



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve Agreement with WBK, LLC for Professional Engineering and Surveying Services for the Active River (River Park) Concept Feasibility Study
Presenter:	Chris Adesso

Please check appropriate box:

	Government Operations	X	Government Services – 07.25.16
	Planning & Development		City Council
	Public Hearing		

Estimated Cost:	\$113,000	Budgeted:	YES		NO	X
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If NO, please explain how item will be funded: Budget Transfer from projects that are under budget in the General Fund.

Executive Summary:

Pursuant to the presentation by the Active River Task Force at the June Government Services Committee Meeting, and in response to the motion from the Committee to review the River Park Concept Feasibility Study prepared by WBK, LLC., staff is prepared to answer questions from the Committee about the limitations of the scope of services of the study and provide feedback on specific tasks the study will complete.

In addition, as requested staff has met with Park District and River Corridor Foundation representatives and discussed a cost share to fund the \$113,000 study. The following table illustrates the cost share proposed, although a final Park District Board vote is pending, the group is open to a contribution in the range of \$30,000 to \$40,000.

City Costs Share	Park District Cost Share	River Corridor Foundation Cost Share	Total
\$68,000 - \$78,000	\$30,000 - \$40,000	\$5,000	\$113,000

An Intergovernmental Agreement (IGA) will be established with the Park District and River Corridor Foundation to solidify the relationship between all parties involved and will be presented to the Committee in the following months.

Attachments: *(please list)*

* WBK, LLC Proposal

Recommendation / Suggested Action *(briefly explain):*

Recommendation to Approve Agreement with WBK, LLC for Professional Engineering and Surveying Services for the Active River (River Park) Concept Feasibility Study in the Amount of \$113,000.

For office use only:

Agenda Item Number: 4.c

PROJECT PROPOSAL

River Park Concept Feasibility Study | Fox River – St. Charles, IL

July 13, 2016

Mr. Peter Suhr
Director of Public Works
City of St. Charles
Two East Main Street
St. Charles, IL 60174

**Subject: Proposal for Professional Engineering Services
River Park Concept Feasibility, Fox River – St. Charles, IL**

Dear Mr. Suhr:

WBK Engineering, LLC (WBK) is pleased to provide this proposal to the City of St. Charles (Client) for professional engineering services to facilitate concept development and initial feasibility of the River Park project on the Fox River in Downtown St. Charles. WBK looks forward to the opportunity to assist the City of St. Charles as we believe this project has the ability to be transformative for the community and economic vitality of the downtown. Included below is our understanding of the assignment, scope of services, project assumptions, and estimate of fee.

UNDERSTANDING OF THE ASSIGNMENT

The City of St. Charles is interested in determining the feasibility of water based river features or “park” on the Fox River from IL 64 to Pottawatomie Park. The “park” would include a paddle course that would seek to improve safety, improve fish passage and would become a destination for recreation while preserving existing recreational uses on the Fox River including rowing and boating.

Prior to a significant expenditure on the project the City would like to explore the feasibility of concepts by determining alternative geometries, maintenance and operational issues as well as identifying the regulatory approval process.

The concept presented in the Fox River Corridor Master Plan includes a new dam structure located near the UPRR trestle crossing the Fox River and modifications to the existing St. Charles dam structure. In accordance with IDNR-OWR procedures, approval of the design concept should be procured prior to initiation of a detailed design study for the project. The first step is to identify the feasibility of a design concept to achieve the goals determined by the City. The limits of the study area the Union Pacific Rail trestle crossing the Fox River to the north and Main Street (IL 64) bridge crossing the Fox River to the south.

SCOPE OF SERVICES

DATA COLLECTION – This task consists of gathering the data required to complete the scope noted herein and engagement of resource agencies to procure the same.

1. Field Visit / Photo Documentation – Existing conditions of the project area will be documented to establish a baseline existing condition for the study. Documentation includes a field walk and written observation of conditions along with photo documentation of conditions such as structures, walls, landscaping and any other element considered to be potentially significant in defining an alternative for consideration.

2. Topographic mapping (2 foot contours) – The current Kane County 2 foot topographic contours will be procured to create base conditions outside ground survey limits. This data will assist to verify drainage sub areas and the relationship between existing roads and buildings and the proposed conditions.
3. Parcel Data, City Utility Information, Ownership of land and infrastructure (City GIS) – Parcel data will be procured from Kane County and the City of St. Charles to establish ownership of parcels adjacent to the project. Utility information will also be procured to identify sanitary sewer, electric or water supply infrastructure that will impact alternative development and selection.
4. Bathymetric Survey (USACE) - The USACE has performed a bathymetric survey of the Fox River from Algonquin to Montgomery and including the reach in which this project is considered. It is assumed the USACE bathymetric survey data will be made available to the City and there is no cost to the City for procurement. It is also assumed the data is readily “readable and useable” with ESRI – GIS software and significant conversion to make the data useable for the project is not necessary. The USACE bathymetric information will be used to establish river channel cross sections below water surface elevation.

FIELD SURVEY & BASE MAP

1. Cross sections & Ground Topography – Ground survey will be performed within 100 feet of the east and west banks of the river within the project limits. Data will be gathered utilizing GPS and total station robotic survey equipment. Horizontal data will be captured in state plane coordinate and vertical datum will be consistent with FEMA benchmarks and datum requirements. Horizontal control will be set for use in future studies to tie in additional survey data. Existing utilities, wall, structures, trees and significant elements will be surveyed and documented. Topographic survey will be utilized to develop cross section for hydraulic modelling and to understand horizontal and vertical relationships of alternatives.
2. Wetland delineation – wetlands will be delineated along the Fox River within the project limits. Wetland limits will be surveyed and incorporated into the project base map.
3. Existing Conditions Base Map - All field data will be downloaded and a base map created depicting ground survey and bathymetric survey in one document. All parcel data, utility information and two foot contours will also be incorporated. The base map will be checked through a field review and will be presented to the City for review and comment prior to being finalized.

HYDRAULICS

1. Procure FEMA regulatory hydraulic models – WBK will procure the regulatory HEC2 hydraulic model for the Fox River within the project limits. The model will be converted into HEC RAS for further refinements and alternatives analysis.
2. Existing Conditions Hydraulic Analysis – update existing model with current field data – The existing regulatory model will be reviewed, revised and updated to include additional cross sections as appropriate to establish a current and accurate existing conditions model. The baseline condition will be utilized to evaluate alternatives. Updated flood profiles will be established based on the updated model. A detailed regulatory review and verification of this model is not included in this task as initial coordination with regulatory agencies is considered in the Alternatives Analysis portion of this scope.

ALTERNATIVES ANALYSIS

1. Purpose, location and configuration – The development of alternatives is an iterative process. The initial selection of alternatives will begin with a review of the base map and existing conditions and the goals for the project. The logical location and number of hydraulic “steps” to maintain the pool north of the UPRR crossing and to match the existing conditions at the IL 64 Bridge will be determined. Initial geometry will be developed through a series of discussions between S2O and WBK. An intense week long internal vetting of alternatives will result in an evolution of the alternatives most likely feasible and most likely permittable. These alternatives will be presented to City staff for review. Alternative geometry and locations will be prioritized for further analysis with selection of an initial preferred alternative. Project constraints will be identified and alternatives will be eliminated or revised to comply with goals and constraints.

2. Alternative development

- a. Hydraulic Evaluation – the initial preferred alternative will be evaluated with HEC-RAS to determine flood impacts, recreational impacts / opportunities, safety impacts and fish passage benefits. Based on the initial hydraulic analysis a second hydraulic analysis may be performed refining the initial preferred alternative or evaluating the next prioritized alternative.
- b. Alternative Refinement – The initial preferred alternative will be evaluated from various perspectives including structural, environmental (fish, sediment, water quality), constructability, recreational, land use, land rights, and safety. These evaluations will be high level based on the information available and within the scope of this effort. These evaluations are not exhaustive or final but intended to guide the process to a preferred alternative and to identify the challenges moving forward.
 - i. Concept Plans / exhibits – A concept plan for the preferred alternatives will be developed. The plan will utilize the topographic and bathymetric survey gathered in prior tasks and the existing conditions base map. The plan will define the hydraulic controls with preliminary geometry so the City can begin to quantify costs, impacts, land rights, etc. The plans will generally include these elements as either separate sheets or combined on a single sheet / exhibit.
 1. Geometric plans sheets
 2. River profile
 3. Cross sections
 4. Details
 5. Adjacent Land Use Opportunities
- c. Regulatory Compliance – the permitting feasibility of the preferred alternative relies on input from resource agencies (IDNR, USACE, USFWS). Since the response will be commensurate with the level of detail and project understanding we can offer, we have prioritized our effort to include only IDNR at this time. We believe their input to be most critical and would solicit their input and support as an initial step. Early coordination with other regulatory agencies is necessary but not included in the scope at this time.
 - i. Environmental Concerns – Environmental concerns will be identified such as fish passage, sediment management. Specific solutions are outside the scope of this report however, generic and previously successful solutions will be identified and determined if generally feasible and compatible with the initial preferred alternative.
 - ii. Permit Requirements – All permits will be identified based on the initial preferred alternative including permitting agency, application process, public involvement, necessary level of documentation for submittal and estimated timeline for review and response. Permits anticipated include, Dam Permit, USACE and City of St. Charles Stormwater Permit. Water Quality Certification may be required for the project however, until the project can be defined more clearly, it is out of the scope of this phase to coordinate and determine this requirement with the IEPA.
- d. Concept Level Costs – We will develop initial concept level project costs from the concept plans created for the initial preferred alternative noted in the previous task. Concept level costs will be developed to include:
 - i. Phase 1 Engineering
 - ii. Phase 2 Engineering
 - iii. Construction
 - iv. Operation and Maintenance

These costs will be based on the plans and project understanding developed in the prior task. We will also utilize our experience on other projects, consult the City for input, and compare to other similar facilities.

- e. Schedule – Based on the preferred alternative and regulatory input we will develop a preliminary project timeline and spread the expenditures identified in the concept level cost estimate across budget years. We will also identify primary action items, milestones and stakeholder engagement.
3. Funding Alternatives (grants, etc.) – We will research available grants and determine feasibility of other funding mechanisms based on the preferred alternative, program availability and current status of the same. A table identifying source, funding limits, match requirements, program goals and capability with preferred alternative will be developed.

SUMMARY

Executive Summary – The preferred alternative will be summarized in a two page executive summary. Tables and graphics from prior tasks will be collated so the project can be understood and digested by elected officials, the public, regulatory agencies and funding opportunities. No additional exhibits are included with this task.

MEETINGS AND COORDINATION

WBK and S2O will coordinate and facilitate several meetings to accomplish project objectives. Meetings include:

- Project initiation (kickoff) meetings
- Regulatory Coordination Meetings (3 meetings)
- City coordination meetings (2 meetings)
- Active River Coordination (1 meeting)
- Report review with City and Active River (1 meeting)

PROJECT ASSUMPTIONS

In preparing this proposal, we have attempted to provide you with a scope of services to accomplish the goals of the project. In doing so, we have made some assumptions which will need to be verified during the engineering process. Any findings which are not consistent with our assumptions may increase the engineering budget for this project. We will thoroughly discuss any such findings with you and negotiate any budget revisions prior to proceeding. Our assumptions are as follows:

- The site was never used for storage of hazardous materials, and therefore the cost of an environmental assessment, mitigation, clean-up and permitting services are not included.
- Geotechnical borings and analysis is not included in this proposal. If it is determined that a study will be necessary we will assist you in soliciting a proposal for this work.
- USACE bathymetric survey data is available for use and incorporation into and existing conditions exhibit.

ESTIMATE OF FEES



Due to the nature of the tasks listed in the above Scope of Basic Services, we have provided time and material budgets. The actual amount invoiced will be based on the level of effort required to accomplish the task, but we will not exceed the budget without your prior approval. Our estimated fees are based on the entire Scope of Basic Services being awarded to us. In general, individual tasks cannot be broken out and awarded separately.

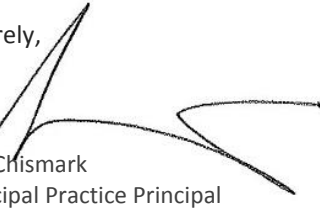
Task #	Task Name	Fee
Task 1	Data Collection	\$9,200
Task 2	Field Survey and Base Map	\$22,100
Task 3	Hydraulics	\$7,700
Task 4	Alternatives Analysis	\$59,800
Task 5	Summary Report	\$3,200
Task 6	Meetings and Coordination	\$6,500
	TOTAL	\$108,500
	Reimbursable Costs (Including Travel for S2O)	\$4,500

Please note that preparing this proposal requires the exercise of professional knowledge and judgment, and as such, this proposal remains the proprietary instrument of service of the firm WBK Engineering, LLC. No portion of this proposal may be shared with another firm providing similar services without permission.

We propose to bill you monthly based on the attached Schedule of Charges. We establish our contract in accordance with the attached General Terms and Conditions. These General Terms and Conditions are expressly incorporated into and are made an integral part of this contract for professional services. We reserve the right to increase our fees by five percent (5%) on December 31st of each calendar year.

If this proposal is acceptable, please return one (1) signed copy to us for our files to serve as a notice to proceed. Thank you for the opportunity to provide service to the City of St. Charles. If you have any questions, please do not hesitate to call.

Sincerely,



Greg Chismark
Municipal Practice Principal

Encl: 2016 Schedule of Charges
General Terms and Conditions for the City of St. Charles

THIS PROPOSAL, SCHEDULE OF CHARGES, AND GENERAL TERMS & CONDITIONS ACCEPTED FOR CITY OF ST. CHARLES:

BY: _____

TITLE: _____

DATE: _____

WBK ENGINEERING, LLC
2016 Standard Charges for Professional Services

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$ 210
Engineer VI	\$ 185
Engineer V	\$ 165
Engineer IV	\$ 140
Engineer III	\$ 117
Engineer II	\$ 98
Engineer I	\$ 84
Engineering Technician IV	\$ 138
Engineering Technician III	\$ 116
Engineering Technician II	\$ 97
Engineering Technician I	\$ 81
Senior Structural Engineer	\$ 170
Senior Scientist	\$ 170
Environmental Resource Specialist IV	\$ 123
Environmental Resource Specialist III	\$ 94
Environmental Resource Specialist II	\$ 85
Environmental Resource Specialist I	\$ 78
Urban Planner V	\$ 180
Urban Planner IV	\$ 144
Urban Planner III	\$ 120
Urban Planner II	\$ 98
Urban Planner I	\$ 80
Landscape Architect	\$ 94
Professional Land Surveyor	\$ 130
Engineering Intern	\$ 45
Office Professional	\$ 62
Direct Costs: Copies & Prints, Messenger & Delivery Services, Mileage, etc.	Cost +10%

Charges include overhead and profit.

WBK Engineering, LLC reserves the right to increase rates and costs by 5% annually.

WBK ENGINEERING, LLC
GENERAL TERMS AND CONDITIONS
MODIFIED FOR CITY OF ST. CHARLES
February 17, 2016

1. Relationship Between Engineer and Client: WILLIS BURKE KELSEY ASSOCIATES, LTD. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall

immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In

the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance with Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement. With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against

Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

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

10. Affirmative Action: The Engineer is committed to the principles of equal employment opportunity. Moreover, as a government contractor bound by Executive Order 11246, Engineer takes its affirmative action obligations very seriously. Engineer states as its Policy of Affirmative Action the following:

It will be the policy of the Engineer to recruit, hire, train and promote persons in all job titles without regard to race, color, religion, sex, age, disability, veteran status, national origin, or any other characteristic protected by applicable law.

All employment decisions shall be consistent with the principle of equal employment opportunity, and only job-related qualifications will be required.

All personnel actions, such as compensation, benefits, transfers, tuition assistance, social and recreational programs, etc. will be administered without regard to race, color, religion, sex, age, disability, veteran status, national origin, or any other characteristic protected by applicable law.

11. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of Engineer's insurance coverage from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer up to amount of Client's insurance coverage, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether

based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

12. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
13. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

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

shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.

24. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the limits of Engineer's insurance coverage as applicable. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
25. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

26. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
27. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs: In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the

Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services: If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

28. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver: Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the **Illinois** Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that **Illinois** law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third-party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

29. **Job Site Safety/Supervision & Construction Observation:** The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall

have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

30. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents

and persons or entities awarded separate contracts administered under the Client's own forces.

31. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.

**Concept Feasibility Study
River Park Concept Feasibility Study**

Fox River

Local Agency City of St. Charles

Project 14-0262

Date: 4/3/2016

Cost Estimate of Consultant's Services in Dollars

Element of Work		Employee Classification	Man-Hours	Hourly Rate	(MH) x Hourly Rate	Services by Others	In-House Direct Costs (IHDC)	Total	TOTAL COST BY TASK
1	Data Collection					\$ -	\$ 1,200.00	\$ 1,200.00	Task: 1
		Engineer VI	12.0	\$185.00	\$2,220.00			\$2,220.00	\$10,408.00
		Engineer III	12.0	\$117.00	\$1,404.00			\$1,404.00	\$9,208.00
		Engineering Technician III	14.0	\$116.00	\$1,624.00			\$1,624.00	
		S2O Shipley	18.0	\$220.00	\$3,960.00			\$3,960.00	
2	Field Survey & Base Map					\$ -	\$0.00	\$0.00	Task: 2
		Engineer VI	8.0	\$185.00	\$1,480.00			\$1,480.00	\$22,094.00
		Engineer V	2.0	\$165.00	\$330.00			\$330.00	\$22,094.00
		Engineering Technician III	60.0	\$116.00	\$6,960.00			\$6,960.00	
		Engineering Technician II	108.0	\$97.00	\$10,476.00			\$10,476.00	
		Senior Scientist	0.0	\$170.00	\$0.00			\$0.00	
		ERS III	12.0	\$94.00	\$1,128.00			\$1,128.00	
		S2O Shipley	1.0	\$220.00	\$220.00			\$220.00	
		S2O Engineer	10.0	\$150.00	\$1,500.00			\$1,500.00	
3	Hydraulics					\$ -	\$0.00	\$0.00	Task: 3
		Engineer V	9.0	\$165.00	\$1,485.00			\$1,485.00	\$7,705.00
		Engineer IV	37.0	\$140.00	\$5,180.00			\$5,180.00	
		S2O Shipley	2.0	\$220.00	\$440.00			\$440.00	
		S2O Engineer	4.0	\$150.00	\$600.00			\$600.00	
4	Alternatives Analysis					\$ -	\$ 1,200.00	\$ 1,200.00	Task: 4
		Engineer VI	63.0	\$185.00	\$11,655.00			\$11,655.00	\$61,033.00
		Engineer V	32.0	\$165.00	\$5,280.00			\$5,280.00	\$59,833.00
		Engineer IV	26.0	\$140.00	\$3,640.00			\$3,640.00	
		Engineering Technician III	64.0	\$116.00	\$7,424.00			\$7,424.00	
		Senior Scientist	20.0	\$170.00	\$3,400.00			\$3,400.00	
		ERS III	6.0	\$94.00	\$564.00			\$564.00	
		S2O Shipley	36.0	\$220.00	\$7,920.00			\$7,920.00	
		S2O Engineer	133.0	\$150.00	\$19,950.00			\$19,950.00	
5	Report and Summary					\$ -	\$835.92	\$835.92	Task: 5
		Engineer VI	6.0	\$185.00	\$1,110.00			\$1,110.00	\$4,065.92
		Engineer V	0.0	\$165.00	\$0.00			\$0.00	\$3,230.00
		Engineer IV	4.0	\$140.00	\$560.00			\$560.00	
		Engineering Technician III	0.0	\$116.00	\$0.00			\$0.00	
		Senior Scientist	0.0	\$170.00	\$0.00			\$0.00	
		S2O Shipley	3.0	\$220.00	\$660.00			\$660.00	
		S2O Engineer	6.0	\$150.00	\$900.00			\$900.00	
6	Meetings and Coordination					\$ -	\$1,200.00	\$1,200.00	Task: 6
		Engineer VI	13.0	\$185.00	\$2,405.00			\$2,405.00	\$7,655.00
		Engineer V	8.0	\$165.00	\$1,320.00			\$1,320.00	\$6,455.00
		S2O Shipley	9.0	\$220.00	\$1,980.00			\$1,980.00	
		S2O Engineer	5.0	\$150.00	\$750.00			\$750.00	
Totals			743.0		\$ 108,525.00	\$ -	\$ 4,435.92	\$ 112,960.92	