

COUNCIL WORKSHOP ITEM

ITEM:	Quality Assurance Testing Agreement for Parking Deck Facility
DATE:	March 7, 2003
PREPARED BY:	John J. Bajor, Jr., Director of Public Works Mike Millette, Assistant Director of Public Works Brian Parks, Senior Engineer, Public Works
PURPOSE:	Agreement for Professional Engineering Consultation and Quality Control Services during construction of a multi-level parking deck.

DISCUSSION:

Staff solicited proposals from three consulting firms for Professional Testing Services/Quality Control for the proposed Parking Deck Facility in downtown Downers Grove. Proposals were received from Testing Service Corporation (TSC), Professional Service Industries, Inc. (PSI), and Engineering Consulting Services, Ltd. (ECS). Staff's review of each proposal was based on seven criteria listed in the RFQ:

1. Understanding of the project & requested services;
2. General history of the firm including general qualifications and experience;
3. Testing facilities and capabilities;
4. Firm's demonstrated experience with Parking Deck and other similar facilities;
5. Key staff experience/credentials;
6. Proposed procedures/timeliness of testing services; and
7. Proposed fee for the services to be provided.

Of the three firms, ECS provided the most detailed description of project activities with a clear description of their duties, scope of services, as well as stressing the importance of timely reporting and expected timeframes. Their estimate of hourly and unit rates to perform the work was also more realistic versus the other firms.

The Village will pay the Consultant an amount not-to-exceed \$78,948.00. This would include reimbursable non-direct expenses. Any additional work performed that would increase the contract amount would be approved in writing by the Village of Downers Grove prior to commencement.

ATTACHMENT:

Engineering Consulting Services, Ltd. (ECS) Agreement for Professional Engineering Consultation and Quality Control Services for the proposed Parking Deck Facility.

RECOMMENDATION:

Staff recommends that Council place a motion to approve the Agreement for Professional Engineering Consultation and Quality Control services and authorize ECS to proceed with the Services for Construction of the Parking Deck Facility on the 3-25-03 Workshop Agenda.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND ENGINEERING CONSULTING SERVICES, LTD.**

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 Engineering Consulting Services, Ltd. (the “Consultant”), for professional engineering consultation and quality control services during construction of the CBD multi-level parking deck, 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 _____, 2003 by and between Engineering Consulting Services, Ltd. ("ECS" or, "Consultant") 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 engineering consultation and quality control services during construction of a multi-level parking deck; 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.Scope of Services

The project consists of a five-level, approximately 750 parking space, parking structure employing a deep foundation system, a poured-in-place concrete structure with post-tensioned reinforcement, pre-cast architectural façade panels and related systems and equipment as well as related site development work to include utilities, storm water detention, related infrastructure, roads/streets, sidewalks and landscaping. The architectural cladding consists of pre-cast concrete panels with inset brick masonry panels, glass curtain-wall stair fenestration and cast stone string-coursing and other eclectic architectural details.

The Consultant shall provide a scope of services consistent and in accordance with this project, all laws and code requirements. The Consultant shall test, report, and serve as an integral part of the design and construction team. The Consultant shall also perform geotechnical support services as described below.

Geotechnical aspects.

Geotechnical aspects of this project include the observation and testing of augured-cast-in place pile installation; the observation and testing shallow foundation and slab sub grades; and monitoring of excavation, dewatering and earth retention systems.

I. Cast-in-Place Concrete (including Post-Tensioned Concrete):

1. Verify compliance with the provisions of American Concrete Institute ("ACI") 318, 301, 214, 304, and 305 and 306, generally accepted construction practices, and specific project requirements.
2. Observe placement of reinforcing steel to verify proper size, grade, spacing, cleanliness, length, location and type of splices, and general compliance with project plans and specifications; verify proper cover of reinforcing steel during concrete placement.

3. Visually observe formwork, shoring and reshoring to verify compliance with Contract Documents and sound construction practices.
4. Confirm that the consultant has provided proper storage and curing facilities for the first 24 hours after casting of cylinders.
5. Monitor placement of concrete and verify proper procedures with regard to forming, vibration, and curing in accordance with appropriate ACI documents, project plans and specifications.
6. Provide a supply of standard cylinder molds at the site.
7. Sample concrete at the frequency stated in the project specifications and perform the following tests and functions:
 - a. Verify mix design
 - b. Slump
 - c. Air Content
 - d. Temperature
 - e. Batch-to-placement time
 - f. Cast test cylinders

Sampling, testing, and curing of specimens in the field shall be performed in accordance with applicable ASTM guidelines and project requirements. For Multi-Level Parking Structure Project, the project requirements for set of cylinders are as follows: one set of 6 cylinders for each 5,000 square feet of post-tensioned concrete and one set of 4 per 100 cubic yards of concrete for the remainder of placements. Additional tests shall be performed as needed in the event deficiencies are encountered. Compliance with extreme weather procedures will also be verified.

8. Monitor post-tensioning activities to verify compliance with Contract Documents and project specifications; maintain a log of activities, including documentation of locations, tendon placement, and jack pressures. Observe placement of tendons, including proper profile, chair support etc. Verify and record stressing operations for each individual post-tensioning tendon for each structural element
9. Cure and test concrete cylinders in the laboratory as directed by the project specifications and in accordance with ASTM C 31 and C 39 and also to verify the concrete has achieved the minimum required compressive strength prior to stressing the tendons
10. Develop Maturity Meter Relationships for use on post-tensioned concrete placements.

11. Generate necessary documents for stripping forms, as required by the structural engineer and local guidelines.
12. Provide detailed documentation of daily events in the field and notify the appropriate persons immediately upon recognition of deficiencies.

II. Masonry:

1. Periodically observe procedures and materials to verify compliance with ACI 530.1, Contract Documents and sound construction practices.
2. Obtain grout prisms as required in the specifications, and test the units for compressive strength as specified in ASTM E 1019.
3. Obtain mortar cubes as required in the specifications, and test mortar for compressive strength as specified in ASTM C 780.
4. Provide documentation of events in the field and notify the appropriate persons immediately upon recognition of deficiencies

III. Paving:

1. Observe proof rolling of sub grades, and suggest and observe corrective Action at excessively soft areas prior to placement of sub base course.
2. Observe placement of sub base course and perform appropriate in-place density tests as directed by specifications.
3. Verify proper thickness of sub base course materials.
4. Observe placement and rolling operations and temperature of paving mixture at time of placement.

IV. Auger Cast Pile Foundations:

1. Observation of the installation of all auger cast pile foundations, to verify proper installation procedures, pump calibration, embedment depth, etc. and reports will be sent to the geotechnical engineer of record (Versar) for verification.
2. Perform sampling and testing of the cementitious materials used to constructed the auger cast piles.
3. Perform observations of the steel reinforcing within the auger cast pile excavation prior to placement of the cementitious materials.

V. Earthwork/Foundations:

A. Scope of Service:

1. Perform appropriate laboratory testing on materials proposed for use as engineered fill and utility backfill in accordance with project specifications. Testing may include:
 - a. Moisture Density Relationships ASTM D 1557 Modified Proctor
 - b. Additional testing as specified.
2. Monitor excavation operations to verify removal of unsuitable materials and maintenance of clean dry work surface.
3. Observe conditions of subgrades prior to fill placement, including proofrolling and other testing of subgrades; note seepage of water, and suggest and observe corrective measures at problem areas.
4. Verify that foundation drainage and drainage materials are installed in accordance with the Contract Documents and the manufacturer's recommendations.
5. Observe placement of engineered fill and backfill (including backfill in utility trenches and against foundation walls) to verify compliance with project requirements. Perform in-place density tests as required by project specifications, to aid in verifying that engineered fill and backfill is properly placed and compacted.
6. Where deficiencies are noted during fill or backfill placement, suggest and observe remedial actions, including reworking and recompacting of materials.
7. Verify that dimensions of foundation elements, reinforcing steel size, spacing and location comply with design specifications, approved drawings and standard practice.
8. Verify that bearing capacity of soils at footing subgrades meets or exceeds design parameters through correlation of soil boring data, use of the calibrated penetrometer or other appropriate equipment, and reference to approved drawings.
9. Provide representation at progress and/or pre-construction meetings as required by the project team.
10. Provide documentation of daily events in the field and notify the appropriate persons immediately upon recognition of deficiencies.

In the event that the following services are deemed necessary, the Consultant shall notify the Village in writing and such additional work and cost shall proceed upon written authorization and agreement between the Village and the Consultant: (1) determination of roofing, (2) structural load tests, and (3) monitoring of earth retention systems. It is understood between the parties that such services may require additional mobilization of specialized equipment and/or personnel, and are not considered part of our basic scope or cost estimate and that additional costs would be incurred.

2. Project Organization and Team

A. People:

The Principal Engineer in Charge has been identified as Brett Gitskin, P.E.

The Senior Project Manager has been identified as Raymond Franz, P.E.
 The Project Manager has been identified Danilo Guevarra.
 There will also be a Lead Materials Technician assigned to this project.

B. Duties:

The Lead Materials Technician will perform as-needed testing and monitoring functions, as well as direct any assistant technician should activities warrant this presence. The Lead/Soils/Materials Technician is in turn under the supervision of a Project Manager, who is responsible for monitoring job progress, ECS performance, and project status and budget. The Project Manager is responsible to a Principal Engineer, who regularly monitors progress and provides additional technical expertise for unusual or difficult circumstances. The Project Manager will review the progress of the project daily, while the Senior Project Manager and Principal Engineer will provide technical direction where required and provide additional project management.

It is understood that additional technicians may be assigned to perform services for this project, particularly during the post tensioned portions of the project and some floor slab placements. ECS will endeavor to assign the same additional Technicians throughout the portion of the project necessitating that presence.

C. Costs:

TOTAL COST ESTIMATES

The anticipated costs outlined below reflect what should be required to provide the services as outlined in our scope of work. It is based on the schedule the Village provided and/or EC's experience on similar projects

<u>Activity (from schedule)</u>	<u>Hours</u>	<u>Rate</u>	<u>Cost</u>
Engineering Technician	823	\$38.00	\$31,274.00
Engineering Technician Full Time		\$35.00	
Steel Technician		\$50.00	
Steel Technician OT		\$67.50	
Floor Flatness		\$300.00	
Water Infiltration Tests		\$2,750.00	
Engineering Technician OT	104	\$57.00	\$5,928.00
Senior Technician	329	\$48.00	\$15,792.00
Senior Technician OT		\$72.00	
Nuclear Density Gauge	12	\$35.00	\$420.00
Mileage (trips)	325	\$25.00	\$8,125.00
		Sub Total:	\$61,539.00
Engineering & Support			
Project Engineer	40	\$80.00	\$3,200.00
Principal Engineer	18	\$125.00	\$2,250.00
Secretary	84	\$35.00	\$2,940.00
		Sub Total:	\$8,390.00
Laboratory Testing			
Soils (GSA, Att.)		\$100.00	
Proctor	1	\$125.00	\$125.00
Unit Weight - Concrete		\$40.00	
Grout Prisms	6	\$20.00	\$120.00
Mortar Cubes	6	\$15.00	\$90.00
High Strength Concrete Cylinders		\$14.00	
Concrete Cylinders	676	\$9.00	\$6,084.00
Cylinder Pickup	65	\$40.00	\$2,600.00

Fireproofing Density

Multi-Story Parking Structure

\$25.00

Sub Total:

\$9,019.00

Estimated Cost :

\$78,948.00

PROJECT UNIT RATES

The following are the unit costs associated with the services proposed for this project:

1.	Lead Engineering Technician for observation of concrete observation and testing, reinforcing steel and on-site coordination of ECS monitoring efforts, portal-to-portal	\$38.00 per hour
2.	Senior Engineering Technician for post-tensioning review and concrete batch monitoring, portal-to-portal	\$48.00 per hour
3.	Structural Steel Inspector for visual examination of welds, testing of bolted connections with calibrated equipment metal deck observation and testing of shear studs, on call, portal-to-portal	\$50.00 per hour
4.	Field Services Supervisor (Technical Specialist) for coordination of field activities, laboratory testing, initial project management and project support	\$55.00 per hour
5.	Project Engineer for daily project management, technical assistance and Professional Engineer Report and test result review	\$80.00 per hour
6.	Principal Engineer for special consultation in unusual circumstances and general project management	\$125.00 per hour
7.	Secretarial Support as needed for report preparation	\$35.00 per hour
8.	Compressive strength testing: (a) concrete cylinders (ASTM C 31) (b) grout prisms (ASTM C 1019) (c) mortar cubes (ASTM C 780) (d) masonry prism (ASTM E 447)	\$9.00/test \$20.00/prism \$15.00/cube \$125.00/prism
9.	Moisture Density Relationships (ASTM D 1557), Modified Proctor Method	\$125.00 per test
10.	Trip Charge (mileage)	\$25.00 per trip
11.	Nuclear Gauge Rental	\$35.00 per day

There is no "show-up" or minimum charge of any kind for services rendered on this project; billing will be based on specific units reflecting only the actual time spent and tests performed on behalf of this project.

The services described above will be rendered portal-to-portal from ECS's office in Buffalo Grove, Illinois with a maximum of 1.75 hours of travel time per round trip. Unit rates are based upon a normal 8-hour workday, Monday through Friday, between normal business hours of 7:00 a.m. to 5:00 p.m. Overtime, beyond 8-hour days, outside normal hours and on Saturday, Sunday and holidays will be invoiced at a rate of 1.5 times the normal hourly rate indicated above. In any case, travel time will not be classified as overtime. Only time in excess of 8 hours on-site will be considered for the overtime multiplier.

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 has developed a preliminary progress schedule which will be revised as the project progresses. As a condition of tender and receipt of a proper monthly invoice, a revised progress schedule shall be attached to the invoice. Without such attached progress schedule, the invoice is not valid and payments will not be made.

4.Compensation

a. **Basic Fees:**

The Village will pay the Consultant an amount not to exceed \$78,948.00. 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. **Reimbursable Non-Direct Expenses:**

These may include support services required to execute the scope of services such as photocopying, messenger/mail and exhibit preparation, etc.

c. **Additional Services:**

The Consultant has provided hourly fees per staff member or sub-consultant/subconsultant should additional services be requested and approved by the Village for each proposed staff member or sub consultant. The agreed upon fee schedule is attached as Group Exhibit A.

d. **Consultant Invoices:**

The Consultant has indicated that he uses unit invoicing terms. In addition to currently billed amounts, invoices shall contain an invoice or reference number, the billing period, the classifications and/or 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.

e. **Prompt Payment Act**

The Village of Downers Grove will comply with the Local Government Prompt Payment Act, 30 ILCS 540/3-2, in that any bill approved for payment must be paid or the payment issued to the Consultant within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Consultant within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village of Downers Grove shall review in a timely manner each bill or invoice after its receipt. If the Village of Downers Grove determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Consultant requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 30 ILCS 540/3-3. The notice shall identify the defect and any additional information necessary to correct the defect.

5. Insurance and Indemnification of the Village

- A. The Consultant 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 Consultant from claims, at a minimum set forth below which may arise out of or result from the Consultant's operations under this agreement and for which the Consultant may legally be 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 Consultant's employees;
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Consultant'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 Consultant, 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 Consultant or failure to properly perform services under the scope of the agreement between the Consultant and the Village.
- B. The Consultant shall demonstrate having such insurance coverage for a minimum of \$5 million for professional liability, \$1 million for general liability, \$500,000 for workman's compensation liability, \$1 million for auto liability and an umbrella policy.
- C. As evidence of said coverages, Consultant 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 Consultant 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 Consultant or any sub-consultant to the Consultant under the Consultant'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 consultant 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 consultant 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 consultant'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 consultant in its efforts to comply with such Act and Rules and Regulations, the consultant 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 subconsultant. In the same manner as with other provisions of this contract, the consultant will be liable for compliance with applicable provisions of this clause by such subconsultants; and further it will promptly notify the contracting agency and the Department in the event any subconsultant fails or refuses to comply therewith. In

addition, the consultant will not utilize any subconsultant 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.

C. 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.

D. 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 consultant'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 consultant'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.

E. Discrimination

Consultant, its employees and subconsultants, 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.

F. Standard Of Care

- a. Services performed by ECS under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Engineering profession currently practicing in the same locality under similar conditions. No other representations, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinions, and documents or otherwise.
- b. Any exploration, testing surveys and analysis associated with the work will be performed by ECS for the Client's sole use to fulfill the purpose of this Agreement and ECS is not responsible for interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys or explorations and the information and recommendations developed by ECS are based solely on the information available from such borings, surveys and explorations.

G. Limitation Of Professional Liability

Client agrees to limit ECS's liability to Client and all construction contractors arising from ECS's professional acts, errors or omissions in performing this Agreement, such that the total aggregate liability of ECS to all those named shall not exceed \$3,000,000 further agrees to require of the Client's General Contractor and its subcontractors an identical limitation of ECS's liability for damages that may be suffered by the contractors or the subcontractors arising from professional acts, errors or omissions of ECS.

H. 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.

I. 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.

J. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage.

K. 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.

L. 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.

M. Amendment

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

N. 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.

O. 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-consultants under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence.

P. 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.

Q. 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 sub consultants.

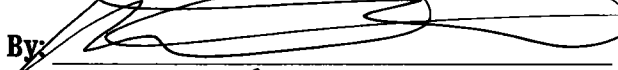
R. Notice

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. Raymond Franz
Engineering Consulting Services, Ltd.
1575 Barclay Blvd.
Buffalo Grove, IL 60089**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.
~~Engineering Consulting Services, Ltd.~~ Village of Downers Grove

By: 

By: _____

Title: Vice President

Title: Village Manager

Date: 2/26/3

Date: _____

CONSULTANT'S CERTIFICATION

Consultant, _____ hereby certifies that
(Name of Consultant)

It is not barred from agreeing to this contract for:

(Description of Contract)

as a result of a violation of either Section 720 ILCS 5/33E-3 and 720 ILCS 5/33E-4 of
Article 33E of Chapter 38 of the Illinois Compiled Statutes.

Consultant further certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue, or that consultant is contesting its liability for the tax delinquency or the amount of a tax delinquency in accordance with the procedures established by the appropriate Revenue Act. Consultant further certifies that if it owes any tax payment(s) to the Department of Revenue, Consultant has entered into an agreement with the Department of Revenue for the payment of all such taxes that are due, and Consultant is in compliance with the agreement.

By: _____
Consultant's Authorized Agent

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FEDERAL TAXPAYER IDENTIFICATION NUMBER

Subscribed and sworn to before me this
_____ day of _____, 19 ____.

or _____
NAME

Notary Public

Social Security Number