



AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve Surveying Services Agreement with H.R. Green for the 7 th Avenue Creek Project
Presenter:	Karen Young

Please check appropriate box:

Government Operations	<input checked="" type="checkbox"/>	Government Services – 06.22.15
Estimated Cost: \$70,400	Budgeted:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> X <input type="checkbox"/> NO

Executive Summary:

FEMA Mapping Update Process

FEMA indicated that they anticipate the preliminary map submittal to the City this fall, with the FEMA public meetings to be held by the end of the year. This will be followed by the public comment period where residents and the City can provide comments and provide information on the proposed mapping.

City of St. Charles Study Process

The City’s consultant H.R. Green continues to move forward with the evaluation of potential design options to develop a long term master plan to relieve flooding along the 7th Avenue Creek watershed. It is anticipated that Staff and H.R. Green will be presenting these options this fall. Staff is proposing completing an elevation certificate for many of the structures located within the revised floodplain and floodway boundary. The elevation certificate is performed by a surveyor to establish the lowest floor elevation (including the basement) and lowest ground elevation adjacent to the existing structures. There are approximately 100 properties (90 residential and 19 commercial) currently identified to be surveyed. This information will be used in the following ways:

- Improve the accuracy of the preliminary and final floodplain maps to better represent the properties that are truly within the floodplain and those that can proposed to be removed from the floodplain. Current FEMA standards are to base their evaluation on 2’ contours, where the elevation certificate will base info on actual survey date within 0.10’.
- Further optimize the needed improvements within the stream or culverts, etc.
- Assist the City in preparing and submitting a strong grant funding application.

City Staff will be working with the impacted property owners to educate them on the elevation certificate process and to coordinate the needs and timing of the surveys.

Attachments: *(please list)*

Agreement

Recommendation / Suggested Action *(briefly explain):*

Recommendation to Approve Surveying Services Agreement with H.R. Green for the 7th Avenue Creek Project in the amount of \$70,400.

For office use only:

Agenda Item Number: 4.c



PROFESSIONAL SERVICES AGREEMENT
FOR
CITY OF ST. CHARLES
7TH AVENUE CREEK ELEVATION CERTIFICATE

Prepared for:

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Prepared by:

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Project Number 86150238

June 18, 2015

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This **AGREEMENT** is between the City of St. Charles, Illinois (hereafter "CLIENT") and HR Green, Inc. (hereafter "COMPANY").

1.0 PROJECT UNDERSTANDING

1.1 GENERAL

The City of St Charles has requested the COMPANY to prepare a FEMA Elevation Certificate for approximately 109 properties (90 residential and 19 commercial) lying along the 7th Avenue Creek between Tyler Rod and the Fox River. The purpose of the FEMA Elevation Certificate is to assist in the 7th Avenue Creek Concept Study currently underway for the purposes of more accurately determining revised floodplain mapping impacts; for optimizing design projects for flood reduction and hence costs; and to coordinating with FEMA any mapping revisions necessary as a result of this information. The Elevation Certificate may further assist the property owners located within the floodplain of the 7th Avenue Creek by having the floodplain mapping reflect the true flood risks and hence negotiating an appropriate risk based flood premium with the insurance companies.

2.0 SCOPE OF SERVICES

The CLIENT agrees to employ COMPANY to perform the following tasks:

2.1 SURVEYING SERVICES

Task 1 – Perform research of existing local benchmarks and coordinate with the CLIENT to acquire owner names and addresses included in this project.

Task 2 – COMPANY will perform a level loop along the included properties from a known accepted NAVD88 benchmark to establish the elevations required for the FEMA Elevation Certificates. The benchmark will be correlated to the benchmark used by FEMA for cross-section surveys along the 7th Avenue Creek.

Task 3 – COMPANY will coordinate with the CLIENT to schedule site visits. It is preferred that the COMPANY is allowed to perform the survey of the outside measurements and photos during one visit. This visit will require access to the front and rear yards. The second site visit will require access to the properties' basement or crawlspace. The CLIENT will coordinate with the residents to schedule this access.

Task 4 – COMPANY will perform the survey field work to measure the finish floor elevation, attached garage floor elevation, lowest adjacent grade, highest adjacent grade, distance to lowest floor elevation and other survey items required in the 2012 FEMA Elevation Certificate. For properties that have property lines at the border of the limits of the proposed floodplain, a limited survey along the lot line will be performed to determine grades at the lot line. Survey will include notes regarding the lowest machinery/equipment elevation, flood openings as shown by CLIENT or resident and digital photos of the North, South, East and West views.

Task 5 – COMPANY will prepare a current FEMA Elevation Certificate for the 109 properties described above.

3.0 DELIVERABLES AND SCHEDULES INCLUDED IN THIS AGREEMENT

The following deliverables are anticipated and included in the scope:

COMPANY will provide two (2) paper copies and a PDF copy of the Elevation Certificate signed and sealed by an Illinois Professional Land Surveyor.

It is anticipated that the survey work will be completed in 2-months from the date of Notice to Proceed. The schedule also assumes that the City is able to distribute notifications and obtain access to properties (inside and outside) within 30-days from the Notice to Proceed.

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

4.0 ITEMS NOT INCLUDED IN AGREEMENT/SUPPLEMENTAL SERVICES

The following items are not included as part of this agreement:

1. A detailed topographic lot survey.
2. Plat of Survey or ALTA survey.
3. Research, identification and survey of and/or establishment of property pins.
4. Archaeological and other environmental surveys
5. Permitting

Supplemental services not included in the agreement can be provided by COMPANY under separate agreement, if desired.

5.0 SERVICES BY OTHERS

None

6.0 CLIENT RESPONSIBILITIES

The following items are required from the client:

1. Provide owner name and addresses for each property.
2. Contact each property representative to schedule access.
3. Provide access to the properties on two occasions.

7.0 PROFESSIONAL SERVICES FEE

7.1 Fees

The fee for services will be based on a fixed fee of \$550/each for residential property/structure survey and elevation certificate and \$1,100/each for commercial property/structure survey and elevation certificate.

7.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis. Invoices shall be due and payable upon receipt. If any invoice is not paid within 15 days, COMPANY may, without waiving any claim or right against the CLIENT, and without liability whatsoever to the CLIENT, suspend or terminate the performance of services. The retainer shall be credited on the final invoice. Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event any portion of an account remains unpaid 60 days after the billing, COMPANY may institute collection action and the CLIENT shall pay all costs of collection, including reasonable attorney's fees.

7.3 Extra Work

Any work required but not included as part of this contract shall be considered extra work. Extra work will be billed on a Time and Material basis with prior approval of the CLIENT.

7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These work items are considered extra and are billed separately on an hourly basis.

7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

On a Fixed Fee Basis for per residential and per commercial structure survey with a Not to Exceed Fee of **\$70,400.00**.

The fee is based on a fixed fee of \$550/each for residential property/structure survey and elevation certificate and \$1,100/each for commercial property/structure survey and elevation certificate.

It is understood that certain properties may not be willing to allow access to their properties and hence the scope of survey may need to be reduced by the City. The COMPANY shall equitably adjust (on a per residential or per commercial property/structure cost) the upper limit of the contract should the number of property surveys be reduced.

8.0 TERMS AND CONDITIONS

The following Terms and Conditions are incorporated into this AGREEMENT and /made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

8.2 Entire Agreement

This Agreement, and its attachments, constitutes the entire understanding between CLIENT and COMPANY relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement. If the CLIENT, its officers, agents, or employees request COMPANY to perform extra work or services pursuant to this Agreement, CLIENT will pay for the additional services even though an additional written Agreement is not issued or signed.

8.3 Time Limit and Commencement of Work

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The work will be commenced immediately upon receipt of this signed Agreement.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this Agreement, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon receipt of payment in full of all outstanding sums due from the CLIENT, or curing of such other breach which caused the COMPANY to suspend services, the COMPANY shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

8.5 Book of Account

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

8.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage arising from the negligent performance by COMPANY's employees of the functions and services required under this Agreement.

8.7 Termination or Abandonment

Either party has the option to terminate this Agreement. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this Agreement may be terminated upon seven days written notice. If any portion of the work is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services

performed during such phase shall be based on COMPANY's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse COMPANY for termination costs.

8.8 Waiver

COMPANY's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

8.11 Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the COMPANY. The COMPANY's services under this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against the COMPANY or the CLIENT because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Illinois without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in the State of Illinois.

8.13 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.14 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of CLIENT. COMPANY shall have the right to maintain copies of all documents provided to the CLIENT.

8.15 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall hold harmless COMPANY from all claims, damages and expenses including attorney's fees arising out of or resulting therefrom.

8.16 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies,

ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of services. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT's failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.17 Opinion of Probable Construction Cost

COMPANY shall submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of his or her opinions of cost, and in recognition of that fact, the CLIENT waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.18 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY's expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30 day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate AGREEMENT. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.19 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the

COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this contract unless indicated in the Scope of Work.

8.20 Force Majeure

The CLIENT agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

8.21 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the General Contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the General Contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.22 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional engineering services. The compensation to be paid COMPANY for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold COMPANY, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this Agreement shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.23 Certificate of Merit

The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against COMPANY unless the CLIENT has first provided COMPANY with a written certification executed by an independent design professional currently practicing in the same discipline as COMPANY and licensed in the State in which the claim arises. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a Design Professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to COMPANY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

8.24 Limitation of Liability

The CLIENT agrees, to the fullest extent permitted by law, to limit the liability of COMPANY and COMPANY's officers, directors, partners, employees, shareholders, owners and subconsultants to the CLIENT for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of COMPANY and its officers, directors, partners, employees, shareholders, owners and subconsultants to all those named shall not exceed COMPANY'S total fee received for services rendered on this project or \$50,000.00, whichever is greater. 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.

8.25 Environmental Audits/Site Assessments

Environmental Audit/Site Assessment report(s) are prepared for CLIENT's sole use. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless against all damages, claims, expenses, and losses arising out of or resulting from any reuse of the Environmental Audit/Site Assessment report(s) without the written authorization of COMPANY.

This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Work cannot begin until COMPANY receives a signed agreement. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,

HR GREEN, INC.

Scott Marquardt, P.E.
Client Service Manager

Ajay Jain, P.E.
Vice President, Practice Leader - Water Resources

CITY OF ST. CHARLES

Accepted by: _____

Printed/Typed Name: _____

Title: _____

Date: _____