

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Dir. of Redevelopment **DATE:** November 5, 2002
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND ALFRED BENESCH & COMPANY", as presented.

SUMMARY OF ITEM:

Adoption of the attached resolution will authorize an agreement between the Village of Downers Grove and Alfre Benesch & Company to provide professional owner's representative services during construction of the multi-story CBD public parking structure.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND ALFRED BENESCH & COMPANY**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Alfred Benesch & Company (the "Consultant"), for professional owner's representative services during construction of the multi-story public parking structure, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

AGREEMENT

This Agreement is made this ___ day of _____, 2002 by and between Alfred Benesch & Company, ("Consultant" or "OR") and the Village of Downers Grove, Illinois, an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, ("Village").

WHEREAS, the Village wishes to retain the services of the Consultant for professional owner's representative services during construction; and

WHEREAS, the Consultant is willing to perform these services for the compensation and in accordance with the terms and conditions described in this Agreement,

NOW, THEREFORE, in consideration of the mutual benefits that will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1.Statement of Services

The Consultant shall act as the primary agent of the Village, acting as Owner's Representative ("OR") with respect to the project, and shall ensure coordination of all activities, from the owner's standpoint, required to properly execute the scope of work contained herein and in the contract documents. The OR provides comprehensive coordination of project activities to ensure that the discharge of responsibilities by the appropriate parties is executed in a manner that serves and protects the Village's overall and best interest. Acting as an extension of the Village's staff, the OR monitors and coordinates efforts of the Village on behalf of the Village, of the Architectural Engineer ("AE"), the Geo-technical Engineer ("GE"), and of the General Contractor ("GC") in order to enable the Village to achieve maximum value for the funds expended. The OR monitors the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work. The OR may also be required to assist the Village in selecting, retaining and coordinating the professional services of other special consultants and/or testing laboratories required for the project. However, the OR shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work, since these are the GC's sole responsibility under the contract for construction. The OR shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

The Consultant will also provide the following services:

A. General Scope

1. The OR will act as the primary agent and representative of the Village in order to help ensure that the project is completed according to the contract documents within the currently approved project budget and schedule.

2. The OR will be responsible for assisting the Village with advising on and assisting with coordination of three primary phases including: 1) Pre-construction; 2) Construction; 3) Post Construction/Project Closeout.
3. The OR shall establish and implement procedures for, and maintain coordination or activities and communication on behalf of the Village and between the Village, AE, and GC.

B. Administration

1. The OR shall assist with reviewing, developing, and/or refining required procedures and supporting documentation to ensure the timely and accurate flow of information between the GC and the Village, such as forms, check lists, internal/administrative procedures, internal/administrative schedules, status logs, report logs and other similar supporting documentation, in support of various administrative aspects of the project including but not limited to:
 - a) GC pay requests and financial tracking;
 - b) Required submittals including samples, product data/literature, shop drawings and status logs;
 - i. GC Requests for Information (RFIs) to include requests for interpretation of drawings or specifications and related status logs;
 - ii. GC Requests for Change Orders (RFCOs) and approved RFCOs and related status logs;
 - iii. Claims log;
 - iv. Field testing and status logs;
 - v. Others as required by the contract documents (“CDs”) or as desirable.
2. The Village expects to enter into an agreement for construction services with a single/prime overall best qualified GC. The Village shall use a pre-qualification process as part of GC selection. The OR shall advise and assist with coordination of a contract/bid documents project manual, where appropriate or as practical, to help ensure that that the procurement process results in selection of the overall best qualified general contractor to perform the work. The Village will be responsible for distribution of bid documents to prospective bidders. The OR shall assist the Village in identifying the best overall qualified GC to perform the work.
3. The OR shall assist with evaluating prospective GCs, bids, and recommending courses of action to the Village on selecting the overall best qualified GC.
4. The OR shall be present at a pre-bid meeting and at the bid opening, and shall assist with analyzing the bids and evaluate any recommendations from the AE to the Village on the selection of a responsive, overall best qualified bidder.

C. General Contractor and Subcontractor Licensing

The OR shall ensure that the GC and all the GC’s subcontractors are all properly licensed to work in the Village. The OR shall not knowingly allow any work to commence or accept any work installed by a non-licensed contractor.

D. Building Permits

The Village shall handle the issuance of the required permits on its own behalf. The OR shall ensure that the GC provides all required information to the Village in order for all relevant building permits to be properly executed by the Village.

E. GC Construction Management Plan

The OR shall be responsible for ensuring that the GC prepares and submits a construction management plan (CMP) that identifies certain key aspects of the project in adequate detail and comprehensiveness to include at a minimum:

1. Construction Schedule
 - a. The OR shall ensure that the construction schedule is submitted to the OR for review. The OR shall review the GC's proposed construction schedule for conformance with the contract requirements and forward to the Village with recommendations. The OR shall ensure that that commencement of construction operations does not occur prior to the GC having a Village approved schedule.
 - b. The OR shall ensure that the GC's proposed schedule is adequately comprehensive and detailed enough for:
 - (i). The Village to be able to reliably ascertain, at all times during the course of construction, the completion status of the project overall as well as the status of major work phases or work packages;
 - (ii). The GC to be able to plan for and around certain and numerous downtown cultural/entertainment events;
 - (iii). The GC to plan for and the Village to be apprised of the status of long lead time items as well as expected delivery or movements of major materials and/or equipment through, in, and around the site and the Village's downtown.
 - c. The OR shall ensure that the GC is advised of the need to maintain and make available a current construction schedule that is updated on at least a weekly basis, or with more frequency depending on the criticality of current project operations, and that the schedule is presented and discussed at weekly project progress meetings. Should the GC's schedule become more than 30 days out of date, the OR shall have the authority to stop construction operations with prior written approval of the Village.
 - d. The OR shall ensure that GC claims for additional time are provided in writing to include specific reasons for the claimed delay as defined in the CDs, an estimate of cost impacts on the project, and an assessment of impacts on progress schedule of the project.
2. Overweight permits from the police department, haulage/delivery routes per State, County, and Village requirements with coordination copies to all subcontractors, vendors, haulers or suppliers of labor, materials or equipment to the project;
3. Storage, staging, and site management plan throughout the course of construction including expected numbers of workers and needed parking;
4. Traffic management plan per IDOT and Downers Grove Police Department requirements including all expected full and partial lane closure or similar traffic flow modifications;
5. Proposed site security.

F. Pre-Construction and Notice to Proceed

1. The OR shall assist with identifying and coordinating a checklist of items required to be completed, by either the Village, AE, other Village consultants, the OR, and the GC prior to commencement of any construction operations.
2. This meeting will be scheduled by the Village within 30 calendar days of award of the construction contract but shall be administered by the OR; however, the meeting shall not be scheduled prior to the GC providing and having approved certain items as follows:
 - A. Required insurance, performance, payment or other required forms of insurance or bonding;

- B. Sub-contractor list with all subcontractors having been approved and licensed to work in the Village;
 - C. Testing lab(s);
 - D. Schedule of Values;
 - E. Initial Construction Management Plan;
 - F. Other
3. An agenda shall be prepared by the OR including but not limited to the following:
- A. A review of construction procedures in the Village including but not limited to:
 - i. Lines of communication/appropriate methods of communication to the Village
 - ii. Points of contact and 24 Hour/Emergency Points of contact
 - iii. Hours of work
 - iv. Village authority to stop work for cause
 - v. Maintenance of current construction schedule
 - vi. Approved haulage routes/overweight permits and a traffic management plan
 - vii. Maintenance of the site and surrounding area
 - viii. Protection of the public and public property
 - ix. Parking
 - x. Site security
 - xi. Required inspections by the Village prior to commencement and/or final acceptance
 - xii. Requests for inspections by the Village
 - xiii. Pre-Final (Punch List) and Final/Final Acceptance inspections
 - B. A review of the project manual including:
Required administrative and operations procedures and supporting documentation for the submission of:
 - i. GC pay requests;
 - ii. Contract/GC required submittals including samples, product data/literature, and shop drawings;
 - iii. GC Requests for Information (RFIs) to include requests for interpretation of drawings or specifications;
 - iv. GC Requests for Change Orders (RFCOs) and approved RFCOs;
 - v. GC requests for schedule modifications;
 - vi. Submittals/Shop Drawings;
 - vii. Field tests;
 - viii. Requests for inspections by the Village;
 - ix. Others as required.
 - C. On-site observation, representation, and authority of the OR during construction including field tests, critical installations, and authority to stop the GC's work which is not in accordance with the requirements of the CDs
 - D. Construction schedule and maintenance of current schedule by the GC
 - E. Weekly project status meetings
4. At the successful conclusion of the pre-construction meeting, the OR will issue, on behalf of the Village, a Notice-to-Proceed (NTP). The NTP shall be in writing and designate the date certain of the start of the construction contract and the date certain completion of the construction contract per the CDs. The completion date for the project shall include completion of all remaining outstanding items (punch-list) after agreed upon substantial completion.

G. Contract Document Issuance, Maintenance, and Turn Over

1. The OR shall issue documents stamped and dated by the AE "Issued for Construction" to the GC. The GC shall not commence work without these documents.
2. OR will maintain at the site for the Village one record copy of all contracts, drawings, specifications, modifications/addenda, RFIs and subsequent responses, RFCOs and subsequent approved or rejected RFCOs, observations and other logs, and any other material that has become a part of the CDs, in good order and marked currently to record all changes and selections made during the construction, and in addition approved shop drawings, product data, samples and similar required submittals and approved closeout documents including final quantities, payments, and as-built CDs. These will be available to the Village and AE throughout the course of the project and to the GC subject and subsequent to a written request for specific information.
3. OR will maintain a working, currently marked-up set of construction drawings and the project manual on site, available for use by the Village, at all times.
4. OR shall establish, on the OR's information technology equipment, personal computers, network, or word processing equipment, an appropriate series of directories to digitally store executed and received documents that shall be turned over to the Village as part of the OR's document turnover at the conclusion of the project.
5. The complete and finalized CDs, including a set of compact disks to include all contract documents and subsequent deliverables, shall be turned over to the Village in good and current order upon completion of the project prior to the final payment of the OR.

H. General Construction Phase

The OR shall act as the Village's designated representative as provided for in the CDs. The OR shall have authority to act on behalf of Village to the extent provided in this document, the resulting agreement for professional owner's representative services, and in the CDs.

I. On-Site Representation and Coordination

1. The OR is required to be on site to conduct site observations when contractors are present on the site and installing their respective trade work. From substantial completion through final acceptance, the required on-site presence of the OR may be reduced based on a schedule approved by the Village and based on the estimated amount of work left for each trade to be installed and observed. Arrangements for on-site facilities for the OR and Village shall be coordinated by the Village.
2. The OR shall advise the Village of specific work critical to the success of the project. With prior approval by the Village, the OR may provide more representatives on-site for temporary periods that may not have been previously identified, to facilitate the progress of the project and report on special conditions and/or critical installations that, in the opinion of the OR, warrant additional on site observation. The request for additional personnel for on site observation shall include justification of the need for additional on site representation, the GC staff responsible for observing the work, and an estimate of the frequency and duration of the proposed observation with the resulting cost.
3. The OR shall coordinate on a daily basis with the Village Project Liaison ("VPL") and as needed but at least weekly with the Village Project Engineer ("VPE") and Village Project Manager ("VPM") in a weekly project status meeting. Upon proper requests from the GC, the OR shall assist with coordinating Village-required inspections by the Village Staff during the course of the work.

J. Construction Schedule – Construction Phase

1. The OR shall monitor actual construction progress as compared to the currently approved construction schedule and advise the Village of key milestones, deadlines, and lapses or accelerations in the work. The OR shall advise the Village as to the status of the actual construction work as compared to the currently approved schedule and recommend appropriate courses of action to the Village.
2. The OR shall ensure that the GC is advised of the requirement to maintain and make available a current construction schedule that is updated on at least a weekly basis, or with more frequency depending on the criticality of current project operations, and that the schedule is presented and discussed at weekly project progress meetings.
3. Should the GC's schedule become more than 30 days out of date, the OR shall have the authority to stop construction operations with prior written approval of the Village.

K. Observation of the Work

1. The OR shall endeavor to facilitate performance that meets the CDs. The OR shall determine if the work of the GC is being performed in accordance with the requirements of the CDs, and shall act to guard the Village against defects and deficiencies in the work. As appropriate, the OR shall have authority, upon written authorization from the Village, to require additional inspection or testing of the work whether or not such work is fabricated, installed or completed. The OR, in consultation with the AE and/or GE and the Village, may reject work that does not conform to the requirements of the CDs.
2. The OR shall observe the construction operations and report, on a regular basis, on the progress and quality of the work being performed to determine that the work is proceeding in accordance with the approved construction schedule, and that the operations, materials, finishes and workmanship are all in accordance with the CDs. The OR shall immediately notify the Village if, in the OR's opinion, the conditions of the CDs are not being met.
3. The OR shall recommend courses of action to the Village when the GC is not meeting requirements of the CDs. This shall include recommendations for the Village to halt all or portions of construction and related operations if after reasonable and documented attempts fail to rectify and/or remedy failures of the GC in meeting the CD requirements. The OR shall transmit and coordinate all notices in writing to the GC that the CDs are not being met along with expected courses of action to remedy deviations from the CDs within certain time constraints.
4. The OR shall witness, monitor, and review all testing required by the CDs of the GC. The OR shall witness field tests, review and evaluate test reports and notify the Village of any deficiencies. A copy of all test results shall be provided to the VPL. Field tests may be specified to be conducted by the GC employing a testing firm to provide assistance and/or analysis, or conducted by the OR on behalf of the Village, employing a testing firm as a reimbursable expense to provide assistance and or analysis.
5. The OR shall provide interpretation of the contract documents when requested by the Village. The OR shall coordinate and distribute supplementary drawings, specifications and instructions as necessary, as developed by the AE or GE, to communicate the interpretation.

L. Observation Reports

1. The OR shall maintain a log of daily project activities and observation reports for each on-site representative and shall make these reports available for Village review at all times on site to constitute a chronicle of project activities.
2. The Village shall reserve the right to not provide reimbursement for on-site representative visits without an observation report or to withhold a portion or all of a GC progress payment if the OR fails to provide proper observation reports.

3. Each report shall include certain general and specific information regarding the project to adequately and accurately describe the activity, personnel involved, and an assessment regarding the adequacy of the activity with respect to contract requirements and recommendations on how to address remediation of activities not conforming to the contract documents.
4. The OR shall submit a proposed typical activity log/observation report format for Village review and comment prior to employing a particular format to include photo documentation that indicates the date, and preferably, the time a photo was taken.

M. Weekly Project Status Meetings

1. The OR shall conduct a weekly project status meeting on site to review project progress issues including but not limited to:
 - a. Current status of the project including the current and expected schedule as of the previous meeting;
 - b. Current status of outstanding items as of the previous meeting;
 - c. Identification of critical items, and points of responsibility, to be addressed prior to the next status meeting;
 - d. RFI log status;
 - e. RFCO log status;
 - f. Submittal/shop drawing log status.
2. The OR shall provide a summary of the weekly project status meeting in a suitable format for distribution to the Village and other meeting attendees as a record of the Village's understanding of the issues discussed and the agreed upon course of action. The previous week's agenda with commentary per the latest project status meeting can act as an acceptable summary with prior approval of the format and content by the Village.
3. The OR may decide, or project conditions may dictate, from time to time, that it may be in the best interest of the Village to hold additional or special meetings to address certain project issues. The OR shall advise the VPL of the need for such meetings who shall then coordinate with other appropriate Village staff. The OR shall provide a summary of such meetings consistent with that of the weekly project Status meeting.

N. Monthly Status Report

The OR shall prepare a not longer than one page monthly status brief containing a text summary of major construction activities. Photographs/photo sheets should be attached from the relevant previous observation reports where appropriate to illustrate key points. The Village should approve the content and format.

O. Contractor Submittals / Shop Drawings, Product Data, Samples.

1. The OR shall be the single point of contact to receive, log, and distribute all shop drawings, material samples and all other required submittals prior to transmittal of these documents to the appropriate party. The OR shall ensure that the GC properly submits all submittals or shop drawings including labels, certificates, and supporting documentations prior to accepting the submittal or shop drawing for review for compliance with the CDs. The OR shall only accept those submittals and shop drawings required in the CDs. The OR shall review and monitor all required submittals for timeliness and conformance with the contract documents and schedule.
2. In collaboration with the AE, the OR shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals. The OR shall coordinate submittals and transmit these to the appropriate, responsible parties to include the AE, GE, Village staff as designated by the Village, or others required to

properly expedite review and approval of the submittal. The OR's and Village's action shall be taken with such reasonable promptness as to cause no delay in the work or in the activities of the GC or project overall.

3. The OR shall ensure that changes to the contract requirements are not made, through the review of submittals, without prior written approval from the Village. The OR shall ensure the GC does not gain approval of material or other substitutions through the shop drawing review process. In this event, the OR shall return the submittal without review and advise the contractor that he may request and initiate an RFCO accordance with the CDs.
4. The OR shall ensure that no work requiring review and prior approval of submittals shall be commenced without the OR's coordination and appropriate review approval by the designated parties.

P. GC Payment Requests

1. The OR shall maintain complete records of payments by payment request, contract balances, and all proposed and approved changes thereto. The OR shall reconcile and maintain files of the GC's and subcontractor's/supplier's approved waiver of liens and the GC's sworn statements.
2. General contractor pay requests shall not, under any circumstances, be certified and/or forwarded to the Village for payment without full and proper documentation of and fully executed waivers of lien from the previous payment and appropriately adjusted schedule of values to reflect payment of the previous pay request. The Village shall reserve the right, if upon recommendation to the Village from the OR, to request, per the CDs, that the GC begin providing cancelled checks from the previous payment, as part of current and future GC pay requests.
3. The OR shall review and certify GC's applications for payment. The OR shall ensure that the GC properly verifies, documents, prepares, and submits the schedule of values for review and approval per the contract documents prior to forwarding the pay request to the Village for review and payment. The OR shall review the form to ensure each item of work required for the contract is indicated and all values are expressed properly per the CDs. The OR shall ensure the GC provides sub-contractor and relevant documentation to substantiate the values indicated.
4. Based on the OR's observations and evaluations of the GCs applications for payment, the OR shall review and certify the amounts due to the GC. The OR's certification for payment shall constitute a representation to the Village, based on the OR's determinations at the site and on the data comprising the GC's applications for payment, that, to the best of the OR's knowledge, information and the quality of the work is in accordance with the CDs. The foregoing representations are subject to an evaluation of the work for conformance with the CDs upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the CDs correctable prior to completion and to specific qualifications expressed by the OR. The issuance of a certified application for payment shall further constitute a representation that the GC is entitled to payment in the amount certified.
5. The CDs may require that certain percentages of the work be performed by the GC's own forces or that certain equal employment opportunity (EEO) contract provisions are met that ensure certain contract-designated minority entities perform specified percentages of the work. The OR shall consider these and other similar criteria as identified in the CDs during the review and recommendation for payment of the GC's pay requests during the execution of the work and advise the Village of actual or expected deviations from this requirement based on project progress to date and portions of funds expended/paid out to the GC.

6. The OR shall develop cash flow reports and forecasts for the project and advise the Village as to the variances between actual and budgeted or estimated costs.
7. The OR shall maintain an accounting record on authorized work performed under unit costs or per the schedule of values, additional work performed on the basis of actual costs of labor and materials, and other work requiring accounting records.

Q. Claims and Disputes

1. The OR shall assist the Village in the review, evaluation, and documentation of claims.
2. The OR shall record any observed occurrence or work that might result in a claim for a change in contract time or amount. The OR shall enter the claim or dispute into a claims log and provide a current copy of the log directly to the Village.
3. The OR shall observe, measure and verify costs incurred that are related to a bona fide dispute.
4. The OR shall review each claim or dispute, including documentation of any time, money or other expenditure made in connection with it. The OR shall provide a written response, interpretation and recommendation for resolution to the Village.
5. The Village shall make a final determination and recommendation, with the assistance of the OR, on all disputes. The OR shall forward the written response, interpretation and recommendation to the GC.
6. Claims, disputes or other matters in question between the Village and the GC may be subject to and decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association currently in effect or other legal means for both parties to seek legal means of resolution to claims and disputes.
7. The Village may request the OR be present during such arbitration or other such proceedings.

R. Requests for Information (RFI)

1. The GC may request information from time to time regarding the project. The OR shall help to ensure thorough and timely responses to RFIs in order to prevent GC claims resulting from untimely, incomplete, or no responses to RFIs. The OR shall ensure that all RFIs are in writing from the GC and that they clearly and specifically state the information being requested and its purpose.
2. Prior to forwarding the RFI to the Village the OR shall determine if supplemental drawings, specifications, or any other supporting documentation is needed to fully describe the information being requested. The OR shall advise the GC in writing that the RFI cannot be officially registered and addressed until all required and supporting information is provided. The OR shall coordinate with the GC in an effort to provide the requested information. If the OR cannot satisfactorily provide the requested information the OR shall forward the RFI directly to the Village.
3. The OR shall maintain an RFI log documenting, at a minimum, when a properly submitted RFI was received, its reference number and title, a brief description of the request, when it was transmitted to the responsible party and when it was transmitted back to the GC.

S. Requests for Change Orders (RFCO)

1. The OR shall ensure that all RFCOs, including any and all requested modifications to the contract documents, are in writing from the GC including supplemental drawings, specifications, supporting documentations and proposed/allowable costs to fully describe the change and why it is justified as a change to the current CDs prior to forwarding the RFCO to the Village.

2. The OR shall review RFCOs, assist in negotiating GC's proposals, submit recommendations to the Village, and, if they are accepted, prepare change orders that incorporate the approved modifications to the CDs.
3. Prior to forwarding the RFCO to the Village the OR shall include a cover memo evaluating the RFCO. The evaluation shall include a preliminary recommendation as to whether the RFCO is justified given the current CDs and if proposed work, quantities, prices and other data in the GC's proposal are found to be reasonable and in conformance with the CDs.
4. The OR shall maintain an RFCO log documenting, at a minimum, when a properly submitted RFCO was received, its reference number and title, a very brief description of the request, the requested amount, its current status, and an approved amount (positive or negative/increase or decrease) if applicable.
5. The OR may be requested from time to time to attend a Village Council meeting in support of Village staff to help explain any contract modifications necessary as a result of an RFCOs.

T. Contractors' Record Drawings

The GC shall be required to maintain updated and current CDs based on as-built and accepted conditions. The OR shall observe the GC's record CDs at intervals appropriate to the construction and notify Village of any apparent failure to maintain up to date records in accordance with the CDs.

U. General Post Construction/Project Closeout Phase

The OR shall coordinate and ensure the GC completes all required post construction and project closeout activities including pre-final and final inspections, completion of outstanding items/punch-lists, AE concurrence that the project was built per the contract drawings and specifications, performance testing, start-up, and training and/or manuals, product literature, warranties, site clean-up and turn-over of all as-built drawings and specifications in order to turn over to the Village a properly and completely finished and operating project.

V. Substantial Completion and Outstanding Items

1. Per the CDs, the GC shall advise the OR in writing that the GC believes the project is substantially complete per the CDs and shall request pre-final inspections by the Village. As part of the written request by the GC, the OR shall ensure that the GC provides the OR a comprehensive list of outstanding items (punch list) that must be satisfactorily addressed prior to final acceptance by the Village and final payment. An estimated schedule for the completion of the outstanding items should also be provided that still meets the current project completion dates per the CDs.
2. Based on observation of the work and the GCs claim of substantial completion, the OR shall make a preliminary determination as to whether the project is substantially complete per the CDs, including the proposed GC list of outstanding items, and make a subsequent recommendation to the Village. The OR shall independently verify the submitted GC's list if the OR was not present when the GC developed his submitted punch-list.
3. The Village shall review the GC's request and recommendation of the OR and develop an independent opinion as to whether the Village agrees with GC's request and the OR's recommendation by independently verifying the GC submitted list of outstanding items and/or developing a comprehensive list of outstanding items and comparing the Village-developed punch list to that developed by the GC. The OR shall assist the Village in assessing the completeness of the punch-list. The OR shall coordinate the appropriate Village staff and the respective AE representatives to make the required pre-final inspections.
4. If the Village agrees the project is substantially complete the OR shall coordinate the development, with the appropriate reviewing parties, a comprehensive list, organized into appropriate categories or work, of outstanding items to be completed (punch list), to include

as-built and any other required project closeout information for the GC to complete prior to final acceptance and final payment by the Village including all fee retention.

5. If after independent verification of the GC claim of substantial completion of the project (a) the Village agrees with an OR recommendation that the project is substantially complete per the CDs, (b) the Village, with supporting recommendations of the AE and OR, and the GC agree on the list of outstanding items, the OR shall advise the GC in writing that the Village concurs that the project is substantially complete and shall direct the GC to complete the punch-list for final inspection in order to meet the contract deadline.
6. The OR shall coordinate the preparation of, and transmit to the GC, the punch-list indicating the all of the items of work remaining to be accomplished in accordance with the CDs and determine the value of any uncorrected and/or deficient work in order to ascertain a valued punch list. Per the CDs, if the valued punch-list amount exceeds remaining GC fee retention after substantial completion, the difference between the value of the final punch list and the current GC fee retention shall be added to the current fee retention amount.
7. The OR shall coordinate a comprehensive final inspection of the project to verify that the material furnished and work performed is in accordance with the CDs. The OR shall monitor and advise on the progress of the GC's completion of the final remaining outstanding items.

W. Performance Testing, Start-Up and Training

1. The OR shall ensure that the GC, as required by the CDs, performs a thorough and systematic performance test and start-up of their respective work. Each general, mechanical, electrical and fire suppression element and the total system shall be tested in the presence of the OR by responsible GC personnel.
2. The OR shall ensure that the GC coordinates equipment and systems training sessions for the Village personnel as required. The OR shall ensure that the GC provides the specified training of the Village's designated personnel prior to substantial completion.
3. The OR shall provide written verification to Village that they have observed the performance testing and start-up process and that the GC has demonstrated that all systems comply with the requirements of the CDs.

X. Final Turnover of Contract Documents and Closeout

1. Prior to authorizing final payment of all fees to the GC, the OR shall advise the GC and coordinate expedited final preparation of as-built CDs, as well as assemblage and delivery to the OR of all operating and maintenance manuals, guarantees, warranties, and other final information required by the CDs.
2. The final submitted as-built CDs shall be reviewed and subject to approval of the OR. The OR shall review the final as-built package from the GC and forward the documents to the Village with a recommendation as to whether the final turnover as-built document package meets the CDs with recommendations of needed corrections if applicable.

2. Deliverables - General, Format and Quantity and Final Turnover

A. General

1. The OR shall be required to submit, on a regular basis or from time to time, depending on the particular project related issue, certain statements, reports, evaluations, opinions or other similar submissions as a part of OR services and responsibilities as delineated herein and as required as a result of subsequent procedures developed in conjunction with the Village covered under the agreement for OR services with the Village.
2. All items submitted by the OR to the Village as part of the services on behalf of the Village shall become the sole property of the Village.

B. Format and Quantity

1. The OR shall produce all deliverables compatible with, at a minimum, Microsoft Office products including Microsoft Word, Excel, PowerPoint, and Access 2002, Microsoft Project 2000, and AutoCAD 2000.
2. Unless otherwise agreed to in advance by the Village, and excluding drawings, plans, diagrams, samples and similar items, all deliverables shall be in an 8 ½ X 11, portrait format. Landscape format can be used to facilitate a more clear presentation of the information at the OR's discretion.
3. Documents originally produced in or provided to the OR in a legal, 8 ½ X 14 format, need not be further reduced or modified.
4. Larger exhibits should, if possible, be provided in an 8 ½ X 11 format by employing a tri-folded 11 X 17 format insert.
5. Larger drawings, plans, diagrams or similar items should be provided at a 50% reduction to the extent practical.
6. All plans, drawings, diagrams and similar items shall be delineated at a commonly recognized and used engineering or architectural scale and shall include north orientation, if applicable, as well as the drawn scale in both a written and graphic form.
7. Digital photo documentation is encouraged. In addition to read-only compact discs of photo documentation, three sets of comprehensive project photo documentation submitted in support of observation reports, weekly status meetings, monthly status reports or other shall be provided in appropriate three-ring binders and annotated appropriately.
8. Unless otherwise specified, the OR shall provide documentation to the Village for the VPM, VPE, VPL, and one additional copy.

C. Final Turnover of Owner's Representative Documents

In addition to properly and chronologically organized hard copies of all contract administration documentation, the OR shall provide an electronic/digital version of all deliverables provided to the Village. In addition to the hard-copy submissions, the Consultant shall submit two (2) sets of read only compact disk(s) with all executed and received deliverables compatible with, at a minimum, Microsoft Word, Excel, PowerPoint, and Access 2002, Microsoft Project 2000, and AutoCAD 2000.

3. Term of Agreement

- a. The term of this Agreement will be 1 year from the date of execution by both parties. The Agreement may be renewed for additional 6-month terms upon written agreement of the parties.
- b. The Consultant will develop a mutually acceptable progress schedule within 3 weeks of the full execution of this Agreement and keep the schedule current based on current project schedule goals and conditions and as approved by the Village.

4. Compensation

a. Basic Fees:

The Village will pay the Consultant an amount not to exceed \$318,496.00. This shall include reimbursable non-direct expenses. Any additional work performed that would increase the contract amount must be approved in writing by the Village of Downers Grove prior to commencement.

b. Additional Services:

The Consultant shall provide hourly fees per staff member or sub-consultant/subcontractor should additional services be requested and approved by the Village for each proposed staff member or sub consultant.

c. Consultant Invoices:

The Consultant shall indicate proposed invoicing terms. In addition to currently billed amounts, invoices shall contain an invoice or reference number, the billing period, the names of staff and/or sub-consultants, numbers of hours billed to the project, a total bare labor amount, total burdened labor amount for the billing period, all reimbursable expenses including reproduction, mailing, and equipment and a total reimbursable amount for the billing period, the original contract amount, the currently approved contract amount, amounts billed to date, amounts received to date, and the contract amount remaining in the contract to date.

5. Insurance and Indemnification of the Village

- A. The OR shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance as will protect the OR from claims, at a minimum set forth below which may arise out of or result from the OR's operations under this agreement and for which the OR may legally liable:
1. Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;
 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the OR's employees;
 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the OR's employees;
 4. Claims for damages insured by the usual personal injury liability coverage which are sustained 1) by a person as a result of an offense directly or indirectly related to employment of such person by the OR, or 2) by another person;
 5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
 6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.
 7. Claims for damages as a result of professional or any other type of negligent action by the OR or failure to properly perform services under the scope of the agreement between the OR and the Village.
- B. The OR shall demonstrate having such insurance coverage, in aggregate, for a minimum of \$1 million as well as appropriate professional liability insurance.
- C. As evidence of said coverages, OR shall provide the Village with certificates of insurance naming the Village of Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village of Downers Grove. In addition, the OR shall indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims,

demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the OR or any sub-contractor to the OR under the OR's agreement with the Village.

6. General Terms and Conditions

A. Relationship Between the Consultant and the Village

The relationship between the Village and the Consultant is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

B. Equal Employment Opportunity

In the event of the Consultant's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the contractor agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
2. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or

representative fails or refuses to cooperate with the contractor in its efforts to comply with such Act and Rules and Regulations, the contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

Sexual Harassment

Consultant, as a party to a public contract, has a project specific written sexual harassment policy amended so that it:

1. Notes the illegality of sexual harassment;
2. Sets forth the State law definition of sexual harassment;
3. Describes sexual harassment utilizing examples;
4. Describes the Consultant's or supplier's internal complaint process including penalties;
5. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities, and;

6. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

Drug Free Work Place

Consultant as party to a public contract, certifies and agrees that it will provide a drug free workplace by:

1. Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
2. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or contractor's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
3. Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
4. Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
5. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.
6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

Discrimination

Consultant, its employees and subcontractors, agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights' rules is specifically incorporated herein.

The American's with Disabilities Act (42 U.S.C. 12101) and the regulations thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this contract, the undersigned vendor certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the ADA.

C. Termination

In the event of the Consultant's nonperformance or breach of the terms of the Agreement, the Agreement may be canceled, in whole or in part, upon the Village's written notice of default and the Consultant's failure to cure such default within ten days of the notice. The Village will pay the Consultant's costs actually incurred as of the date of receipt of notice of default. Upon termination, the Consultant will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the notice of default.

D. Compliance with Laws

All work under the Agreement must be executed in accordance with all applicable federal, state and local laws, ordinances, rules and regulations.

E. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois.

F. Successors and Assigns

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

G. Waiver of Contract Breach

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

H. Amendment

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

I. Proposal

This Agreement includes and incorporates the terms of the Request for Qualifications and Fee Proposal prepared by the Village (Exhibit "A") and the Consultant's responses (Exhibit "B"). In the event that there is a conflict between this Agreement, the Request for Qualifications and Fee Proposal or the Consultant's Proposals, this Agreement will govern.

J. Indemnification

The Consultant will indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Consultant or any sub-contractors under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence.

K. Severability of Invalid Provisions

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

L. Assignment

The Consultant will not assign or subcontract any portion of this Agreement, unless the Village agrees to the assignment or subcontract in writing. Any assignment will not relieve the Consultant from its obligations or change the terms of this Agreement. The Consultant will provide a list of key staff, titles, responsibilities, and contact information to include all expected subconsultants.

M. Notice

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

Mr. Riccardo Ginex
Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

Mr. John L. Carrato
Alfred Benesch & Company
205 N. Michigan Ave., Suite 2400
Chicago, IL 60601

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

Alfred Benesch & Company

Village of Downers Grove

By: _____

By: _____

Title: _____

Title: Village Manager

Date: _____

Date: _____

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