mean the person, independent contractor, partnership, corporation, joint venture or other business entity (including its employees, agents or others performing or supplying on its behalf, or at its direction) having a contract with the Consultant for the performance of any portion of the Services.
- G. The term "MGN Working Group" means the respective staff and consultants employed by Morton Grove and Niles who are working on the Project.

SECTION 2. TERM OF AGREEMENT.

This Agreement shall be effective on the date that the last signatory executes this Agreement and shall terminate upon the completion and acceptance of the Services by MGN and final payment to the Consultant by MGN, which shall occur **on or before June 3, 2017** (the "Completion Date"), as provided below (the "Term"), unless this Agreement is terminated earlier by any Party, or by mutual agreement, or the Parties agree, in writing, to extend the Term.

SECTION 3. SCOPE OF SERVICES

- A. **Services; Non-Exclusive Relationship.** The Consultant agrees to perform the Services in order to complete the Scope of Work in accordance with the terms and conditions of this Agreement. The Consultant shall provide the Services on behalf of and at the direction of MGN, the MGN Representative (defined below) and/or the MGN Working Group and understands that this Agreement is not an exclusive relationship in that Morton Grove and Niles, in their collective discretion, are free to enter into other agreements with other vendors or consultants to perform work on the Project, upon ten (10) calendar days written notice to the Consultant's Primary Representative. Morton Grove and Niles MGN, in their collective discretion, are also

free to assign all or any portion of the Services to other vendors or consultants, upon ten (10) calendar days written notice to the Consultant's Primary Representative, and the Compensation of the Consultant shall be reduced on an equitable basis. Unless otherwise indicated by MGN, the primary contact point for MGN and the MGN Working Group ("MGN Representative") to provide direction to the Consultant under this Agreement shall be:

Bill Balling
WRBLLC
Cellular Phone: (847) 863-7101
Office Phone: (847) 398-8399
Email: bill@wrblc.com

NOTE: Copies of all correspondence and documents shall be sent via email to the Morton Grove Administrator and the Morton Grove Village Manager at their Village business addresses at the same time the originals are sent by the Consultant.

B. **Mutual Cooperation.** MGN agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant on an as-needed basis and providing the Consultant with such "Confidential Information" (as defined in Section 10 below) and non-confidential information that MGN may have that may be relevant and helpful to the Consultant's performance of the Services. These documents shall be furnished to the Consultant without cost or expense to the Consultant. The Consultant agrees to cooperate with MGN in the performance and completion of the Services, including meeting with MGN, the MGN Representative and/or the MGN Working Group on an as-needed basis, and with any other consultants engaged by MGN. Within this Agreement, anytime that MGN is referenced in terms of providing direction to, making requests of, or communicating with the Consultant, that MGN reference shall also be read to include Morton Grove, Niles, the MGN Representative and/or the MGN Working Group.

C. **Consultant's Personnel and Representative.**

(1) **Primary Representative.** The Consultant shall designate Larry Thomas who shall be available during normal business hours (Monday through Friday from 8:00 a.m. CST to 5:00 p.m. CST) and who shall serve as the Consultant's primary authorized representative throughout the Term of this Agreement. This "Primary Representative" shall be readily available to respond to communications from MGN and shall be primarily responsible for performing the Services as requested by MGN. The Primary Representative shall receive requests from MGN to perform the Services and shall have full authority to execute the directions of MGN, without delay, and promptly supply any necessary labor, equipment or incidentals to do so. The Consultant also shall provide MGN with the name and phone number of the Consultant's Primary Representative who, in the case of an off-hours emergency, shall be readily accessible and available for a quick response. The Consultant shall immediately notify MGN in writing of any change in the identity and telephone number of the Consultant's Primary Representative. The Primary Representative shall not be changed by the Consultant without MGN's prior written approval. If the Primary Representative fails to perform the Services to the satisfaction of MGN, then the Consultant shall immediately replace the Primary Representative with a new person with comparable experience and knowledge.

(2) **Availability of Personnel.** The Consultant shall provide adequate personnel necessary to complete the Services. The Consultant shall notify MGN as soon as practicable prior to terminating the employment of, reassigning or receiving notice of the resignation of any personnel assigned to regularly perform the Services. The Consultant shall have no claim for damages and shall not bill MGN for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of time in performing the Services as a result of any such termination, reassignment or resignation.

- (3) **Approval and Use of Sub-consultants / Sub-contractors.** The Consultant shall perform the Services with its own personnel and under the management, supervision and control of its own organization, unless otherwise approved in advance and in writing by MGN. All sub-consultants and sub-contractors used by the Consultant shall be acceptable to and approved in advance by MGN. MGN's approval of any sub-consultant or sub-contractor shall not relieve the Consultant of full responsibility and liability for the provision, performance and completion of the Services as required by this Agreement, including the agreed upon compensation for the Services. All Services performed under any sub-contract shall be subject to each of the terms of this Agreement, in the same manner as if performed by employees of the Consultant. Every subcontract that the Consultant enters into in regard to the performance of the Services under this Agreement shall include an express provision binding the sub-consultant or sub-contractor to all of the terms of this Agreement, and specifically noting the obligations in this Section 3.C(3). Upon execution of this Agreement, MGN accepts the sub-consultants listed in **Exhibit "C."**
- (4) **Removal of Personnel and Sub-consultants / Sub-contractors.** If any of Consultant's personnel or any sub-consultant or sub-contractor fails to perform the Services in a manner satisfactory to MGN and consistent with commonly accepted industry standards and professional practices, the Consultant shall immediately, upon notice from MGN, remove and replace such personnel or sub-consultant or sub-contractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of time of performance as a result of any such removal or replacement.
- (5) **Financial Ability to Perform.** The Consultant states that it is financially solvent, has the financial resources necessary, has sufficient experience and competence, and has the necessary capital, facilities, organization, and staff necessary to provide, perform, and complete the Services set forth in this Agreement.

- D. **Notice to Proceed with Services.** The Consultant shall commence the Services immediately upon receipt of a written notice to proceed from MGN ("**Commencement Date**"). The Consultant shall diligently and continuously work on the Services until the completion of the Services or upon the termination of this Agreement, but in no event later than the Completion Date. The Parties may mutually agree in writing to modify the Completion Date. Delays caused by MGN shall extend the Completion Date in equal proportion to the delay caused by MGN. In the event that the Consultant performs any Services and incurs any expenses in furtherance of the Project prior to receiving a written notice to proceed from MGN in regard to the Project or any phase of the Project, the Services are performed and the expenses are incurred at the Consultant's sole risk, and such Services and expenses are not authorized for payment or reimbursement, unless and until a written notice to proceed is issued by MGN. Those actual, documented Services performed prior to the issuance of the MGN notice to proceed shall be paid by MGN as part of the "not to exceed" Fee provided by this Agreement.
- E. **Suspension of Services.** MGN, at any time and for any reason, may suspend work on any or all Services by issuing a written work suspension notice to the Consultant. The Consultant must stop the performance of all Services within the scope of the suspension notice until MGN directs the Consultant in writing to resume performance of the Services.
- F. **Phasing of Scope of Work.** The Consultant shall not commence performance of the Services on the initial phase or any subsequent phase of the Scope of Work, unless it first receives a written Notice to Proceed from the MGN Representative. In the event that MGN decides not to proceed with the Project or any subsequent phase of the Project for any reason, this Agreement shall terminate upon written notice to the Consultant issued by MGN advising of the termination of the Agreement. In such case, MGN shall be liable to the Consultant only for payment of all actual, completed, documented Services through the date of termination. The Consultant agrees to waive any and all claims and causes of action for any other damages or losses of any kind that could be brought relative to the termination of

the Agreement by MGN based on MGN's decision not to proceed with the Project or any phase of the Scope of Work. For the purposes of this Agreement, each of the numbered paragraphs in **Exhibit "D"**, Compensation and Fee Schedule, shall be considered "a phase".

- G. **Reporting; Delivery Date of Final Report.** The Consultant shall regularly, and no less than bi-weekly, provide both written and verbal reports to the MGN Representative to the MGN Working Group and to any other MGN staff or officials upon request regarding the progress of the Services. The MGN Representative can require more frequent reporting by the Consultant at any time. Upon final completion of the Services, the Consultant shall deliver a final written report addressed to the Village Administrator of Morton Grove and the Village Manager of Niles and with copies delivered to the MGN Representative and the other members of the MGN Working Group that confirms the completion of the Services (the "Final Report"). The Final Report shall be completed and delivered to MGN on or before the Completion Date.
- H. **Electronic Reporting.** In addition to providing MGN with paper copies of all reports, data or results and the Final Report, the Consultant (and the Primary Representative) shall, to the extent possible, submit documentation regarding the Services to MGN electronically. The Parties agree to work together to develop a procedure for electronic communication of data that is effective and efficient for all Parties.
- I. **Final Acceptance.** The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the MGN Representative of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.
- J. **Sub-consultant/Sub-contractor List.** The Consultant shall maintain an updated list of sub-consultant/sub-contractors who are working on the Project and shall provide the list and any updates to the list to the MGN Representative. A copy of the initial sub-consultant/sub-contractor list shall be attached hereto as **Exhibit "C"** and made a part hereof; and any updated version(s) of the list shall be incorporated herein by reference.

SECTION 4. EXHIBITS.

The following exhibits are either incorporated by reference or attached to and made part of this Agreement as noted. In the event of a conflict between an Exhibit and the text of this Agreement, the text of the Agreement shall control.

- Exhibit "A"** - Request for Proposals entitled "RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study, Issue Date: October 12, 2016" (the "MGN RFP").
- Group Exhibit "B"** - Consultant's Proposal for Services in regard to MGN RFP (incorporated by reference); Final version of the Scope of Services dated January 4, 2017 (attached and made part of this Agreement); Projected Labor and Budget dated December 12, 2016 (attached and made part of this Agreement).
- Exhibit "C"** - Sub-consultant/Sub-contractor List
- Exhibit "D"** - Compensation and Fee Schedule for Services in Regard to RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study ("Fee Schedule")
- Exhibit "E"** - Insurance Requirements for the Consultants, Sub-consultants and Sub-contractors
- Exhibit "F"** - Services Change Order (Form)

SECTION 5. INDEPENDENT CONTRACTOR STATUS.

- A. **Relationship of the Parties.** The Consultant's role, and the role of its employees and its sub-consultants and sub-contractors, with respect to the performance of the Services is solely that of an independent contractor. The following terms and conditions are operative and applicable to the Parties under this Agreement:
- (1) **Non-Exclusive Contractual Arrangement.** The Consultant and its employees and its sub-consultants and sub-contractors are retained under a non-exclusive contractual arrangement to perform the Services only for the limited purposes set forth in this Agreement. No provision of this Agreement or subsequent conduct between the Parties shall be construed to create a relationship between the Parties as that of "employer-employee," "principal and agent," "partners" or "participants in a joint venture."
 - (2) **No Authority to Bind.** The Consultant and its employees and its sub-consultants and sub-contractors shall have no authority or right to enter into any contract or incur any debt or liability of any nature in the name of, or on behalf of, MGN or Morton Grove or Niles.
 - (3) **Not Employees of MGN.** The Consultant and its employees and its sub-consultants and sub-contractors serve only as independent contractors of MGN, Morton Grove and Niles, and not as employees of MGN, Morton Grove or Niles, for all purposes, including, but not limited to, the application of the Fair Labors Standards Act minimum wage and overtime payments, including any similar Illinois wage laws, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Illinois Unemployment Insurance Act (820 ILCS 405/1 *et seq.*) and the Illinois Worker's Compensation and Occupational Diseases Act (820 ILCS 305/1, *et seq.*). Therefore, neither federal nor state nor local income tax nor payroll tax of any kind, nor any other withholding, shall be withheld or paid by MGN, Morton Grove or Niles on behalf of the Consultant, and its employees and its sub-consultants and sub-contractors. Nothing in this Agreement shall be construed as MGN, Morton Grove or Niles requiring or acquiring or incurring any liability for Worker's Compensation, FICA, withholding tax, unemployment compensation or any other payment which would be required to be paid by MGN, Morton Grove or Niles if MGN and the Consultant, and its employees and its sub-consultants and sub-contractors, were engaged in an "employer-employee" relationship.
 - (4) **Payment of Taxes.** The Consultant and its employees and its sub-consultants and sub-contractors are responsible, pursuant to applicable law, for payment of any income and employment taxes or any other taxes of any kind arising from their receipt of compensation under this Agreement.
 - (5) **Ineligible for MGN Employment Benefits.** The Consultant and its employees and its sub-consultants and sub-contractors agree that they shall not be entitled to receive or to participate in any employee benefits or health, life or professional liability insurance programs or other employee benefit programs or pension plans or retirement plans available to part-time or full-time Village employees, and agree that they are ineligible to file a claim for unemployment compensation benefits or for Worker's Compensation benefits against Morton Grove or Niles. The Consultant and its employees and its sub-consultants and sub-contractors agree not to file any such claims in the event this Agreement is terminated or if they are injured or become ill as a result of performing any Services under this Agreement.
 - (6) **Autonomy.** The Consultant and its employees and its sub-consultants and sub-contractors are free to use their time, energy and skill when they are not performing the Services for MGN on other endeavors, as they deem appropriate and advisable.

- (7) **Discretion Over Performance and Delivery of Services.** MGN shall have no control over the timing, means and manner in which the Services are to be performed by the Consultant, and its employees or its sub-consultants and sub-contractors. The Consultant is responsible for directing and controlling the performance and completion of the Services in a timely manner that meets MGN's requested schedule and the Completion Date.
- (8) **Certification, Training and Licensing.** The Consultant represents that its employees, sub-consultants and sub-contractors (a) are fully qualified, licensed, registered, trained and capable within their respective disciplines in accordance with applicable laws, regulations and industry standards, and (b) currently hold, and shall maintain throughout the Term of this Agreement, all required licenses, registrations, permits and certificates applicable to the their performance of the Services. To the extent that equipment is being utilized in the providing of the Services, the Consultant and its employees and its sub-consultants and sub-contractors shall use their own equipment and tools of the trade, and be qualified and authorized to operate same.
- (9) **Applicable Regulations.** The Consultant, and its employees and its sub-consultants and sub-contractors, shall be familiar with and comply with the applicable Federal, State, County and local codes, ordinances and regulations, and shall use, apply and enforce the same when performing the Services.
- (10) **Injury to Reputation.** The Consultant, and its employees and its sub-consultants and sub-contractors, shall not act in a manner that might injure the reputation of Morton Grove and the Morton Grove Affiliates or Niles and the Niles Affiliates.

SECTION 6. COMPENSATION AND METHOD OF PAYMENT.

A. Fee Amount.

- (1) **Fee Schedule.** MGN agrees to pay for any requested, fully completed and accepted Services rendered by the Consultant in accordance with and not to exceed the Compensation and Fee Schedule (**Exhibit "D"**) attached to this Agreement. The "not to exceed" Fee for the Basic Services (**Exhibit "D"** Items 1 and 2) shall be Seven Hundred and Seventeen Thousand Seven Hundred and Thirty and No/100 Dollars (\$717,730.00) (the "Not-To-Exceed Fee").
- (2) **Out-of-Pocket Costs.** The Consultant, at its sole cost, shall pay all other expenses related to the performance of this Agreement including, and not limited to, travel, printing, reproduction, mailing, insurance premiums, licensing fees, fuel, overhead, administrative costs, delivery charges, and all costs associated with the acquisition and maintenance of vehicles and equipment. The Consultant may request reimbursement of these out-of-pocket costs, including the Reimbursable Costs shown in attached **Exhibit "D"**, upon proper documentation, but such reimbursement shall be paid as part of the payment of and within the dollar amount of the Not-To-Exceed Fee.
- (3) **Scope of Fees.** The amounts set forth in the Fee Schedule include all applicable Federal, State and Village taxes of every kind and nature applicable to the Services, as well as all taxes, contributions and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities or similar benefits, and all costs, royalties and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes or inventions. All claims or rights to claim additional compensation by reason of the payment by the Consultant of any such tax, contribution, premium, cost, royalty or fee are the sole responsibility of the Consultant, and any claim or demand from any person that MGN or Morton Grove or Niles pay such taxes, contributions,

premiums, costs, royalties or fees are waived and released and shall be indemnified by the Consultant.

B. **Invoices and Payment.**

- (1) **Frequency and Content.** The Consultant shall submit invoices to MGN, allocated to Morton Grove and Niles on an equal share basis (50% share / 50% share), on a monthly basis. Each invoice shall be addressed and delivered to both the Village Administrator of Morton Grove and the Village Manager of Niles at their respective business addresses set forth in **Section 13(D)** below and a copy delivered to the MGN Representative. MGN may specify the specific day of the month on or before which invoices must be filed. Each invoice must be accompanied by receipts, vouchers, and other documents as necessary to reasonably establish the Consultant's right to payment of the Compensation stated in the invoice. In addition, each invoice must include employee classifications and employee designations (initials), rates per hour, and hours worked by each employee classification. If the Services are to be performed in separate phases, then for each phase, the invoice must also include: the total amount billed in the current phase(s), the total amount billed to date including each completed phase and any current phase(s), and the estimated percent completion of the Services for each phase and on an overall basis.
- (2) **Invoice Payment.** MGN agrees to make payments to Consultant within thirty (30) calendar days of receipt of the invoice, unless there is a dispute in regard to the invoice, and to pay interest on unpaid balances under the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*), unless the Parties mutually agree to waive the interest payment. If there is a dispute in regard to any invoice, MGN shall make payment for that portion of the invoice not in dispute and the Parties shall cooperate to resolve the dispute as soon as possible in accordance with Subsection 6(G) below, but any such dispute shall not cause the Consultant to stop performing Services or delay in its completion of the Scope of Work. MGN's failure to object to any monthly invoices and payment by MGN for Services related to any monthly invoice or other periodic progress payment shall not be an acceptance by MGN of such Services that are incomplete and in progress.
- (3) **Final Payment.** The Services will be considered complete on the date of final written acceptance by MGN after completion of all of the Services for the entire Scope of Work or acceptance of the relevant phase of the Services for a portion of the Scope of Work. After delivery of the Final Report and completion of the Services, the Consultant shall request in writing a confirmation of acceptance of the Services by MGN and shall also deliver an invoice for final acceptance and payment. MGN will make final payment to the Consultant within thirty (30) calendar days after final written acceptance of the Services to be delivered under this Agreement, after deducting therefrom charges, if any, as provided in this Agreement ("Final Payment"). The acceptance by the Consultant of Final Payment will operate as a full and complete release of MGN by the Consultant of and from any and all lawsuits, claims, or demands for further payment of any kind for the Services encompassed by the Final Payment.
- (4) **Deductions.** Notwithstanding any other provision of this Agreement, MGN may deduct and withhold from any payment or from Final Payment such amounts as may reasonably appear necessary to compensate MGN for any loss due to (1) Services that are defective, nonconforming, or incomplete, (2) liens or claims of lien, (3) claims against the Consultant or MGN made by any of the Consultant's sub-consultants or suppliers or by other persons about the Services, (4) delay by the Consultant in the completion of the Services, (5) the cost to MGN, including without limitation reasonable attorneys' fees, of correcting any of the matters stated in this Section or exercising any one or more of MGN's remedies set forth in Section 6(G)(Informal Dispute Resolution) or Section 13 (O)(Cumulative Rights and Remedies)

below. MGN will notify the Consultant in writing given in accordance with Section 13(D) below of MGN's determination to deduct and withhold funds, which notice will state with specificity the amount of, and reason or reasons for, such deduction and withholding.

- (5) **Use of Deducted Funds.** MGN will be entitled to retain any and all amounts withheld pursuant to Section 6(B)(4)(Deductions) above until the Consultant either has performed the obligations in question or has furnished security for that performance satisfactory to MGN. MGN will be entitled to apply any money withheld or any other money due to the Consultant to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, and reasonable attorneys' fees (collectively "Costs") incurred, suffered, or sustained by MGN and chargeable to the Consultant under this Agreement.

- C. **Records; Audit.** The Consultant shall maintain records showing the Services performed and a record of additional services performed, and shall permit MGN to inspect and audit all data and records of the Consultant for Services performed pursuant to this Agreement. The records shall include all billable charges and costs, descriptions and time entries by personnel (in minutes/hours increments) incurred in performing the Services in accordance with generally accepted accounting practices, consistently applied, and in such manner as to permit verification of all entries. Upon written request by MGN, the records shall promptly be made available to MGN or its auditors during normal business hours during the Term of this Agreement, and for three (3) consecutive calendar years after the termination of this Agreement. Copies of such records shall be promptly furnished by the Consultant to MGN at a reasonable per page photocopy expense or in an electronic or digital format at no charge.

D. **Claim In Addition To Agreement Amount.**

- (1) The Consultant shall provide written notice to MGN of any claim for additional Compensation as a result of action taken by MGN, within fifteen (15) calendar days after the occurrence of such action.
- (2) The Consultant acknowledges and agrees that written notice pursuant to this Section shall not be deemed or interpreted as entitling the Consultant to any additional compensation; and that any changes in the Agreement Amount shall be valid only upon written amendment signed by all Parties pursuant to **Section 6(F) (Service Change Orders)** below.
- (3) Regardless of the decision of MGN relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the Services required to complete the Services under this Agreement, as determined by MGN, without interruption.

- E. **Additional Services.** The Consultant acknowledges and agrees that in no event shall MGN or Morton Grove or Niles be liable for any additional Compensation or fees or costs incurred by the Consultant or any sub-consultant or sub-contractor in connection with any Services provided by the Consultant or any sub-consultant or sub-contractor that are outside of, or exceed, the scope of this Agreement ("Additional Services"), regardless of whether such Additional Services are requested or directed by MGN or Morton Grove or Niles, except upon the prior written consent of both Morton Grove and Niles provided under Section 6(F) (Service Change Orders) below.

F. **Services Change Orders; Delays.**

- (1) **Services Change Orders.** MGN, from time to time, may issue a written order modifying or otherwise changing the scope of the Services included in a Services Change Order (a "Services Change Order"). Any one or more Services Change Order which increases the original contract not to exceed price amount (individual or in the aggregate) by more than Twenty Thousand and No/100 Dollars (\$20,000.00) must be approved by Resolution of the

corporate authorities of MGN. For Services Change Orders below the Twenty Thousand and No/100 Dollars (\$20,000.00) threshold, the MGN Representative is authorized to execute the Services Change Order after review and approval by the Village Administrator of Morton Grove and the Village Manager of Niles. The Services Change Order will be generally in the form attached to and by this reference incorporated into this Agreement as **Exhibit "F"**. MGN or the Consultant may request a Services Change Order based on new or different information or changes in conditions or circumstances that were not known or not anticipated at the time of approval of this Agreement that results in change in the scope of any Services to be performed under this Agreement. A Services Change Order may include additions to and deletions from the Services and will include any equitable increases or decreases to the Compensation as mutually agreed to by the Parties.

- (2) **Revision Notices.** Within five (5) calendar days of receipt of a MGN-approved Services Change Order, the Consultant must notify MGN in writing if the Consultant desires a revision to the Services Change Order (a "Revision Notice"). The Revision Notice must clearly state the Consultant's requested revisions and the reasons for the revisions. If MGN agrees to any revision, then MGN will issue a revised Services Change Order in a form acceptable to the Parties. If the Consultant does not submit a Revision Notice within the 5-day period, then the Consultant will be deemed to have accepted the Services Change Order and the Services Change Order will be final.
- (3) **Disagreements over Services Change Order Terms.** If MGN and the Consultant cannot agree on the proposed revisions to the Compensation or Project Schedule terms of a Services Change Order, then the Parties will apply the dispute resolution provisions of this Agreement in order to reach agreement. In that event, the Consultant must proceed diligently with the revised Services as directed by MGN pending resolution of the disagreement. The Consultant will be compensated equitably for the work the Consultant undertakes during the informal dispute resolution process.
- (4) **No Change in Absence of Services Change Order.** No claim for an adjustment in Compensation or Project Schedule will be made or allowed unless it is embodied in a Services Change Order signed by the MGN Representative and the Consultant. If the Consultant believes it is entitled to an adjustment in the Compensation or Project Schedule terms that has not been included, or fully included, in a Services Change Order, then the Consultant may submit to MGN a written request for the issuance of, or revision of, a Services Change Order including the desired adjustment. The Consultant's request must be submitted before the Consultant proceeds with any Services for which an adjustment is desired.
- (5) **Delays.** If a delay in providing Services results from one or more causes that could not be avoided or controlled by the Consultant, then the Consultant may be entitled to an extension of the Project Schedule for a period of time equal to that delay, or an adjustment in Compensation for extra costs related to the delay, or both. The Consultant must notify MGN in writing within ten (10) calendar days after the start of the delay and again in writing within ten (10) calendar days after the delay has ended (the "Delay Period"). The first notice must state the cause or causes of the delay and the impact of the delay on providing Services. The second notice must state the cause or causes of the delay, the length of the day, the reasons why the delay disrupted performance of the Services and the Consultant's request, if any, for a change in Compensation or Project Schedule. If the Consultant fails to submit notices as provided in this Section, then the Consultant will be deemed to have waived any right to an adjustment in Compensation for the Services.

G. **Informal Dispute Resolution.**

- (1) **Dispute Resolution.** If a dispute arises between any of the Parties concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Parties do not resolve the dispute through negotiation, any Party to this Agreement may pursue other remedies under Section 13(O) (Cumulative Rights and Remedies) below to enforce the provisions of this Agreement.
- (2) **Performance of Services.** During the dispute resolution process, the Consultant must proceed diligently with the performance of Services.

SECTION 7. PERFORMANCE AND STANDARD OF SERVICES.

A. **Consultant Responsibilities.** The Consultant, at its sole cost, agrees as follows:

- (1) **Standard of Performance.** The Consultant shall perform the Services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the Chicago Metropolitan Region (the "Standard of Performance"). All Services must be free from defects and flaws, must conform to the requirements of this Agreement, and must be performed in accordance with the Standard of Performance. The Consultant is fully and solely responsible for the quality, technical accuracy, completeness, and coordination of all Services. Such performance shall be to the satisfaction of MGN. All Services shall be performed in a reasonably prompt manner.
- (2) **Corrections of Defects, Errors and Omissions.** If any errors, omissions or acts, intentional or negligent, are made by the Consultant and/or its employees, its sub-consultants and sub-contractors in providing the Services, the correction of which requires additional Services, the Consultant shall be required to perform such additional Services as may be necessary to remedy same without undue delay and without any charge or cost to MGN. The Consultant must provide, for no additional Compensation and at no separate expense to MGN, all work required to correct any defects or deficiencies in the performance of Services, regardless of whether the defect or deficiency relates to the work of the Consultant or of the Consultant's sub-consultants or suppliers.
- (3) **Risk of Loss.** The Consultant bears the risk of loss in providing all Services. The Consultant is responsible for any and all damages to property or persons arising from any Consultant negligent or intentional error, omission, or act and for any losses or costs to repair or remedy any work undertaken by MGN based on the Services as a result of any such error, omission, or act. Notwithstanding any other provision of this Agreement, the Consultant's obligations under this Section 7 exist without regard to, and may not be construed to be waived by, the availability or unavailability of any insurance, either of MGN or the Consultant, to indemnify, hold harmless, or reimburse the Consultant for damages, losses, or costs.

- (4) **Opinions of Probable Cost.** The Parties recognize that neither the Consultant nor MGN has control over the costs of labor, materials, equipment, nor services furnished by others nor over competitive bidding, market nor negotiating conditions, nor construction contractors' methods of determining their prices. Accordingly, any opinions of probable costs provided under this Agreement are considered to be estimates only, made on the basis of the Consultant's experience and qualifications, and those opinions represent the Consultant's best judgment as an experienced and qualified professional, familiar with the industry. The Consultant does not guaranty that proposals, bids, or actual costs will not vary from the opinions prepared by the Consultant.
- (5) **Communications with Regulators.** The Consultant must comply with all statutes, ordinances, codes, and regulations applicable to the Services. Except to the extent expressly set forth in this Agreement, the Consultant may not communicate directly with applicable governmental regulatory agencies with regard to Services without prior express authorization from MGN. The Consultant must either direct inquiries from governmental regulatory agencies to MGN for appropriate response or respond on behalf of MGN as directed by the MGN Representative. To the extent that the Consultant communicates directly with applicable governmental regulatory agencies with regard to Services, it shall promptly (same day or within twenty (24) hours) inform MGN of such communications, provide copies to MGN of any such written communications (e.g., letters, emails, etc.) and shall copy the MGN Representative or the MGN Working Group on its own communications to the governmental regulatory agencies, as requested by MGN. In those cases that MGN will be either responding directly to the regulatory agencies, or providing information to the Consultant to allow the Consultant to respond, the response must be made within five (5) calendar days so as not to delay the Project.
- (6) **Consultant Payments; Waivers of Liens.** The Consultant must pay promptly for all services, labor, materials, and equipment used or employed by the Consultant in the performance of any Services and must not cause any materials, equipment, structures, buildings, premises, and property of MGN to be impressed with any mechanic's lien or other liens. The Consultant, if requested, must provide MGN with reasonable evidence that all services, labor, materials, and equipment have been paid in full and with waivers of lien as appropriate.
- (7) **Permits and Licenses.** The Consultant, and its sub-consultants and sub-contractors, will assist MGN in obtaining all permits and licenses, registrations, qualifications, and other governmental authorizations required by all applicable laws and regulations that relate to the performance of the Services. MGN retains responsibility to pay for all permits and licenses, registrations, qualifications, and other governmental authorizations. If the Consultant pays for any permits and licenses, registrations, qualifications, and other governmental authorizations on behalf of MGN, the cost will be paid as an Additional Service (Subsection 6(E) in addition to the Agreement not to exceed fee.
- (8) **Safety; Hazardous Materials.**
- i. **Protection of Health, Environment.** The Consultant's personnel must be experienced and properly trained to perform the Services and must take adequate precautions to protect human health and the environment in the performance of Services.
 - ii. **Notice of Hazardous Conditions.** If the Consultant observes a potentially hazardous condition relating to the Services, the Consultant must immediately bring that condition to the attention of MGN.

- iii. Hazardous Materials. The Consultant acknowledges that there may be hazardous substances, wastes, or materials as defined by applicable Law (“Hazardous Materials”) within the proposed Project area or otherwise associated with Services, and the Consultant under those circumstances must take appropriate precautions to protect its employees, sub-consultants, and suppliers, and shall advise in writing MGN of the presence or suspected presence and location of such Hazardous Materials.

B. **MGN Responsibilities**. Morton Grove and Niles, at their collective cost, agree as follows:

- (1) To designate in writing a person with authority to act on behalf of MGN with respect to the Services. The MGN Representative will have the authority to act on behalf of MGN, except on matters that require approval of the respective corporate authorities of Morton Grove and Niles or the MGN Working Group.
- (2) To provide to the Consultant all criteria and information about the requirements for the Services, including, as relevant, MGN’s objectives and constraints, schedule, space, capacity and performance requirements, and budgetary limitations.
- (3) To provide to the Consultant existing studies, reports, and other available data relevant to the Services.
- (4) To arrange for access to, and make provisions for the Consultant (and its employees, sub-consultants and sub-contractors) to enter on, public and private property as reasonably required for the Services.
- (5) To provide, as relevant, existing surveys and GIS data describing physical characteristics, legal limitations, and utility locations in Niles, Morton Grove, and Skokie for the Services and the services of other consultants when the services of other consultants are requested by the Consultant and are necessary for the performance of the Services. Note: Under the Scope of Services, the Consultant is responsible for preparing or obtaining new surveys of the land and utility locations under consideration for the Project.
- (6) To provide structural, mechanical, chemical, air and water tests, tests for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law to be provided by MGN in connection with the Services, except the extent such tests, inspections, or reports are part of the Services.
- (7) To review reports, documents, data, and all other information presented by the Consultant as appropriate in a timely manner and to provide responses within five (5) calendar days of receipt.
- (8) To provide approvals from all governmental authorities having jurisdiction over the Services when requested by the Consultant, except the extent such approvals are part of the Services.
- (9) To attend meetings related to the Services.
- (10) To give prompt written notice to the Consultant whenever MGN observes or otherwise becomes aware of any development that affects the scope or timing of Services, except that the inability or failure of MGN to give any such a notice will not relieve the Consultant of any of its responsibilities under this Agreement.

SECTION 8. INDEMNIFICATION

A. Indemnification by Consultant.

- (1) **Morton Grove.** To the fullest extent permitted by law, the Consultant shall defend, hold harmless and indemnify the Village of Morton Grove and Morton Grove Affiliates from and against any and all injury, death, loss, property damage, judgments, liens, claims, suits, liabilities, actions, causes of action, demands, expenses, costs or other liabilities of any character (including reasonable attorney fees and litigation costs) to the extent arising in whole or in part, relating to or resulting from the performance under this Agreement by the Consultant, and/or its employees and its sub-consultants and sub-contractors, or others performing or furnishing any Services directly or indirectly on the Consultant's behalf, including but not limited to: (a) failure to comply with, or violation of, any federal, state or local law, statute, regulation, rule, ordinance, order or governmental directive; (b) negligent acts, omissions or willful misconduct; and (c) failure to comply with the terms, conditions, representations or warranties contained in this Agreement. In connection with any such liabilities, the Village of Morton Grove and the Morton Grove Affiliates shall have the right to defense counsel of their choice and the Consultant shall be solely liable for all reasonable costs, fees and expenses of such defense. Any insurance policies required to be maintained pursuant to this Agreement shall in no way limit the extent of the Consultant's responsibility to indemnify as herein provided. The terms of this indemnity shall survive the suspension, expiration or termination of this Agreement.
- (2) **Niles.** To the fullest extent permitted by law, the Consultant shall defend, hold harmless and indemnify the Village of Niles and Niles Affiliates from and against any and all injury, death, loss, property damage, judgments, liens, claims, suits, liabilities, actions, causes of action, demands, expenses, costs or other liabilities of any character (including reasonable attorney fees and litigation costs) to the extent arising in whole or in part, relating to or resulting from the performance under this Agreement by the Consultant, and/or its employees and its sub-consultants and subcontractors-, or others performing or furnishing any Services directly or indirectly on the Consultant's behalf, including but not limited to: (a) failure to comply with, or violation of, any federal, state or local law, statute, regulation, rule, ordinance, order or governmental directive; (b) intentional or negligent errors, acts, omissions or willful misconduct; and (c) failure to comply with the terms, conditions, representations or warranties contained in this Agreement. In connection with any such liabilities, the Village of Niles and the Niles Affiliates shall have the right to defense counsel of their choice and the Consultant shall be solely liable for all reasonable costs, fees and expenses of such defense. Any insurance policies required to be maintained pursuant to this Agreement shall in no way limit the extent of the Consultant's responsibility to indemnify as herein provided. The terms of this indemnity shall survive the suspension, expiration or termination of this Agreement.
- (3) **Kotecki Waiver.** The Consultant (and all sub-consultants and sub-contractors into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided thereunder. The Consultant agrees to indemnify and defend the Village of Morton Grove and the Morton Grove Affiliates and the Village of Niles and the Niles Affiliates from and against all such loss, expense, damage or injury, including reasonable attorney fees, which the Village of Morton Grove and the Morton Grove Affiliates and the Village of Niles and the Niles Affiliates may sustain as a result of personal injury claims by the Consultant's employees and by the sub-consultants and sub-contractors and their respective employees, except to the extent those claims arise as a result of the Village of Morton Grove's and the Morton Grove Affiliates' own negligence and the Village of Niles' and the Niles Affiliates' own negligence.

- C. **No Personal Liability.** No elected or appointed official or employee of the Village of Morton Grove and the Morton Grove Affiliates and the Village of Niles and the Niles Affiliates shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement. No employee of the Consultant, Sub-consultants, and Sub-contractors shall be personally liable, in law or in contract, to MGN as the result of the execution of this Agreement.

SECTION 9. INSURANCE.

- A. During the Term of this Agreement, or any extended term, the Consultant shall procure and maintain the following insurance coverages: See **Exhibit "E"** attached to this Agreement.

SECTION 10. CONFIDENTIAL INFORMATION; OWNERSHIP OF DOCUMENTS.

- A. **No Disclosure of Confidential Information.** The Consultant acknowledges that it shall, in performing the Services for MGN under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information, as defined below. The Consultant shall hold confidential all Confidential Information of MGN, Morton Grove and Niles and shall not disclose or use such Confidential Information without the express prior written consent of MGN, Morton Grove or Niles, depending on whose Confidential Information is at issue. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring its employees and sub-consultants and sub-contractors of the Consultant to execute a non-disclosure agreement (in a format approved by MGN) before obtaining access to Confidential Information.
- (1) **Confidential Information.** All confidential information and data disclosed by MGN and developed or obtained from MGN under this Agreement must be treated by the Consultant as proprietary and confidential information ("Confidential Information"). Based on whose Confidential Information is at issue, the Consultant must not disclose Confidential Information without MGN's or Morton Grove's or Niles' prior written consent. No person may use Confidential Information for any purpose other than for the proper performance of the Services. The obligations under this Section do not apply to Confidential Information that is (i) in the public domain without breach of this Agreement, (ii) developed by the Consultant independently from this Agreement, (iii) received by the Consultant on a non-confidential basis from others who had a right to disclose the information, or (iv) required by law to be disclosed, but only after prior written notice has been received by MGN or Morton Grove or Niles and MGN or Morton Grove or Niles has had a reasonable opportunity to protect disclosure of the Confidential Information. The Consultant must ensure that the foregoing obligations of confidentiality and use extend to and bind the Consultant's employees, sub-consultants and sub-contractors.
- B. **Ownership of Data and Documents.** The Parties expressly agree that all data, documents, records, studies or other information (collectively "Data") provided by MGN to the Consultant or generated, created, found or otherwise completed by the Consultant, and its employees, sub-consultants and sub-contractors, in the performance of Consultant's Services under the terms of this Agreement shall at all times remain the proprietary information of and under the ownership of MGN and shall be provided to MGN by the Consultant upon request of MGN, or at the termination of this Agreement. All Data, regardless of its format, developed or obtained under this Agreement, other than the Consultant's confidential information, will be and remain the sole property of MGN, unless Morton Grove and Niles agree that certain portions of the Data is the sole property of either Morton Grove or Niles. The Consultant must promptly deliver all Data to MGN at MGN's request. The Consultant is responsible for the care and protection of the Data until that delivery. The Consultant may not retain a copy of the Data. Notwithstanding the foregoing, upon request of MGN at any time, or at the termination of this

Agreement, the Consultant shall promptly return to MGN all documents provided to the Consultant by MGN during the Term of this Agreement.

- C. **Intellectual Property.** The Consultant may not infringe on any intellectual property (including but not limited to patents, trademarks, or copyrights) (collectively "Intellectual Property") in the performance of Services. If ever the Consultant is alleged to have infringed on any Intellectual Property, then, in addition to the Consultant's obligations to indemnify Morton Grove and Niles under this Agreement, the Consultant also, at the sole discretion of MGN and at the Consultant's sole expense (a) procure for MGN the right to continue using the infringing subject matter, or (b) replace or modify the infringing subject matter so that it becomes non-infringing but still complies with the requirements of this Agreement, or (c) reimburse MGN for all payments made to the Consultant relating to or impacted by the infringing material and all costs incurred by MGN resulting from such infringement.
- D. **Copyrights and Patents.** The Consultant agrees not to assert, or to allow persons performing under the Consultant's control to assert, any rights to Data or establish any claim under design, patent, or copyright laws. It is expressly agreed that all copyrightable or patentable Data produced as part of Services has been specifically commissioned by MGN and is considered "work for hire," and that all copyrightable and other proprietary rights in that Data will vest solely in MGN. Further, the Consultant agrees that all rights under copyright and patent laws under this Agreement belong to MGN. The Consultant assigns any and all rights, title, and interests under copyright, trademark, and patent law to MGN and agrees to assist MGN in perfecting the same at MGN's expense.
- E. **Advertisements; Media / News Releases; Use of Letterhead or Logo.** The Consultant, and its employees, sub-consultants and sub-contractors, shall not issue any media news releases, advertisements, promotional materials or other public statements regarding the Services without the prior written consent of the MGN Working Group. The Consultant shall not use the letterhead or logo or any servicemark or trademark of Morton Grove without the prior written consent of the Village Administrator of Morton Grove and shall not use the letterhead or logo or any servicemark or trademark of Niles without the prior written consent of the Village Manager of Niles.

SECTION 11. COMPLIANCE WITH LAWS.

- A. **Compliance with Laws.** The Consultant, and its employees, sub-consultants and sub-contractors, shall comply with any and all applicable laws, regulations and rules promulgated by any Federal, State, County, local, or other governmental authority or regulatory body pertaining to all aspects of the Services, now in effect, or which may become in effect during the performance of the Services. The scope of the laws, regulations and rules referred to in this paragraph includes, but is in no way limited to, the Occupational Safety and Health Act standards, the Illinois Human Rights Act, the Illinois Equal Pay Act of 2003, along with the standards and regulations promulgated pursuant thereto (including but not limited to those safety requirements involving work on elevated platforms), all forms of traffic regulations, public utility, Interstate and Intrastate Commerce Commission regulations, Workers' Compensation Laws, the Substance Abuse Prevention on Public Works Projects Act, Prevailing Wage Laws, the Smoke Free Illinois Act, the USA Security Act, the Federal Social Security Act (and any of its titles), and any other law, rule or regulation of the Illinois Department of Labor, Illinois Department of Transportation, Illinois Environmental Protection Act, Illinois Department of Human Rights, Human Rights Commission, EEOC, Metropolitan Water Reclamation District of Greater Chicago, the Village of Morton Grove and the Village of Niles. In the event that the Consultant, or its employees, sub-consultants and sub-contractors, in performing the Services are found to have not complied with any of the applicable laws and regulations as required by this Agreement, then the Consultant shall indemnify and hold MGN harmless, and pay all amounts determined to be due from MGN for such non-compliance the Consultant, including, but not limited to fines, costs, attorneys' fees and penalties.

- (1) **Employment of Illinois Workers on Public Works Act Compliance.** To the extent required by law, the Consultant agree to comply with the provisions of the Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01 *et seq.*).
- (2) **Preference To Veterans Act Compliance.** The Consultant will comply with the Preference to Veterans Act (330 ILCS 55).
- (3) **Patriot Act Compliance.** The Consultant represents and warrants to the Villages that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the Villages that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the Villages, their respective corporate authorities, and all of each Village's elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

B. The Parties to this Agreement shall further comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement, including the following:

- (1) **Certification.** Each Party and its officers, corporate authorities, employees and agents certify that they are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or 5/33E-6 (interference with contract submission and award by public official) or as a result of a violation of 820 ILCS 130/1 *et seq.* (the Illinois Prevailing Wage Act) or as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue or any fee required by any unit of local government or the State, unless the Party is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or the fee, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.* Each Party and its officers, corporate authorities, employees and agents further certify by signing this Agreement that the Party and its officers, corporate authorities, employees and agents have not been convicted of, or are not barred for attempting to rig bids, price-fixing or attempting to fix prices as defined in the Sherman Anti-Trust Act and Clayton Act. 15 U.S.C. § 1 *et seq.*; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that officer's or employee's official capacity. Nor has any of the Parties and their officers, corporate authorities, employees and agents made admission of guilt of such conduct which is a matter of record, nor has any official, officer, agent or employee of the Parties been so convicted nor made such an admission.
- (2) **Non-Discrimination.** Each Party and its officers, corporate authorities, employees and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations. Each Party maintains a

written Sexual Harassment Policy in compliance with Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4)). Each Party certifies that it is an "Equal Opportunity Employer" as defined by federal and State laws and regulations, and agrees to comply with the Illinois Department of Human Rights ("IDHR") Equal Opportunity Employment clause as required by the IDHR's Regulations (44 Ill. Adm. Code, Part 750, Appendix A). As required by Illinois law and IDHR Regulation, the Equal Opportunity Employment clause is incorporated by reference in its entirety as though fully set forth herein. Each Party certifies that it agrees to comply with the Prohibition of Segregated Facilities clause, which is incorporated by reference in its entirety as though fully set forth herein. See, *Illinois Human Rights Act (775 ILCS 5/2-105)*. See also, *Illinois Department of Human Rights Rules and Regulations, Title 44, Part 750. Administrative Code, Title 44: Government Contracts, Procurement and Property Management, Subtitle B: Supplemental Procurement Rules, Chapter X: Department of Human Rights, Part 750: Procedures Applicable to All Agencies, Section 750.160: Segregated Facilities (44 Ill. Adm. Code 750.160)*

- (3) **Illinois Freedom of Information Act.** The definition of a public record in the Freedom of Information Act (5 ILCS 140/1 *et seq.*) ("FOIA") includes a "public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act." (5 ILCS 140/7(2)). Consequently, the Parties must maintain and make available to the other Parties, upon request, their public records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) and FOIA. To facilitate a response by MGN to any FOIA request, the Consultant agrees to provide all requested public records within five (5) business days of a request being made by MGN. The Consultant agrees to defend, indemnify and hold harmless Morton Grove and Morton Grove Affiliates and Niles and Niles Affiliates, and agrees to pay all reasonable costs connected therewith (including, but not limited to, reasonable attorney and witness fees, filing fees and any other expenses) for Morton Grove and/or Niles to defend any and all causes, actions, causes of action, disputes, prosecutions or conflicts arising from the Consultant's actual or alleged violation of the FOIA or the Consultant's failure to furnish all public records as requested by MGN. Furthermore, should the Consultant request that Morton Grove or Niles utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, the Consultant agrees to pay all costs connected therewith (such as reasonable attorney and witness fees, filing fees and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. The Consultant agrees to defend, indemnify and hold harmless Morton Grove and Morton Grove Affiliates and Niles and Niles Affiliates, and agrees to pay all costs incurred by Morton Grove and/or Niles connected therewith (such as reasonable attorney and witness fees, filing fees, penalties, fines, and any other expenses) to defend any denial of a FOIA request pursuant to the Consultant's request to utilize a lawful exemption.

D. **Consultant Representations.**

- (1) **No Collusion.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of State or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue or any fee required by the Village of Morton Grove and the Village of Niles, unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or the fee, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only

persons, firms or corporations interested in this Agreement as principals are those disclosed to MGN prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm or corporation, then the Consultant shall be liable to the Village of Morton Grove and/or the Village of Niles for any loss or damage that the Village of Morton Grove and/or the Village of Niles may suffer, and this Agreement shall, at MGN's option, be null and void.

(2) **Conflict of Interest.**

(a) The Consultant represents and certifies that, to the best of its knowledge: (1) no Morton Grove or Niles employee or agent is interested in the business of the Consultant or this Agreement; (2) as of the date of this Agreement, neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the Term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

(b) The Consultant agrees to perform no professional services during the Term of this Agreement for any person, firm or corporation, for any project or work that may be subject to review/inspection by Morton Grove or Niles, to occur or occurring within the corporate limits of Morton Grove or Niles without notification to Morton Grove and/or Niles prior to rendering services. The Consultant agrees to provide Morton Grove and Niles with written notification whenever the Services provided under this Agreement shall require the Consultant to review a project, business or work performed by any other firm or corporation for whom the Consultant is or has within the previous twelve (12) months provided professional services, or with any of the Consultant's partners or principals that have a financial interest.

(3) **Compliance with Laws, Grant Regulations.** All Services must be provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations, and with applicable statutes, ordinances, rules, and regulations. The Consultant also must comply with applicable conditions of any federal, state, or local grant received by MGN with respect to this Agreement. The Consultant will be solely responsible for any fines or penalties that may be imposed or incurred by a governmental agency with jurisdiction over the Services as a result of the Consultant's improper performance of, or failure to properly perform, any Services.

SECTION 12. DEFAULT AND TERMINATION OF SERVICES.

This Agreement is at-will and may be terminated by MGN at any time at MGN's convenience, without reason or cause. If MGN terminates this Agreement without reason or cause, then MGN will be liable to the Consultant only for payment of all actual, completed, documented Services through the date of termination. The Consultant shall not be entitled to Compensation of any kind, including without limitation for lost profit, for any Services not performed by the Consultant.

B. **Termination by Village for Breach.** MGN at any time, by written notice, may terminate this Agreement on account of breach by the Consultant and failure of the Consultant to cure the breach within ten (10) calendar days after that written notice or such further time as MGN may agree, in MGN's sole discretion, in response to a written notice from the Consultant seeking additional time to cure. "Breach" by the Consultant includes (a) failure of the Consultant to adhere to any terms or conditions of this Agreement, (b) failure of the Consultant to properly perform Services, (c) failure of the

Consultant to maintain progress in the performance of Services so as to endanger proper performance of the Services within the Project Schedule, or (d) failure of the Consultant to have or maintain adequate financial or legal capacity to properly complete any Services.

- C. **Village Remedies.** If MGN terminates this Agreement for Breach by the Consultant, then MGN will have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:
- (1) MGN may recover from the Consultant any and all costs, including without limitation reasonable attorneys' fees, incurred by MGN as the result of any Breach or as a result of actions taken by MGN in response to any Breach.
 - (2) MGN may withhold any or all outstanding Compensation to reimburse itself or pay for any and all costs, including without limitation reasonable attorneys' fees, incurred by MGN as the result of any Breach or as a result of actions taken by MGN in response to any Breach. In that event, MGN will pay any excess funds to the Consultant, if any, after all of MGN's costs are reimbursed or paid. If the Compensation withheld by MGN is insufficient to reimburse MGN for, or pay, all costs, then MGN will have the right to recover directly from the Consultant a sum of money sufficient to reimburse itself, or pay, all remaining costs.
- D. **Termination for Convenience.** If, after termination of this Agreement by MGN for breach, it is determined that the Consultant was not in breach or that the termination otherwise was irregular or improper, then the termination shall be deemed to have been made for the convenience of MGN under this Section 12.
- E. **Termination by Consultant for Breach.** The Consultant at any time, by written notice, terminate this Agreement on account of a failure by MGN to adhere to any terms or conditions of this Agreement and a failure of MGN to cure the breach within ten (10) calendar days after that written notice or such further time as the Consultant may agree, in the Consultant's sole discretion, in response to a written notice from MGN seeking additional time to cure.
- F. **Termination by Consultant without Cause.** The Consultant shall not terminate this Agreement without cause.

SECTION 13. GENERAL PROVISIONS.

- A. **Amendment.** No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by Morton Grove, Niles and the Consultant.
- B. **Assignment.** The Consultant shall not assign this Agreement or any portion thereof without the prior written approval of Morton Grove and Niles, which shall not be unreasonably withheld. The merger, consolidation or liquidation of the Consultant or any change in the ownership of or power to vote equal to twenty percent (20%) or more of the Consultant's capital stock, as held as of the date of execution of this Agreement, shall be deemed an assignment; provided, however, that the transfer of ownership of shares of capital stock between persons who, on the date of this Agreement, are owners of the Consultant's capital stock or who are employees of Consultant, shall not constitute an assignment. In the event that Morton Grove and Niles establish a water commission in accordance with applicable Illinois law in order to further pursue this Project, then at the option of the water commission and upon written notice to the Consultant, this Agreement shall be automatically assigned to the water commission without any further action by the corporate authorities of the water commission or the Consultant. As part of the written notice of assignment sent to the Consultant, an addendum to this Agreement that memorializes the assignment shall be prepared and sent to the Consultant for execution.

- C. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of Morton Grove, Niles and the Consultant, and their agents, successors and assigns.
- D. **Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered: (1) by personal delivery; (2) by a reputable overnight courier; (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid; or (4) by email delivery to the Party's business email address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one (1) business day after deposit with an overnight courier, as evidenced by a receipt of deposit; (c) four (4) business days following deposit in the U.S. mail, as evidenced by a return receipt; or (d) date of delivery of the email. By notice complying with the requirements of this Section 13.D, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other Party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Morton Grove and Niles shall be addressed to, and delivered at, the following addresses:

Attn: Village Administrator
Richard T. Flickinger Municipal Center
Village of Morton Grove
6101 Capulina Avenue
Morton Grove Illinois 60053
Phone: (847) 663-3001
Fax: (847) 370-1649
Email: rczerwinski@mortongroveil.org

With a copy to:
Corporation Counsel (same address as Village Administrator)
Email: tliston@mortongroveil.org

Attn: Village Manager
Village of Niles
1000 Civic Center Drive
Niles, Illinois 60714
Phone: (847) 588-8010
Fax: (847) 588-8051
Email: scv@niles.com

SCV@NILES.COM

With a copy to:
Corporation Counsel (same address as Village Manager)
Email: dg@niles.com

DG@NILES.COM

Notices and communications to the Consultant shall be addressed delivered to the following address:

Attn: Larry Thomas, P.E.
Stanley Consultants, Inc.
8501 West Higgins Road
Suite 730
Chicago, Illinois 60631
Phone: (773) 714-2015 and Cellular Phone: (815) 355-0923
Fax: (773) 693-7690
Email: thomaslarry@stanleygroup.cpm

With a copy to:
Kale Knisley
Legal Department
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, IA 52761
Phone: (563) 264-6507
Email: knisleykale@stanleygroup.com

- E. **Third Party Beneficiary.** No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made or be valid against Morton Grove and Morton Grove's Affiliates and Niles and Niles' Affiliates.
- F. **Provisions Severable.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- G. **Time.** Time is of the essence in the performance of all terms and provisions of this Agreement.
- H. **Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday or federal holiday.
- I. **Venue and Governing Law.** All questions of interpretation, construction and enforcement, and all controversies with respect to this Agreement, shall be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in the Circuit Court of Cook County, Illinois or the Northern District of the United States District Court, Chicago, Illinois, and the Parties consent to the jurisdiction of said Courts for any such action or proceeding.
- J. **Authority to Execute.**
- (1) **Morton Grove and Niles or MGN Water Commission.** The Village of Morton Grove warrants and represents to the Consultant and to Niles that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities. The Village of Niles warrants and represents to the Consultant and to Morton Grove that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities. In the event that Morton Grove and Niles establish a water commission in accordance with applicable Illinois law in order to further pursue this Project, the corporate authorities of the water commission shall be authorized to approve and execute this Agreement instead of the corporate authorities of Morton Grove and Niles.
 - (2) **The Consultant.** The Consultant warrants and represents to MGN that the persons executing this Agreement on its behalf have the full and complete right, power and authority to enter into this Agreement and to agree to the terms, provisions and conditions set forth in this Agreement, and that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken.
- K. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties to this Agreement and supersedes all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

- L. **Waiver.** The failure of either Party to enforce any term, condition or covenant (herein referred to as "provision") of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing by said Party.
- M. **Survival.** The aforesaid covenants, agreements, representations and warranties shall survive the expiration or termination of this Agreement.
- N. **Counterpart Execution.** This Agreement may be executed in counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- O. **Cumulative Rights and Remedies.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.
- P. **Effective Date.** This Agreement shall become effective on the date the last signatory signs this Agreement.

IN WITNESS WHEREOF, this Agreement was executed on behalf of the Parties through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES AND EXHIBITS TO FOLLOW

**SIGNATURE PAGE FOR
CONSULTANT**

IN WITNESS WHEREOF, the below authorized corporate officer of Stanley Consultants, Inc. signed this Agreement pursuant to legal authority and direction granted to him/her by the required corporate action.

Stanley Consultants, Inc.

By: 

Name: Tony Mardam

Title: Vice President

Date: January 23, 2017

Attest:

By: 

Name: Lawrence E. Thomas

Title: Water/Wastewater Department Manager

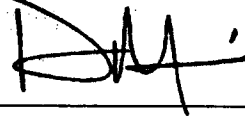
Date: January 23, 2017

**SIGNATURE PAGE FOR
VILLAGE OF MORTON GROVE**

IN WITNESS WHEREOF, the below authorized officials of the Village of Morton Grove have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) and the corporate approval granted by passage of a Resolution by the Corporate Authorities of the Village of Morton Grove.

Village of Morton Grove

By: _____




Name: Daniel DiMaria
Village President, Village of Morton Grove

Date: _____

March 11, 2017.

Attest:

By: _____



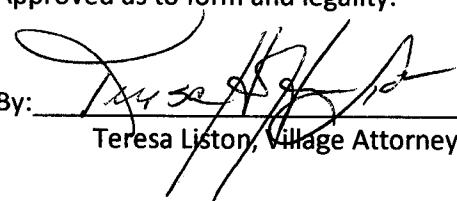
Name: Connie Travis
Village Clerk, Village of Morton Grove

Date: _____

3-1-17, 2017

Approved as to form and legality:

By: _____



Teresa Liston, Village Attorney

**SIGNATURE PAGE FOR
VILLAGE OF NILES**

IN WITNESS WHEREOF, the below authorized officials of the Village of Niles have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) and the corporate approval granted by passage of a Resolution by the Corporate Authorities of the Village of Niles.

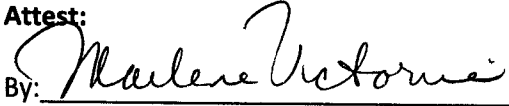
Village of Niles

By: 

Name: Andrew Przybylo
Mayor, Village of Niles

Date: 2-22, 2017.

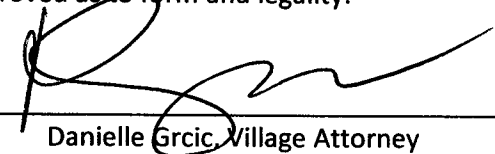
Attest:

By: 

Name: Marlene Victorine
Village Clerk, Village of Niles

Date: Feb 22, 2017

Approved as to form and legality:

By: 

Danielle Grcic, Village Attorney

Exhibit "A"

**Request for Proposals
RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study
Issue Date: October 12, 2016**

(attached)

Group Exhibit "B"

**Consultant's Proposal for Services in regard to MGN RFP dated November 2, 2016
(incorporated by reference)**

Final version of the Scope of Services dated January 4, 2017

(attached)

Projected Labor and Budget dated December 12, 2016

(attached)

Exhibit "C"

Sub-consultant/Sub-contractor List

As of the execution of this Agreement, the Consultant will organize and manage a Project team inclusive of the following sub-consultants/sub-contractors:

Robinson Engineering, LTD.
Strand Associates, Inc
Ciorba Group, Inc.
Merryman Excavation, Inc.
Santacruz Land Acquisitions

Exhibit "D"

**Compensation and Fee Schedule for Services in Regard to
RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study
("Fee Schedule")**

The Consultant's fees will be based on the total hours worked on the Project, including travel, plus expenses. The Consultant's current schedule of Hourly Fees and Charges follows on the next page. The actual hourly rates charged for individual employees will be based on their individual billing rates. The Consultant is responsible and has the discretion for the allocation of costs to individual work items based on needed work effort within the limits of the approved not to exceed values.

1. The Consultant's Fee for the Basic Services associated with the Water Supply Corridor and Route Study and the IEPA Project Plan and Loan Application Preparation as described in Exhibit B Part 1, Sections A, B, C, D, E, F, G.1 (Level A survey), and including labor and expenses will not exceed \$660,486.
2. The Consultant's fee for the Basic Services associated with the Skokie Distribution System Repurposing Study as described in **Exhibit "B"**, Part 1, Section H including labor and expenses will not exceed \$57,244.
3. The Consultant's Fee for additional Authorization Level B survey field services and survey related drafting services as may be required to complete the detailed survey of one water transmission main route including labor and expenses as described in **Exhibit "B"**, Part 1, Section G.2 will not exceed \$93,118. **NOTE:** Before the Consultant commences Item 3 work, the corporate authorities of each Village must approve the Item 3 work and the expenditure of funds to pay for the work.
4. The Consultant's Fee for additional Authorization Level C survey field services and survey related drafting services as may be required to complete the detailed survey of a second water transmission main route including labor and expenses as described in **Exhibit "B"**, Part 1, Section G.3 will not exceed \$83,558. **NOTE:** Before the Consultant commences Item 4 work, the corporate authorities of each Village must approve the Item 4 work and the expenditure of funds to pay for the work.
5. Compensation for Additional Services is not included in the Basic Services described in Exhibit B Part 1. Additional Services agreed to by MGN, in writing, shall be compensated on an Hourly basis for labor plus reimbursable expenses, in accordance with the Hourly Fees and Charges included with this exhibit unless other compensation is agreed upon prior to performance of the services.

(Informational Note: The total Fee for Items 1 and 2 is \$717,730.00)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/9/2017

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

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

PRODUCER Slater & Associates Insurance, Inc. PO Box 1469 Tualatin OR 97062-1469		CONTACT NAME: Lisa Mault PHONE (A/C, No, Ext): (503) 624-0466 FAX (A/C, No): (503) 624-0846 E-MAIL ADDRESS: lisa@slaterinsurance.com	
INSURED Santacruz Associates, Ltd 310 Happ Rd, Suite 206 Northfield IL 60093		INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Ins Co, LTD NAIC # 11000 INSURER B: Trumbull Ins. Co. 27120 INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 16-17GL/WC REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:		52SBANX6540	6/27/2016	6/27/2017	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		52SBANX6540	6/27/2016	6/27/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		52SBANX6540	6/27/2016	6/27/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y N/A	52WECPI8646	11/16/2016	11/16/2017	<input checked="" type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
B	Excluded Individual is J. Steven Santacruz					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: WATER SUPPLY CORRIDOR AND WATER ROUTE STUDY
 Village of Morton Grove, Its Officials and Agents and the Morton Grove Affiliates, the Village of Niles and the Niles Affiliates and the Morton Grove - Niles Water Commission and the MG-N Commission Affiliates are listed as additional insured per form IH 12 00 11 85 - Attached
 Coverage is Primary

CERTIFICATE HOLDER rczerwinski@mortongroveil. Village of Morton Grove, Its Officials an ET AL 6101 Capulina Ave Morton Grove, IL 66053	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Lisa Mault/LMM
--	--

Additional Named Insureds

Other Named Insureds

Antacruz Land Acquisitions

Doing Business As

POLICY NUMBER: 52 SBA NX6540



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - PERSON-ORGANIZATION

PATRICK ENGINEERING, INC.
4970 VARSITY DR
LISLE, IL 60532

COUNTY OF DUPAGE ITS OFFICERS AND EMPLOYEES
C/O DUPAGE COUNTY DIVISION OF TRANSPORTATION
421 N COUNTY FARM RD
WHEATON, IL 60187

TRANSYSTEMS CORP.
1475 E WOODFIELD RD #600
SCHAUMBURG, IL 60173
BAXTER & WOODMAN INC.
8678 RIDGEFIELD RD
CRYSTAL LAKE, IL 60012

RS&H INC
10748 DEERWOOD PARK BLVD S
JACKSONVILLE, FL 32256

VILLAGE OF MORTON GROVE, ITS OFFICIALS AND AGENTS AND THE
MORTON GROVE AFFILIATES, THE VILLAGE OF NILES AND THE NILES
AFFILIATES AND THE
MORTON GROVE - NILES WATER COMMISSION AND THE MG-N COMMISSION
AFFILIATES
6101 CAPULINA AVE
MORTON GROVE, IL 60053

Legislative Summary
Resolution 17-30

**AUTHORIZING A CHANGE ORDER TO THE PROFESSIONAL SERVICE AGREEMENT
BETWEEN STANLEY CONSULTANTS, INC. AND THE VILLAGES OF MORTON GROVE AND
NILES FOR A JOINT WATER PROJECT TO SUPPORT SURVEY FIELD SERVICES**

Introduced: May 8, 2017

Synopsis: This Resolution will authorize a change order to the Professional Services Agreement among Morton Grove, Niles and Stanley Consultants, Inc. for Engineering Services for the Preparation of Water Supply Corridor and Water Route Study approved pursuant to Resolution 17-04 for survey field services and survey related drafting services.

Background: Due to recent substantial water rate hikes from the City of Chicago, the Villages of Niles and Morton Grove (the Villages) have worked together to consider an alternate water supply. On January 23, 2017, pursuant to Resolution 17-03, the Village approved an agreement with the City of Evanston to allow Morton Grove and Niles to purchase Lake Michigan water at a cost substantially less than what the Villages currently pay to the City of Chicago. The Board also approved an agreement with Stanley Consultants, Inc., 8501 W. Higgins Road, Suite 730 Chicago, IL 60631-2801 for the Preparation of Water Supply Corridor and Water Route Study (Resolution 17-04). The Agreement included optional field work and drafting services to complete a detailed survey of the one water transmission main route. Based on the initial work performed by Stanley Consultants, Inc., staff is now requesting the Village Board approve a change order to authorize the additional survey field services and survey related drafting.

Departs Affected Legal, Administration, and Finance Departments

Fiscal Impact: The work performed pursuant to this change order shall not exceed the amount of ninety-three thousand one hundred eighteen dollars (\$ 93,118) and shall be billed to and paid by the Village of Morton Grove and the Village of Niles equally

Source of Funds: Enterprise Fund


Workload Impact: The Village Administrator will oversee the implementation of the contact and agreement.

Administrator Recommendation: Approval as presented.

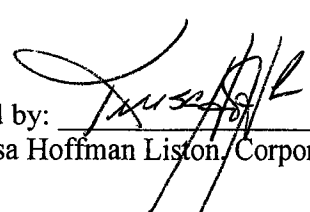
First Reading: Not required.

Special Considerations or Requirements: None

Respectfully submitted:


Ralph E. Czerwinski, Village Administrator

Prepared by:


Teresa Hoffman Liston, Corporation Counsel

RESOLUTION 17-30

AUTHORIZING A CHANGE ORDER TO THE PROFESSIONAL SERVICE AGREEMENT BETWEEN STANLEY CONSULTANTS, INC. AND THE VILLAGES OF MORTON GROVE AND NILES FOR A JOINT WATER PROJECT TO SUPPORT SURVEY FIELD SERVICES

WHEREAS, the Village of Morton Grove (VILLAGE), located in Cook County, Illinois, is a home rule unit of government under the provisions of Article 7 of the 1970 Constitution of the State of Illinois, can exercise any power and perform any function pertaining to its government affairs, including but not limited to the power to tax and incur debt; and

WHEREAS, for many decades the Village of Morton Grove has purchased water from the City of Chicago; and

WHEREAS, due to recent substantial rate hikes, the Village believes it is in the best interest to find an alternative water source at a more favorable rate; and

WHEREAS, since 2014, the Villages of Niles and Morton Grove (the Villages) have worked together to consider and analyze alternate sources of supply of Lake Michigan water; and

WHEREAS, on January 23, 2017, pursuant to Resolution 17-03, the Village Board approved an agreement with the City of Evanston to allow Morton Grove and Niles to purchase Lake Michigan water for 40 years beginning in 2019 at a cost substantially less than what the Villages currently pay to the City of Chicago; and

WHEREAS, on January 23, 2017, pursuant to Resolution 17-04 the Village Board approved an agreement with Stanley Consultants, Inc., 8501 W. Higgins Road, Suite 730 Chicago, IL 60631-2801 to study, review and update construction cost estimates for a new water transmission main and provide advice to the Villages in support of the Villages' efforts to procure an alternate source of supply ("the Agreement"); and

WHEREAS, the Agreement included a Compensation and Fee Schedule ("Exhibit D") which provided the fee for the basic services associated with the Water Supply Corridor and Route Study, the IEPA Project Plan and loan application preparation, and the Skokie Distribution System Repurposing Study would not exceed \$717,730.00; and

WHEREAS, Exhibit D also included a fee for additional field work and drafting services to complete the detailed survey of the one water transmission main route which including labor and expenses shall not exceed \$93,118. However, the Agreement required both Morton Grove and Niles' Corporate Authorities approve the additional work and expenditure of funds to pay for the work before this additional survey work commences; and

WHEREAS, based on the initial work performed by Stanley Consultants, Inc., and based upon the phased approach for the professional services agreement for Engineering Service for Preparation of Water Supply Corridor and Water Route Study authorized by the Village Board in Resolution 17-04 on January 23, 2017, authorization for the survey field services and survey related drafting services as set forth in Exhibit D of the Agreement is now requested; and

WHEREAS, the work performed pursuant to this Agreement shall be billed to and paid by the Village of Morton Grove and the Village of Niles equally; and

WHEREAS, the completion of the contract will be within thirteen weeks from the time of authorization to proceed; and

WHEREAS, it is in the best interest of the Village to approve this Change Order to the contract with Stanley Consultants, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MORTON GROVE, COOK COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The Corporate Authorities do hereby incorporate the foregoing WHEREAS clauses into this Resolution as though fully set forth therein thereby making the findings as hereinabove set forth.

SECTION 2: The Village President is hereby authorized to execute a Services Change Order Agreement with Stanley Consultants, Inc. for consulting services relative to water supply route study to support field survey and drafting services as presented in Exhibit "D" Item 3 of the Engineering Service for Preparation of Water Supply Corridor and Water Route Study authorized by the Village Board on January 23, 2017 in Resolution 17-04.

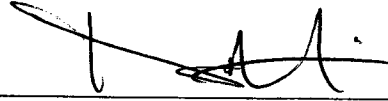
SECTION 3: The Village Administrator, Corporation Counsel and/or his/her designee is hereby authorized to take all steps necessary to implement said contract

SECTION 4: This Resolution shall be in full force and effect from and upon its passage and approval.

Passed this 8th day of May 2017.

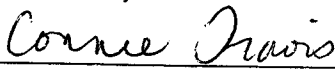
Trustee Gear	<u> AYE </u>
Trustee Minx	<u> AYE </u>
Trustee Pietron	<u> AYE </u>
Trustee Ramos	<u> AYE </u>
Trustee Thill	<u> AYE </u>
Trustee Witko	<u> AYE </u>

Approved by me this 8th day of May 2017



Daniel P. DiMaria , Village President
Village of Morton Grove
Cook County, Illinois

Attested and Filed in my office
This 8th day of May 2017



Connie Travis, Village Clerk
Village of Morton Grove
Cook County, Illinois

Exhibit "D"

Compensation and Fee Schedule for Services in Regard to RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study ("Fee Schedule")

The Consultant's fees will be based on the total hours worked on the Project, including travel, plus expenses. The Consultant's current schedule of Hourly Fees and Charges follows on the next page. The actual hourly rates charged for individual employees will be based on their individual billing rates. The Consultant is responsible and has the discretion for the allocation of costs to individual work items based on needed work effort within the limits of the approved not to exceed values.

1. The Consultant's Fee for the Basic Services associated with the Water Supply Corridor and Route Study and the IEPA Project Plan and Loan Application Preparation as described in Exhibit B Part 1, Sections A, B, C, D, E, F, G.1 (Level A survey), and including labor and expenses will not exceed \$660,486.
2. The Consultant's fee for the Basic Services associated with the Skokie Distribution System Repurposing Study as described in Exhibit "B", Part 1, Section H including labor and expenses will not exceed \$57,244.
3. The Consultant's Fee for additional Authorization Level B survey field services and survey related drafting services as may be required to complete the detailed survey of one water transmission main route including labor and expenses as described in Exhibit "B", Part 1, Section G.2 will not exceed \$93,118. **NOTE:** Before the Consultant commences Item 3 work, the corporate authorities of each Village must approve the Item 3 work and the expenditure of funds to pay for the work.
4. The Consultant's Fee for additional Authorization Level C survey field services and survey related drafting services as may be required to complete the detailed survey of a second water transmission main route including labor and expenses as described in Exhibit "B", Part 1, Section G.3 will not exceed \$83,558. **NOTE:** Before the Consultant commences Item 4 work, the corporate authorities of each Village must approve the Item 4 work and the expenditure of funds to pay for the work.
5. Compensation for Additional Services is not included in the Basic Services described in Exhibit B Part 1. Additional Services agreed to by MGN, in writing, shall be compensated on an Hourly basis for labor plus reimbursable expenses, in accordance with the Hourly Fees and Charges included with this exhibit unless other compensation is agreed upon prior to performance of the services.

(Informational Note: The total Fee for Items 1 and 2 is \$717,730.00)

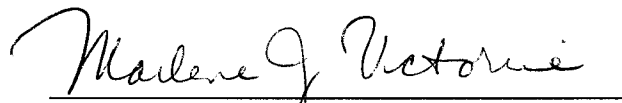
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, **MARLENE J. VICTORINE**, do hereby certify that I am the duly appointed and qualified Village Clerk of the Village of Niles, County of Cook and State of Illinois, and, as such, am the keeper of the records, legal documents and files of said Village.

I **DO FURTHER CERTIFY** that the attached and foregoing is a true, correct, and complete copy of a legal document duly adopted by the Board of Trustees of the Village of Niles on the 23rd day of May, 2017 entitled:

RESOLUTION 2017-44R AUTHORIZING A CHANGE ORDER TO THE PROFESSIONAL SERVICE AGREEMENT BETWEEN STANLEY CONSULTANTS, INC. AND THE VILLAGES OF NILES AND MORTON GROVE FOR A JOINT WATER PROJECT TO SUPPORT SURVEY FIELD SERVICES

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Niles, this 29th day of May, 2017.



Village Clerk of the Village of Niles
Cook County, State of Illinois

(SEAL)

RESOLUTION 2017-44R

AUTHORIZING A CHANGE ORDER TO THE PROFESSIONAL SERVICE AGREEMENT BETWEEN STANLEY CONSULTANTS, INC. AND THE VILLAGES OF NILES AND MORTON GROVE FOR A JOINT WATER PROJECT TO SUPPORT SURVEY FIELD SERVICES

WHEREAS, the Village of Niles ("Village"), located in Cook County, Illinois, is a home rule unit of government under the provisions of Article 7 of the 1970 Constitution of the State of Illinois, can exercise any power and perform any function pertaining to its government affairs, including but not limited to the power to tax and incur debt; and

WHEREAS, for many decades the Village of Niles has purchased water from the City of Chicago; and

WHEREAS, due to recent substantial rate hikes, the Village believes it is in the best interest to find an alternative water source at a more favorable rate; and

WHEREAS, since 2014, the Villages of Niles and Morton Grove (the Villages) have worked together to consider and analyze alternate sources of supply of Lake Michigan water; and

WHEREAS, on January 24, 2017, pursuant to Resolution 2017-02R, the Village Board approved an agreement with the City of Evanston to allow Niles and Morton Grove to purchase Lake Michigan water for 40 years beginning in 2019 at a cost substantially less than what the Villages currently pay to the City of Chicago; and

WHEREAS, on January 24, 2017, pursuant to Resolution 2017-03R the Village Board approved an agreement with Stanley Consultants, Inc., 8501 W. Higgins Road, Suite 730 Chicago, IL 60631-2801 to study, review and update construction cost estimates for a new water transmission main and provide advice to the Villages in support of the Villages' efforts to procure an alternate source of supply ("the Agreement"); and

WHEREAS, the Agreement included a Compensation and Fee Schedule ("Exhibit D") which provided the fee for the basic services associated with the Water Supply Corridor and Route Study, the IEPA Project Plan and loan application preparation, and the Skokie Distribution System Repurposing Study would not exceed \$717,730.00; and

WHEREAS, Exhibit D also included a fee for additional field work and drafting services to complete the detailed survey of the one water transmission main route which including labor and expenses shall not exceed \$93,118. However, the Agreement required both Niles and Morton Groves' Corporate Authorities approve the additional work and expenditure of funds to pay for the work before this additional survey work commences; and

WHEREAS, based on the initial work performed by Stanley Consultants, Inc., and based upon the phased approach for the professional services agreement for Engineering Service for Preparation of Water Supply Corridor and Water Route Study authorized by the Village Board in Resolution 2017-03R on January 24, 2017, authorization for the survey field services and survey related drafting services as set forth in Exhibit D of the Agreement is now requested; and

WHEREAS, the work performed pursuant to this Agreement shall be billed to and paid by the Village of Niles and the Village of Morton Grove equally; and

WHEREAS, the completion of the contract will be within thirteen weeks from the time of authorization to proceed; and

WHEREAS, it is in the best interest of the Village to approve this Change Order to the contract with Stanley Consultants, Inc.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Niles, Cook County, Illinois as follows:

SECTION 1: The Corporate Authorities do hereby incorporate the foregoing WHEREAS clauses into this Resolution as though fully set forth therein thereby making the findings as hereinabove set forth.

SECTION 2: The Village President is hereby authorized to execute a Services Change Order Agreement with Stanley Consultants, Inc. for consulting services relative to water supply route study to support field survey and drafting services as presented in Exhibit "D" Item 3 of the Engineering Service for Preparation of Water Supply Corridor and Water Route Study authorized by the Village Board on January 24, 2017 in Resolution 17-03R.

SECTION 3: The Village Administrator, Corporation Counsel and/or his/her designee is hereby authorized to take all steps necessary to implement said contract

SECTION 4: This Resolution shall be in full force and effect from and upon its passage and approval.

PASSED: This 23rd day of May, 2017
YEAS: 6 Alpogianis, Jekot, LoVerde, Matyas, McCreery, Strzelecki
NAYS: 0
ABSENT: 0
ABSTAIN: 0

APPROVED by me this 23rd day of May, 2017.



President of the Village of Niles
Cook County, Illinois

ATTESTED AND FILED in my office this 23rd day of May, 2017, and published in pamphlet form as provided by law in the Village of Niles, Illinois.



Village Clerk

Exhibit "D"

**Compensation and Fee Schedule for Services in Regard to
RFP Morton Grove and Niles – Detailed Water Supply Corridor and Route Study
("Fee Schedule")**

The Consultant's fees will be based on the total hours worked on the Project, including travel, plus expenses. The Consultant's current schedule of Hourly Fees and Charges follows on the next page. The actual hourly rates charged for individual employees will be based on their individual billing rates. The Consultant is responsible and has the discretion for the allocation of costs to individual work items based on needed work effort within the limits of the approved not to exceed values.

1. The Consultant's Fee for the Basic Services associated with the Water Supply Corridor and Route Study and the IEPA Project Plan and Loan Application Preparation as described in Exhibit B Part 1, Sections A, B, C, D, E, F, G.1 (Level A survey), and including labor and expenses will not exceed \$660,486.
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(Informational Note: The total Fee for Items 1 and 2 is \$717,730.00)



It's possible here

MAYOR
Andrew Przybylo

VILLAGE MANAGER
Steven C. Vinezeano

VILLAGE CLERK
Marlene J. Victorine

TRUSTEES
George D. Alpogianis
John C. Jekot
Joe LoVerde
Danette O'Donovan Matyas
Denise McCreery
Dean Strzelecki

CHANGE ORDER #: 1

VENDOR #:	<u>10092</u>	DEPARTMENT:	<u>Public Services</u>
NAME:	<u>Stanley Consultants</u>	DATE:	<u>2/23/17</u>
ADDRESS:	<u>8501 W. Higgins Rd, Suite 730</u>	P.O. #:	<u>P47729</u>
	<u>Chicago, IL 60631</u>	P.O. AMOUNT:	<u>\$358,865.00</u>

Previous Change Order Amounts:	<u>\$0.00</u>
This Change Order Amount:	<u>\$46,559.00</u>
Contract Amount with all Approved Change Orders:	<u>\$405,424.00</u>

Reason for Change Order: The initial route study included limited survey necessary to complete a route study, but did not include the detailed survey necessary for final design. Now that the preferred route has been identified we are recommending that MGN move forward to fully survey the preferred route. The FY 18 budget for Phase 2 engineering is \$3,000,000, therefore the contract is for a small amount with remainder of the budget line item remaining to be utilized for the design work.

Recommended By:

Department

Date

Finance Department

Date

Village Manager

Date