

RESOLUTION NO. 17-18

**AUTHORIZING THE APPROVAL AND EXECUTION OF AN INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN THE MORTON GROVE-NILES WATER COMMISSION AND WRBLLC, FOR PROJECT
MANAGEMENT AND SUPERINTENDENT SERVICES**

WHEREAS, the Morton Grove Niles Water Commission, located in Cook County, Illinois ("MGNWC"), has been established to operate a public water supply system (the "System") by an intergovernmental agreement adopted by the Village of Morton Grove and the Village of Niles pursuant to 65 ILCS 5/11-135-1 *et seq.*, and the MGNWC further operates in accordance with the provisions of Article VII, Section 6 of the Illinois Constitution (the "Act"); and

WHEREAS, since 2014, the Villages of Morton Grove and Niles have retained WRBLLC, to provide consulting services relating to the evaluations and negotiations for a wholesale water supply agreement with the city of Evanston, the formation and operation of the MGNWC, the acquisition of property and easements, the negotiation and drafting of contracts, the application for permits and zoning approvals, and the drafting and financing of contracts for the construction of infrastructure necessary for the transmission of the MGNWC's water supply from Evanston to the Villages of Morton Grove and Niles ("the Services"); and

WHEREAS, the MGNWC has appointed William Balling, the President of WRBLLC as the Superintendent of the MGNWC; and

WHEREAS, the MGNWC has requested that WRBLLC provide project management services and services as Superintendent to assist with various management and administrative matters that pertain to the development, operation and governance of the MGNWC and its System, including all aspects of implementation and construction of a new water delivery system project, land acquisition/sale/conveyance, short-term and long-term financing for capital costs and debt financing for the new water system, personnel matters, regulatory matters and contractual matters related to the water delivery and receiving infrastructure to be owned by the MGNWC, including but not limited to water system infrastructure that will extend from the City of Evanston to receiving points owned and operated respectively by the MGNWC, Morton Grove and Niles, and other management and administrative related matters as assigned by the MGNWC (the "Services"); and

WHEREAS, the MGNWC desires to approve and enter into an agreement entitled "Independent Contractor Agreement Between the Morton Grove-Niles Water Commission and WRBLLC for Project Management and Superintendent Services" ("the Agreement"), in substantially the same form as the copy attached hereto as **Exhibit "A"** and made a part hereof; and

WHEREAS, WRBLLC desires to approve and enter into the Agreement and agrees to perform the Services pursuant to the terms, condition and compensation set forth in the Agreement; and

WHEREAS, the Board of Commissioners of the Morton Grove-Niles Water Commission have the authority to enter into the Agreement pursuant to 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.*, including 65 ILCS 5/11-135-1, *et seq.*), and find that entering into the Agreement is in the best interests of MGNWC, the Village of Morton Grove and the Village of Niles.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MORTON GROVE-NILES WATER COMMISSION, COOK COUNTY, 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 Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") approves and authorizes the execution of an agreement entitled "Independent Contractor Agreement Between The Morton Grove-Niles Water Commission and WRBLLC for Project Management and Superintendent Services" ("the Agreement"), in substantially the same form as the copy attached hereto as **Exhibit "A"** and made a part hereof. The MGNWC Board authorizes and directs the Chair and the Clerk, or their designees, to execute the final version of the Agreement, which may contain certain non-substantive and non-financial modifications that are approved by the MGNWC Board Chair, and to execute and deliver all other instruments and documents and pay all costs that are necessary to fulfill MGNWC'S obligations under the Agreement.

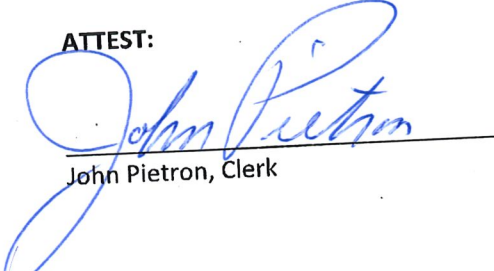
SECTION 3: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this 30th day of November 2017, pursuant to a roll call vote as follows:

AYES: John Pietron and Steven Vinezeano
NAYS: None
ABSENT: None (Cook County Appointee not appointed yet)

PASSED by the Board of Commissioners of the Morton Grove-Niles Water Commission, Cook County, Illinois on a roll call vote at a Regular Meeting thereof held on the 30th day of November 2017, and approved by the Chair, and attested by the Clerk on the same day.


Steven Vinezeano, Chair

ATTEST:

John Pietron, Clerk

CERTIFICATION

I, John Pietron, certify that I am the duly appointed, qualified Clerk of the Morton Grove-Niles Water Commission. I do further certify that the above and foregoing, identified as Ordinance Number 17-18, is a true, complete and correct copy of an ordinance otherwise identified as:

“A RESOLUTION THE APPROVAL AND EXECUTION OF AN INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE MORTON GROVE-NILES WATER COMMISSION AND WRBLLC, FOR PROJECT MANAGEMENT AND SUPERINTENDENT SERVICES ”

which Resolution was passed by the Morton Grove-Niles Water Commission on the 30th day of November 2017, the original of which is part of the books and records within my control as Secretary/Treasurer of the Morton Grove-Niles Water Commission.

Dated this 30th day of November 2017

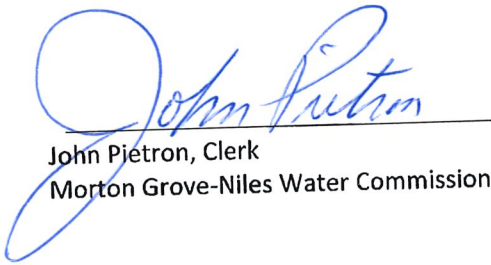

John Pietron, Clerk
Morton Grove-Niles Water Commission

EXHIBIT A
INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN THE MORTON GROVE-NILES WATER COMMISSION AND WRBLLC
FOR PROJECT MANAGEMENT AND SUPERINTENDENT SERVICES

This **PROFESSIONAL SERVICES AGREEMENT FOR PROJECT MANAGEMENT AND SUPERINTENDENT SERVICES** (the "Agreement") is made this 30th day of November 2017, by and between WRBLLC, an Illinois Limited Liability Company, whose mailing address is 412 South Prindle Avenue, Arlington Heights, Illinois 60004 ("WRBLLC") and the Morton Grove-Niles Water Commission, whose mailing address is 1000 Civic Center Drive, Niles, Illinois 60714 ("Commission" or the "MGNWC"), as approved by the Board of the Commissioners of the MGNWC (the "MGNWC Board"). WRBLLC and the Commission are at times referred to herein individually as a "Party" and collectively as the "Parties." The Village of Morton Grove ("Morton Grove") and the Village of Niles ("Niles") are at times referred to collectively as the "Villages".

RECITALS

WHEREAS, since 2014, the Villages of Morton Grove and Niles have retained WRBLLC, to provide consulting services relating to the evaluations and negotiations for a wholesale water supply agreement with the city of Evanston, the formation and operation of the MGNWC, the acquisition of property and easements, the negotiation and drafting of contracts, the application for permits and zoning approvals, and the drafting and financing of contracts for the construction of infrastructure necessary for the transmission of the MGNWC's water supply from Evanston to Morton Grove and Niles; and

WHEREAS, the MGNWC has appointed William Balling, the President of WRBLLC ("Balling"), as the Superintendent of the MGNWC; and

WHEREAS, the MGNWC has requested that WRBLLC provide project management services and services as Superintendent to assist with various management and administrative matters that pertain to the development, operation and governance of the MGNWC and its water system, including all aspects of implementation and construction of a new water delivery system project, land acquisition/sale/conveyance, short-term and long-term financing for capital costs and debt financing for the new water system, personnel matters, regulatory matters and contractual matters related to the water delivery and receiving infrastructure to be owned by the MGNWC, including but not limited to water system infrastructure that will extend from the City of Evanston ("Evanston") to receiving points owned and operated respectively by the MGNWC, Morton Grove and Niles, and other management and administrative related matters as assigned by the MGNWC (the "Services"); and

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

WHEREAS, WRBLLC 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 WRBLLC shall perform the Services described below, and the MGNWC shall pay WRBLLC 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 Attachments as entered into by WRBLLC and MGNWC setting forth the terms and conditions governing the Services.

B. The term "MGNWC Affiliates" means MGNWC's former, current and future appointed officials, officers, commissioners, employees, engineers, attorneys, consultants, authorized representatives and volunteers, including the former, current and future MGNWC Board members, the MGNWC Representative and the MGNWC Working Group members.

C. 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.

E. 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.

F. The term "WRBLLC Affiliates" means William Balling, the owners, members and officers of WRBLLC, the employees, consultants, sub-contractors and authorized representatives of WRBLLC.

G. The term "Services" or "Work" means the professional consulting and project management activities and services to be performed by the Superintendent that are listed in the "Scope of Services" dated November 30, 2017 and attached hereto as **Attachment "1"**.

H. 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 WRBLLC for the performance of any portion of the Services.

I. The term "MGNWC Working Group" means the respective staff and consultants employed by Morton Grove, Niles and the Commission 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, which date shall be inserted on page 1 of this Agreement, and shall terminate upon the completion and acceptance of the Services by the MGNWC and final payment to WRBLLC by the MGNWC, (the "Term"), unless this Agreement is terminated earlier by any Party, or by agreement, or the Parties agree, in writing, to extend the Term.

SECTION 3. SCOPE OF SERVICES.

A. Services; Non-Exclusive Relationship. WRBLLC agrees to perform the Services to complete the Scope of Services in accordance with the terms and conditions of this Agreement. WRBLLC shall provide the Services on behalf of and at the direction of the MGNWC Board, the MGNWC Representative (defined below) and/or the MGNWC Working Group, and understands that this Agreement is not an exclusive relationship in that the MGNWC, in its collective discretion, is free

to enter other agreements with other vendors or consultants to perform work on the Project. The MGNWC Board, in its collective discretion, is also free to assign all or any portion of the Services to other vendors or consultants, upon fourteen (14) calendar days written notice to WRBLLC's Primary Representative. Unless otherwise indicated by the MGNWC, the primary contact point for the MGNWC, the MGNWC Board and the MGNWC Working Group to provide direction to WRBLLC under this Agreement shall be the Morton Grove Administrator and the Niles Village Manager (collectively referred to as the "MGNWC Representative").

B. Mutual Cooperation. The MGNWC agrees to cooperate with WRBLLC in the performance of the Services, including meeting with WRBLLC on an "as-needed" basis and providing WRBLLC with such "Confidential Information" (as defined in Section 10 below) and non-confidential information that the MGNWC may have that may be relevant and helpful to WRBLLC's performance of the Services. These documents shall be furnished to WRBLLC without cost or expense to WRBLLC. WRBLLC agrees to cooperate with the MGNWC in the performance and completion of the Services, including meeting with the MGNWC, the MGNWC Representative and/or the MGNWC Working Group on an "as-needed" basis, and with any other consultants engaged by the MGNWC.

C. Consultant's Personnel and Representative.

- (1) WRBLLC Primary Representative. WRBLLC has designated William Balling ("Balling") as its "Primary Representative", 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 WRBLLC's primary authorized representative throughout the Term of this Agreement. This Primary Representative shall be readily available to respond to communications from the MGNWC Board, the MGNWC Representative, the MGNWC Corporation Counsel and the MGNWC Special Counsel and shall be primarily responsible for performing the Services as requested by the MGNWC Board, the MGNWC Representative, the MGNWC Corporation Counsel and the MGNWC Special Counsel. The Primary Representative shall receive requests from the MGNWC Board, the MGNWC Representative, the MGNWC Corporation Counsel and the MGNWC Special Counsel to perform the Services and shall have full authority to execute the directions of the MGNWC, without delay, and promptly supply any necessary labor, equipment or incidentals to do so. The Primary Representative shall not be changed by WRBLLC without the MGNWC Board's prior written approval.
- (2) Approval and Use of Sub-consultants / Sub-contractors. It is the expectation of the MGNWC Board that Balling will personally perform the day-to-day activities of the Superintendent position and the Project Manager position in accordance with the Scope of Services (Attachment "1") and while he may use and rely on the assistance of other individuals (e.g., MGNWC employees, Morton Grove and Niles employees and other consultants), Balling will not outsource or delegate such activities without the advanced, written consent of the MGNWC Board. All sub-consultants and sub-contractors used by WRBLLC shall be acceptable to and approved in advance by the MGNWC Board. The MGNWC Board's approval of any sub-consultant or sub-contractor shall not relieve WRBLLC 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 WRBLLC. Every subcontract that WRBLLC enters into regarding the performance of the Services under this Agreement shall include an

express provision binding the sub-consultant or sub-contractor to all the terms of this Agreement, and specifically noting the obligations in this Section 3.C(2).

D. Notice to Proceed with Services. WRBLLC shall commence the Services immediately upon the date of Balling's execution of this Agreement ("Commencement Date"). WRBLLC shall diligently and continuously perform the Services until the completion of the Services or upon the termination of this Agreement.

E. Suspension of Services. The MGNWC Board or the MGNWC Representative, at any time and for any reason, may suspend work on any or all Services by issuing a written work suspension notice to WRBLLC. WRBLLC must stop the performance of all Services within the scope of the suspension notice until the MGNWC Board or the MGNWC Representative directs WRBLLC in writing to resume performance of the Services.

F. Termination before Completion of Services. If the MGNWC Board decides not to proceed with the Project or any phase of the Project for any reason, this Agreement shall terminate upon written notice to WRBLLC issued by the MGNWC Board advising of the termination of this Agreement. In such case, the MGNWC shall be liable to WRBLLC only for payment of all actual, completed, documented Services through the date of termination. WRBLLC agrees to waive all claims and causes of action for any other damages or losses of any kind that could be brought relative to the termination of this Agreement by the MGNWC based on the MGNWC Board's decision not to proceed with the Project or any phase of the Scope of Work.

SECTION 4. INTENTIONALLY DELETED.

SECTION 5. INDEPENDENT CONTRACTOR STATUS.

A. Relationship of the Parties. WRBLLC'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. WRBLLC 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. Unless specifically approved by the MGNWC Board or the MGNWC Representative, WRBLLC and its employees and its sub-consultants and sub-contractors shall have no authority or right to enter any contract or incur any debt or liability of any nature in the name of, or on behalf of the MGNWC or Morton Grove or Niles.
- (3) Not Employees of MGNWC. WRBLLC and its employees and its sub-consultants and sub-contractors serve only as independent contractors of the MGNWC, and not as employees of the MGNWC, 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 the MGNWC, Morton Grove, Niles or Cook County on behalf of WRBLLC, and its employees and its sub-consultants and sub-contractors. Nothing in this Agreement shall be construed as MGNWC, Morton Grove, Niles or Cook County 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 the MGNWC, Morton Grove, Niles or Cook County if the MGNWC and WRBLLC, and its employees and its sub-consultants and sub-contractors, were engaged in an "employer-employee" relationship.

- (4) Payment of Taxes. WRBLLC 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 MGNWC/Village/County Employment Benefits. WRBLLC 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 MGNWC, Morton Grove, Niles or Cook County employees, and agree that they are ineligible to file a claim for unemployment compensation benefits or for Worker's Compensation benefits against MGNWC, Morton Grove, Niles or Cook County. WRBLLC 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. WRBLLC 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 the MGNWC on other endeavors, as they deem appropriate and advisable.
- (7) Discretion Over Performance and Delivery of Services. The MGNWC shall have no control over the timing, means and way the Services are to be performed by WRBLLC, and its employees or its sub-consultants and sub-contractors. WRBLLC is responsible for directing and controlling the performance and completion of the Services in a timely manner that meets MGNWC's requested schedule and the Project Completion Date.
- (8) Applicable Regulations. WRBLLC, 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.
- (9) Injury to Reputation. WRBLLC, and its employees and its sub-consultants and sub-contractors, shall not act in a manner that might injure the reputation of the MGNWC,

the MGNWC Board members, the MGNWC employees, 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. The MGNWC agrees to pay for any requested, fully completed and accepted Services rendered by WRBLLC at the rate of \$185.00 per hour.
- (2) Overhead. MGNWC further agrees to pay WRBLLC an "overhead" charge equal to twelve percent (12%) of the monthly billing charged by WRBLLC pursuant to Section 6.A(1) in lieu of paying or being responsible for any out-of-pocket cost incurred by WRBLLC including without limitation travel expenses, copy charges, mailing expenses, internet, telephone, meals, lodging, training or license fees for WRBLLC or its employees or representatives, etc.
- (3) Scope of Fees. The compensation set forth in Section 6.A above includes all applicable Federal, State, County 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 because of the payment by WRBLLC of any such tax, contribution, premium, cost, royalty or fee are the sole responsibility of WRBLLC, and any claim or demand from any person that the MGNWC or Morton Grove or Niles or Cook County pay such taxes, contributions, premiums, costs, royalties or fees are waived and released and shall be indemnified by WRBLLC.

B. Invoices and Payment.

- (1) Frequency and Content. WRBLLC shall submit monthly invoices to the MGNWC address and marked to the attention of the MGNWC Representative. Each invoice must be accompanied by accurate copies of receipts, vouchers and other documents as necessary to reasonably establish WRBLLC's right to payment of the Compensation stated in the invoice.
- (2) Invoice Payment. The MGNWC agrees to make payments to WRBLLC within thirty (30) calendar days of receipt of the invoice, unless there is a dispute regarding 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 regarding any invoice, the MGNWC 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.C. below, but any such dispute shall not cause WRBLLC to stop performing Services or delay in its completion of the Scope of Work. The MGNWC's failure to object to any monthly invoices and payment by the MGNWC for Services related to any monthly invoice or other periodic progress payment shall not be an acceptance by the MGNWC of such Services that are incomplete and in progress.

C. 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, WRBLLC must proceed diligently with the performance of Services.

SECTION 7. PERFORMANCE AND STANDARD OF SERVICES.

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

- (1) Standard of Performance. WRBLLC 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. WRBLLC is fully and solely responsible for the quality, technical accuracy, completeness and coordination of all Services. Such performance shall be to the satisfaction of the MGNWC. 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 WRBLLC and/or its employees, its sub-consultants and sub-contractors in providing the Services, the correction of which requires additional Services, WRBLLC 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 the MGNWC. WRBLLC must provide, for no additional Compensation and at no separate expense to the MGNWC, 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 WRBLLC or of WRBLLC's sub-consultants or suppliers.
- (3) Risk of Loss. WRBLLC bears the risk of loss in providing all Services. WRBLLC is responsible for any and all damages to property or persons arising from any WRBLLC negligent or intentional error, omission or act and for any losses or costs to repair or remedy any work undertaken by the MGNWC based on the Services as a result of any such error, omission or act. Notwithstanding any other provision of this Agreement, WRBLLC'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 the MGNWC or WRBLLC, to indemnify, hold harmless or reimburse WRBLLC for damages, losses or costs.

- (4) Consultant Payments; Waivers of Liens. WRBLLC must pay promptly for all services, labor, materials and equipment used or employed by WRBLLC in the performance of any Services and must not cause any materials, equipment, structures, buildings, premises and property of the MGNWC to be impressed with any mechanic's lien or other liens. WRBLLC, if requested, must provide the MGNWC with reasonable evidence that all services, labor, materials and equipment have been paid in full and with waivers of lien as appropriate.

(5) Safety; Hazardous Materials.

- i. Protection of Health, Environment. WRBLLC'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 WRBLLC observes a potentially hazardous condition relating to the Services, WRBLLC must immediately bring that condition to the attention of the MGNWC Board, the MGNWC Representative and the MGNWC Working Group.
- iii. Hazardous Materials. WRBLLC 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 WRBLLC under those circumstances must take appropriate precautions to protect its employees, sub-consultants and suppliers, and shall advise in writing the MGNWC Board, the MGNWC Representative and the MGNWC Working Group of the presence or suspected presence and location of such Hazardous Materials.

B. MGNWC Responsibilities. The MGNWC, at its collective cost, agrees as follows:

- (1) To designate in writing a person with authority to act on behalf of the MGNWC with respect to the Services. The MGNWC Representative will have the authority to act on behalf of the MGNWC, except on matters that require approval of the respective corporate authorities of the MGNWC or the input of the MGNWC Working Group.
- (2) To provide to WRBLLC all criteria and information about the requirements for the Services, including, as relevant, the MGNWC's objectives and constraints, schedule, space, capacity and performance requirements, and budgetary limitations.
- (3) To provide to WRBLLC existing studies, reports and other available data relevant to the Services.
- (4) To arrange for access to, and make provisions for WRBLLC (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 Evanston, Niles, Morton Grove and Skokie for the Services.
- (6) To review reports, documents, data and all other information presented by WRBLLC as appropriate in a timely manner and to provide timely responses.
- (7) To give prompt written notice to WRBLLC whenever the MGNWC or one of the MGNWC Affiliates observes or otherwise becomes aware of any development that

affects the scope or timing of Services, except that the inability or failure of the MGNWC or one of the MGNWC Affiliates to give any such a notice will not relieve WRBLLC of any of its responsibilities under this Agreement.

SECTION 8. INDEMNIFICATION

A. Indemnification by WRBLLC. WRBLLC agrees as follows:

- (1) MGNWC. To the fullest extent permitted by law, WRBLLC shall defend, hold harmless and indemnify the MGNWC and the MGNWC 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 WRBLLC and/or its employees and its sub-consultants and sub-contractors, or others performing or furnishing any Services directly or indirectly on WRBLLC'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 MGNWC and the MGNWC Affiliates shall have the right to defense counsel of their choice and WRBLLC 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 WRBLLC's responsibility to indemnify as herein provided. The terms of this indemnity shall survive the suspension, expiration or termination of this Agreement.
- (2) Morton Grove. To the fullest extent permitted by law, WRBLLC 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 WRBLLC and/or its employees and its sub-consultants and sub-contractors, or others performing or furnishing any Services directly or indirectly on WRBLLC'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 WRBLLC 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 WRBLLC's responsibility to indemnify as herein provided. The terms of this indemnity shall survive the suspension, expiration or termination of this Agreement.
- (3) Niles. To the fullest extent permitted by law, WRBLLC 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 WRBLLC and/or

its employees and its sub-consultants and sub-contractors, or others performing or furnishing any Services directly or indirectly on WRBLLC'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 WRBLLC 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 WRBLLC's responsibility to indemnify as herein provided. The terms of this indemnity shall survive the suspension, expiration or termination of this Agreement.

B. Personal Liability. No person covered by the defined terms of the MGNWC, the MGNWC Affiliates, the Village of Morton Grove, the Morton Grove Affiliates, the Village of Niles and the Niles Affiliates shall be personally liable, in law or in contract, to WRBLLC as the result of the execution of this Agreement. No employee of WRBLLC, sub-consultants, and sub-contractors shall be personally liable, in law or in contract, to the MGNWC as the result of the execution of this Agreement.

SECTION 9. INSURANCE.

Unless waived or modified in writing by the Village Manager of Niles and the Village Administrator of Morton Grove, WRBLLC shall procure and maintain the following insurance coverages during the Term of this Agreement, or any extended term,:

A. Worker's Compensation. Worker's Compensation coverage as required by the Workers' Compensation Act of the State of Illinois.

B. Comprehensive Motor Vehicle Liability. Comprehensive Motor Vehicle Liability coverage with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented. All WRBLLC employees shall be included as insureds.

C. Comprehensive General Liability. Comprehensive General Liability insurance with coverage written on an "occurrence" basis and with limits no less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit Coverage. Coverages shall include a Broad Form Property Damage Endorsement and Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract).

D. Professional Liability Insurance. Professional Liability coverage with a limit of liability of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate and covering WRBLLC against all sums that WRBLLC may be obligated to pay on account of any liability arising out of the Agreement. The policy shall be written on an "occurrence" basis, unless the policy that covers these Services is already in existence. If the existing policy is written on a claims-made form, the retroactive date must be equal to or preceding the Effective Date of this Agreement to cover the actual commencement date of any work and services that WRBLLC or any sub-consultant has performed in regard to this Project. If the policy is cancelled, non-renewed, or switched to an occurrence form, then WRBLLC must purchase supplemental extending reporting period coverage for a period of not less than five (5) years after the Completion Date.

E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying

insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

F. Village of Morton Grove, Village of Niles and the Morton Grove – Niles Water Commission as Additional Insureds. Village of Morton Grove, Village of Niles and the Morton Grove – Niles Water Commission shall be named as an Additional Insureds on all policies except for: Worker's Compensation and Professional Liability. Additional Insured endorsement shall identify the Additional Insureds as follows: Village of Morton Grove, including its former, current and future appointed and elected officials, officers, village president and trustees, employees, agents, engineers, attorneys and representatives ("Morton Grove Affiliates") and Village of Niles, including its former, current and future appointed and elected officials, officers, village president and trustees, employees, agents, engineers, attorneys and representatives ("Niles Affiliates") and the Morton Grove – Niles Water Commission, including its municipal members, its commissioners, appointed officials, its officers, employees, agents, engineers, attorneys, and representatives ("MGNWC Commission Affiliates").

G. Primary Coverage. The insurance coverage must be primary with respect to the Village of Morton Grove and the Morton Grove Affiliates, the Village of Niles and the Niles Affiliates and the MGNWC and the MGNWC Affiliates. Any insurance or self-insurance maintained by the Village of Morton Grove, the Village of Niles and the MGNWC will be excess of WRBLLC's insurance and will not contribute with it.

H. Reporting Failures. Any failure to comply with reporting provisions of any policy must not affect coverage provided to the Village of Morton Grove and the Morton Grove Affiliates, the Village of Niles and the Niles Affiliates and the MGNWC and the MGNWC Affiliates.

I. Severability of Interests/Cross Liability. The insurance must contain a Severability of Interests/Cross Liability clause or language stating that the insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's ability.

J. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and licensed to do business in the State of Illinois.

K. Verification of Coverage. WRBLLC must furnish the MGNWC with certificates of insurance naming the Village of Morton Grove and the Morton Grove Affiliates, the Village of Niles and the Niles Affiliates and the MGNWC and the MGNWC Affiliates as additional insureds and with original endorsements affecting coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the MGNWC and in any event must be received and approved by the MGNWC Representative and the MGNWC Attorney before any work commences. Other additional-insured endorsements may be utilized, if they provide a scope of coverage at least as broad as the coverage stated on the ISO Additional Insured Endorsements CG 2010 or CG 2026. The MGNWC reserves the right to request a full certified copy of each insurance policy and endorsement.

L. Sub-Consultants and Suppliers. WRBLLC must include all sub-consultants/sub-contractors as insureds under its policies or must furnish separate certificates and endorsements for each sub-consultant/sub-contractor. All coverage for sub-consultant/sub-contractors are subject to all of the requirements stated in this Agreement, except that any non-engineer sub-consultants/sub-contractors shall not be obligated to provide professional liability insurance coverage that is required of the engineers.

Upon execution of this Agreement, WRBLLC shall furnish to Village of Morton Grove, Village of Niles and the MGNWC satisfactory proof of coverage of the above insurance requirements. Such proof shall consist of certificates executed by the respective insurance companies together with executed copies of an "Additional Insured Endorsement" in a form acceptable to the MGNWC Board. Said certificates shall expressly provide that, for the duration of this Agreement, the insurance policy shall not be suspended, cancelled or reduced in coverage or amount, except after thirty (30) calendar days' prior notice by certified mail, return receipt requested, has been addressed and provided to the MGNWC Chair, the Village Administrator of Morton Grove and the Village Manager of Niles at their business addresses listed in Section 13 of this Agreement.

SECTION_10. CONFIDENTIAL INFORMATION; OWNERSHIP OF DOCUMENTS.

A. No Disclosure of Confidential Information. WRBLLC acknowledges that it shall, in performing the Services for the MGNWC under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information, as defined below. WRBLLC shall hold confidential all Confidential Information of the MGNWC and Morton Grove and Niles and shall not disclose or use such Confidential Information without the express prior written consent of the MGNWC, Morton Grove or Niles, depending on whose Confidential Information is at issue. WRBLLC shall use reasonable measures at least as strict as those WRBLLC uses to protect its own confidential information. Such measures shall include, without limitation, requiring its employees and sub-consultants and sub-contractors of WRBLLC to execute a non-disclosure agreement (in a format approved by the MGNWC) before obtaining access to Confidential Information.

(1) Confidential Information. All confidential information and data disclosed by the MGNWC and developed or obtained from the MGNWC under this Agreement must be treated by WRBLLC as proprietary and confidential information ("Confidential Information"). Based on whose Confidential Information is at issue, WRBLLC must not disclose Confidential Information without the MGNWC'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 WRBLLC independently from this Agreement, (iii) received by WRBLLC 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 the MGNWC or Morton Grove or Niles and the MGNWC or Morton Grove or Niles has had a reasonable opportunity to protect disclosure of the Confidential Information. WRBLLC must ensure that the foregoing obligations of confidentiality and use extend to and bind WRBLLC'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 the MGNWC to WRBLLC or generated, created, found or otherwise completed by WRBLLC, and its employees, sub-consultants and sub-contractors, in the performance of WRBLLC's Services under the terms of this Agreement shall at all times remain the proprietary information of and under the ownership of the MGNWC and shall be provided to the MGNWC by WRBLLC upon request of the MGNWC, or at the termination of this Agreement. All Data, regardless of its format, developed or obtained under this Agreement, other than WRBLLC's confidential information, will be and remain the sole property of the MGNWC, unless the MGNWC agree that certain portions of the Data is the sole property of either Morton Grove or Niles. WRBLLC must promptly deliver all Data to the MGNWC at the MGNWC's

request. WRBLLC is responsible for the care and protection of the Data until that delivery. WRBLLC may retain one or more copies of the Data. Notwithstanding the foregoing, upon request of the MGNWC at any time, or at the termination of this Agreement, WRBLLC shall promptly return to the MGNWC all documents provided to WRBLLC by the MGNWC during the Term of this Agreement.

C. Intellectual Property. WRBLLC 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 WRBLLC is alleged to have infringed on any Intellectual Property, then, in addition to WRBLLC's obligations to indemnify the MGNWC under this Agreement, WRBLLC also, at the sole discretion of the MGNWC and at WRBLLC's sole expense (a) procure for the MGNWC 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 the MGNWC for all payments made to WRBLLC relating to or impacted by the infringing material and all costs incurred by the MGNWC resulting from such infringement.

D. Copyrights and Patents. WRBLLC agrees not to assert, or to allow persons performing under WRBLLC'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 the MGNWC and is considered "work for hire," and that all copyrightable and other proprietary rights in that Data will vest solely in the MGNWC. Further, WRBLLC agrees that all rights under copyright and patent laws under this Agreement belong to the MGNWC. WRBLLC assigns any and all rights, title, and interests under copyright, trademark, and patent law to the MGNWC and agrees to assist the MGNWC in perfecting the same at the MGNWC's expense.

E. Advertisements; Media / News Releases; Use of Letterhead or Logo. WRBLLC, 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 MGNWC Representative. WRBLLC shall not use the letterhead or logo or any servicemark or trademark of the MGNWC without the prior written consent of the MGNWC Representative. WRBLLC 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. WRBLLC, 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 WRBLLC, 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 WRBLLC shall indemnify and hold the MGNWC harmless, and pay all amounts determined to be due from the MGNWC for such non-compliance by WRBLLC, including, but not limited to fines, costs, attorneys' fees and penalties.

B. Patriot Act Compliance. WRBLLC 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. WRBLLC further represents and warrants to the Villages that WRBLLC 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. WRBLLC 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.

C. Certification Of Other Laws and Regulations. 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 the MGNWC to any FOIA request, WRBLLC agrees to provide all requested public records within five (5) business days of a request being made by MGNWC. WRBLLC agrees to defend, indemnify and hold harmless MGNWC and the MGNWC Affiliates, Morton Grove and the Morton Grove Affiliates and Niles and the 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 the MGNWC, Morton Grove and/or Niles to defend any and all causes, actions, causes of action, disputes, prosecutions or conflicts arising from WRBLLC's actual or alleged violation of the FOIA or WRBLLC's failure to furnish all public records as requested by the MGNWC. Furthermore, should WRBLLC request that the MGNWC utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, WRBLLC 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. WRBLLC agrees to defend, indemnify and hold harmless MGNWC and the MGNWC Affiliates, Morton Grove and Morton Grove Affiliates and Niles and Niles Affiliates, and agrees to pay all costs incurred by the MGNWC, 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 WRBLLC's request to utilize a lawful exemption.

C. Consultant Representations.

- (1) No Collusion. WRBLLC represents and certifies that WRBLLC 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 WRBLLC 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.* WRBLLC represents that the only persons, firms or corporations interested in this Agreement as principals are those disclosed to the MGNWC 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 WRBLLC has, in procuring this Agreement, colluded with any other person, firm or corporation, then WRBLLC 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 the MGNWC's option, be null and void.
- (2) Conflict of Interest.
 - (a) WRBLLC represents and certifies that, to the best of its knowledge: (1) no MGNWC, Morton Grove or Niles employee or agent is interested in the business of WRBLLC or this Agreement; (2) as of the date of this Agreement, neither WRBLLC nor any person employed or associated with WRBLLC has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither WRBLLC nor any person employed by or associated with WRBLLC 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) WRBLLC 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. WRBLLC agrees to provide the MGNWC with written notification whenever the Services provided under this Agreement shall require WRBLLC to review a project, business or work performed by any other firm or corporation for whom WRBLLC is or has within the previous twelve (12) months provided professional services, or with any of WRBLLC'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. WRBLLC also must comply with applicable conditions of any federal, state, or local grant received by the MGNWC with respect to this Agreement. WRBLLC 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 WRBLLC's improper performance of, or failure to properly perform, any Services.

SECTION 12. DEFAULT AND TERMINATION OF SERVICES.

A. At-Will Relationship. This Agreement establishes an "at-will" relationship and may be terminated by the MGNWC at any time at MGNWC's convenience, without reason or cause. If the MGNWC terminates this Agreement without reason or cause, then the MGNWC will be liable to WRBLLC only for payment of all actual, completed, documented Services through the date of termination. WRBLLC shall not be entitled to Compensation of any kind, including without limitation for lost profit, for any Services not performed by WRBLLC.

B. Termination by MGNWC for Breach. MGNWC at any time, by written notice, may terminate this Agreement because of breach by WRBLLC and failure of WRBLLC to cure the breach within ten (10) calendar days after that written notice or such further time as the MGNWC may agree, in the MGNWC's sole discretion, in response to a written notice from WRBLLC seeking additional time to cure. "Breach" by WRBLLC includes (a) failure of WRBLLC to adhere to any terms or conditions of this Agreement, (b) failure of WRBLLC to properly perform Services, (c) failure of WRBLLC 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 WRBLLC to have or maintain adequate financial or legal capacity to properly complete any Services.

C. MGNWC Remedies. If the MGNWC terminates this Agreement for Breach by WRBLLC, then the MGNWC 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) MGNWC may recover from WRBLLC any and all costs, including without limitation reasonable attorneys' fees, incurred by the MGNWC as the result of any Breach or as a result of actions taken by MGNWC in response to any Breach.
- (2) MGNWC 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 the MGNWC as the result of any Breach or as a result of actions taken by the MGNWC in response to any Breach. In that event, the MGNWC will pay any excess funds to WRBLLC, if any, after all of the MGNWC's costs are reimbursed or paid. If the Compensation withheld by the MGNWC is insufficient to reimburse the MGNWC for, or pay, all costs, then the MGNWC will have the right to recover directly from WRBLLC a sum of money sufficient to reimburse itself, or pay, all remaining costs.

D. Termination for Convenience. If, after termination of this Agreement by the MGNWC for breach, it is determined that WRBLLC 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 the MGNWC under this Section 12.

E. Termination by WRBLLC for Breach. WRBLLC at any time, by written notice, terminate this Agreement on account of a failure by the MGNWC to adhere to any terms or conditions of this Agreement and a failure of the MGNWC to cure the breach within fourteen (14) calendar days after that written notice or such further time as WRBLLC may agree, in WRBLLC's sole discretion, in response to a written notice from the MGNWC seeking additional time to cure.

F. Termination by WRBLLC without Cause. WRBLLC 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 by the MGNWC Board and executed by the MGNWC Chair and WRBLLC.

B. Assignment. WRBLLC shall not assign this Agreement or any portion thereof. The merger, consolidation or liquidation of WRBLLC or any change in the ownership of or power to vote equal to twenty percent (20%) or more of WRBLLC'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 WRBLLC's capital stock or who are employees of WRBLLC, shall not constitute an assignment. As part of the written notice of assignment sent to WRBLLC, an addendum to this Agreement that memorializes the assignment shall be prepared and sent to WRBLLC for execution.

C. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the MGNWC and WRBLLC, 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 the MGNWC with copies to the MGNWC Working Group shall be addressed to, and delivered at, the following addresses:

Steven Vinezeano, Chair
MGNWC
1000 Civic Center Dr.
Niles, Illinois 60714
Office Phone: 847-588-8002
Email: scv@niles.com

With a copy to:
Teresa Hoffman Liston, MGNWC
6101 Capulina Avenue,
Morton Grove, Illinois 60053
Direct: 847-663-3001
Mobile 847-917-5416
Email: tliston@mortongroveil.org

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

William Balling
412 South Prindle Avenue
Arlington Heights, Illinois 60004
Phone: (847) 863-7101
Office Phone: (847) 398-8399
Email: bill@ WRBLLC.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 MGNWC and the MGNWC Affiliates, 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 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) MGNWC Water Commission. The MGNWC warrants and represents to WRBLLC that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.
- (2) WRBLLC. WRBLLC warrants and represents to the MGNWC 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.

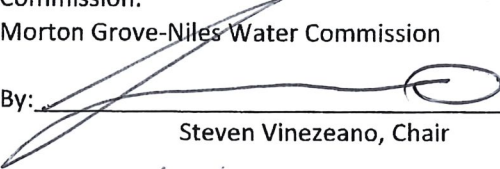
P. Effective Date. This Agreement shall become effective on the date the last signatory signs this Agreement.

SIGNATURE PAGE TO FOLLOW

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.

WRBLLC
By: 
Name: William Balling,
President, Managing Member
Date: November 30, 2017


IN WITNESS WHEREOF, the below authorized officials of the Morton Grove-Niles Water Commission 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 Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, et seq.) ("Division 135") and the corporate approval granted by passage of a Resolution by the Corporate Authorities of the Morton Grove-Niles Water Commission.

Morton Grove-Niles Water Commission
By: 
Steven Vinezeano, Chair

Date: 12/12/17, 2017.

Attest:
By: 
John Pietron, Clerk

Date: 12/12, 2017

Approved as to form and legality:
By: 
Teresa Hoffman Liston, MGNWC General Counsel

Attachment "1"
SCOPE OF SERVICES dated November 30, 2017

WRBLLC shall perform all Services necessary to fulfill the responsibilities of Superintendent of the MGNWC, which includes the role of "Project Manager" for the design and construction of the MGNWC water system, and all services assigned to him from time to time by the MGNWC Board of Commissioners, the Village Manager of Niles and the Village Administrator of Morton Grove, including but not limited to the following:

GOVERNMENTAL APPROVALS

Village of Skokie

1. Intermediate Booster Station entitlement including pre-application, full application, site review, public hearing and Village Ordinance
2. ROW Permit including MGNWC determination on what will be offered (comprehensive voluntary offer) to Skokie other than permit fee
3. Building Permit and Plan submittal, Project review and permit issuance
4. Establish for MGNWC appropriate levels of inspection protocols and commitment to monitor construction adequately.

MWRD

1. Secure an easement to construct the IBS including the identification of MWRD review and inspection protocols of construction
2. MWRD agreement to sign the Special Use application (Skokie site)
3. MWRD to fully approve project construction

City of Evanston (alternate)

1. Secure alternate site location easement as soon as possible
2. Apply and secure Special Use entitlement from Evanston for IBS
3. Apply and issuance of IBS

Village of Morton Grove

1. Continued advance funding for project
2. Apply and secure Special Use entitlement for reservoir and PS
3. Building permit for construction
4. Labor and materials to disconnect local utilities
5. ROW permits for water main construction

Village of Niles

1. Continued advance funding for project
2. ROW permits for water main construction

IDOT

1. ROW permits

Cook County

1. ROW Permits
2. 7900 demolition permit

METRA

1. Permit and license to cross rail ROW

USACE

1. Secure required permits to construct system

IEPA

1. Secure commitment for funding through revolving loan program
2. Approve design of system and issue Permit
3. 7900 Abatement remediation certifications

MGNWC ADMINISTRATION

1. Structure and present the FY 2018 operating and capital budget
2. Manage payment cycle
3. Place insurance beyond Dec 1, 2017 and secure 2018 insurance
4. Special Counsel engagement
5. Project coordinator and Superintendent engagement
6. Manage Agenda cycle
7. Assure Evanston supply contract compliance
8. Secure one or more emergency water supply partners, NWC, AQUA, Chicago, Skokie
9. Develop and maintain key contacts directory
10. Website launch
11. Refine plan and shop potential operating contractors for the system
12. Cook County Commissioner recommendation
13. Determine what if any action is needed from IDNR to switch water supplier (water allocation)

PROJECT FINANCING**IEPA 20-Year Revolving Loan Program**

1. Close out any remaining checklist items for IEPA as requested
2. Secure all easements, Morton Grove, Niles, MWRD, Evanston (Alternate option)
3. Transfer Evanston supply Agreement to MGNWC
4. Update plan of finance and select optimal blend of financing and timing

Alternate Revenue Bond Financing 30+ Year Term

1. Publish BINA hearing
2. Conduct BINA hearing November 30
3. Follow Speer timetable
4. Solicit proposals and select underwriter(s) for sale
5. Develop and deploy accounting and treasury management function for capital project
6. Reconfirm rate impact model
7. Develop and approve master Water Supply Agreement between MGNWC and its customers
8. Bond rating presentation and materials
9. Bond sale

ENGINEERING FOR PROJECT

1. Secure all final design approvals
2. Secure and complete 7900 technical advisory services for site remediation
3. Complete all design review exercises, HNTB, IEPA, Stanley Team, and as required for permit

4. Solicit and secure Construction Engineering services
5. Establish optimal sequencing of construction elements for completion timeline and funding

7900 SITE REMEDIATION

1. Clear utilities from site
2. Secure all permits
3. Technical advisor to observe all work to assure compliance
4. Clear asbestos from building
5. Demolish building
6. Provide site access for geo-technical borings
7. Removal of UST
8. Secure site clean up certifications

PROJECT BIDDING

1. Finalize bid specifications, packaging, distribution, length of bid hold, front end language terms
2. Meet all statutory requirements to authorize bidding notice and advertise and other required actions
3. Conduct pre-submittal meeting
4. Issue addenda as required
5. Open bids between December 12-20, 2017
6. Bid analysis and recommendation

CONSTRUCTION

1. Confirm construction sequencing and preparations
2. Receive all permits and approvals
3. Secure appropriate insurance and bonding
4. Contract development and execution