

RESOLUTION

VILLAGE OF GILBERTS

A Resolution authorizing a General Engineering Service Agreement between the Village of Gilberts and Robinson Engineering to provide general engineering services

Be it Resolved by the President and Board of Trustees of the Village of Gilberts, Kane County, Illinois that:

Section 1:

The Village of Gilberts hereby authorizes the Village President and Village Clerk to execute a General Engineering Service Agreement with Robinson Engineering to provide general engineering services associated with Specific Projects not otherwise covered under a separate agreement, and such documents as are necessary and convenient to effectuate the service agreement as hereby attached hereto and made a part hereof as Exhibit A as approved.

Section 2:

This resolution shall be in full force and in effect from and after its passage and approval pursuant to law.

Passed this 10th day of October, 2017 by a roll call vote as follows:

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Elissa Kojzarek	✓	_____	_____	_____
Trustee Dan Corbett	✓	_____	_____	_____
Trustee Nancy Farrell	✓	_____	_____	_____
Trustee Louis Hacker	✓	_____	_____	_____
Trustee Jeanne Allen	✓	_____	_____	_____
Trustee Guy Zambetti	✓	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS 10th DAY OF Oct., 2017

*[Signature]*

Village President, Rick Zirk



*[Signature]*  
Village Clerk, Debra Meadows

## AGREEMENT

### BETWEEN THE VILLAGE OF GILBERTS and ROBINSON ENGINEERING, LTD. For General Engineering Services

THIS IS AN AGREEMENT effective as of the date shown on the Signature sheet between the Village of Gilberts, hereinafter "OWNER", and Robinson Engineering, Ltd., hereinafter "ENGINEER". From time to time OWNER may request that ENGINEER provide general professional services for a Specific Project not otherwise covered under a separate agreement. Each such engagement shall be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all duly authorized Task Orders executed under this Agreement.

OWNER and ENGINEER agree as follows:

#### 1.01 Basic Agreement

- A. ENGINEER's services will vary from time to time based on the requirements as determined by OWNER, but will generally be categorized as "Municipal Engineer Duties" and "Specific Projects". Municipal Engineering Duties will include but may not be limited to daily tasks as requested by OWNER performed from OWNER's offices such as development plan reviews; site inspections; meetings with Village staff, property owners, or the public at large; municipal budgeting; capital improvement planning; ordinance updates; coordination with other governmental or regulatory agencies and utility companies; day-to-day engineering support; and other miscellaneous tasks ordinarily administered by a Municipal Engineer. Specific Projects will generally include the engineering design, bidding and/or construction oversight of capital improvement projects; detailed engineering studies; and other Specific Projects outside normal day-to-day activities typically performed by a municipal engineer, as outlined in Appendix 3.
- B. Municipal Engineering Duties will be governed by the terms of this Agreement. ENGINEER's duties related to each Specific Project will be detailed in a duly executed Task Order for each Specific Project as applicable. Each Task Order will indicate the specific services to be performed and deliverables to be provided. A sample Task Order is attached as Appendix 1. If authorized by OWNER, or if required because of changes in the Project, ENGINEER shall furnish services in addition to those set forth above. OWNER shall pay ENGINEER for its services as set forth in Paragraphs 7.01 and 7.02.
- C. This Agreement is not a commitment by OWNER to ENGINEER to issue any Task Orders.
- D. ENGINEER shall not be obligated to perform any prospective Task Order unless and until OWNER and ENGINEER agree as to the particulars of the Specific Project, including the scope of ENGINEER's services, time for performance, ENGINEER's compensation, and all other appropriate matters.
- E. This agreement shall remain in force until terminated

#### 2.01 Procedures

##### A. Task Orders

1. OWNER and ENGINEER shall agree on the scope, time for performance, and compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
  2. ENGINEER will commence performance as set forth in this Agreement for Municipal Engineering Duties, and per approved Task Orders for Specific Projects as may be applicable.
- B. Invoices: ENGINEER shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to OWNER on a monthly basis. Payment to ENGINEER shall be in accordance with 50 ILCS 505 (Local Government Prompt Payment Act). In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. OWNER waives any and all claims against ENGINEER for any such suspension. Payments will be credited first to interest (if any) and then to principal

#### 3.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,
  - a. By either party upon 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.
  - b. By ENGINEER:
    - 1) Upon seven (7) days written notice if OWNER demands that ENGINEER furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or
    - 2) Upon seven days written notice if the ENGINEER's services for the Specific Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.
    - 3) ENGINEER shall have no liability to OWNER on account of such termination, other than to provide documentation and copies of all work that ENGINEER has been compensated for to date
  - c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 3.01 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by OWNER effective upon ENGINEER's receipt of notice from OWNER.
  - B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Specific Project materials in orderly files.
  - C. In the event of any termination under Paragraph 3.01, ENGINEER will be entitled to invoice OWNER and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 Successors, Assigns, and Beneficiaries

- A. OWNER and ENGINEER are hereby bound and the successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by Paragraph 4.01.8 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

#### 5.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services. Subject to the foregoing standard of care, ENGINEER and its consultants may

use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. ENGINEER is not responsible for the quality or accuracy of data nor for the methods used in the acquisition or development of any such data where such data is provided by or through the OWNER, contractor, or others to the ENGINEER and where the ENGINEER's services are to be based upon such data. Such data includes, but is not limited to, soil borings, groundwater data, chemical analyses, geotechnical testing, reports, calculations, designs, drawings, specifications, record drawings, contractor's marked-up drawings, and topographical surveys.

- B. ENGINEER shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall ENGINEER have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Specific Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractors furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the State of Illinois. Venue for any dispute arising out or related to this Agreement shall be in the Circuit Court of Kane County, Illinois.
- D. ENGINEER neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between OWNER and such contractor. ENGINEER is not responsible for variations between actual construction bids or costs and ENGINEER's opinions or estimates regarding construction costs. ENGINEER's opinions of probable Construction Cost are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's estimate as an experienced and qualified professional generally familiar with the construction industry. Since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER requires greater assurance as to probable Construction Cost, OWNER must employ an independent cost estimator.
- E. ENGINEER shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except ENGINEER's own employees) at the Specific Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by ENGINEER.
- F. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in ENGINEER having to certify, guarantee, or warrant the existence of conditions whose existence ENGINEER cannot ascertain within its services for that Specific Project. OWNER agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon ENGINEER signing any such certification.
- G. Subject to the receipt by ENGINEER of full payment for all services relating to preparation of the documents, all documents prepared or furnished by ENGINEER to OWNER shall be and remain the exclusive property of OWNER; provided, however, that ENGINEER shall hold concurrent ownership of all documents prepared by ENGINEER. Any reuse or modification of the documents provided by ENGINEER, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to its officers, directors, members, partners, agents, employees and consultants.
- H. To the fullest extent permitted by law, OWNER and ENGINEER (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Specific Project, and (2) agree that ENGINEER's total liability to OWNER under this Agreement shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of OWNER's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto.

- I. The parties acknowledge that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until OWNER: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. OWNER and ENGINEER agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the parties may exercise their rights at law.
- K. Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER. ENGINEER's Services under this Agreement are being performed solely for OWNER's benefit, and no other party or entity shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of Services hereunder.
- L. ENGINEER agrees that it shall keep and maintain records and documents that have been transmitted to the OWNER that have been created pursuant to this Agreement or any task order in compliance with the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., and shall produce the same in response to a FOIA request received by OWNER requesting or requiring the production of such records and documents in the time and manner required by the FOIA and the relevant request, subject to OWNER'S timely transmittal of such request to ENGINEER. OWNER agrees that it shall extend the time to respond to any such requests to the maximum extent permitted by law upon ENGINEER'S request where ENGINEER indicates to OWNER that such an extension of time is necessary for ENGINEER'S timely and compliant production of documents in response to such request. Any costs incurred by the ENGINEER to provide these services shall be paid for by the OWNER according to paragraph 7.02 of this agreement.

#### 6.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 Basis of Payment-Hourly Rates Plus Reimbursable Expenses

- A. Using the procedures set forth in Paragraph 2.01, unless otherwise agreed to by both parties, OWNER shall pay ENGINEER as follows:
  1. An amount equal to the cumulative hours charged to Municipal Engineering Duties by each class of ENGINEER's employees' times standard hourly rates for each applicable billing class for all services performed, plus reimbursable expenses and ENGINEER's consultants' charges, if any.
  2. An amount equal to the preliminary engineering fee computed using Schedule A or Schedule B (as applicable) for design and bidding services associated with each Specific Project, plus reimbursable expenses and ENGINEER's consultants' charges, if any. Payment for construction oversight services related to Specific Projects will be an amount equal to the cumulative hours charged by each class of ENGINEER's employees' times standard hourly rates for each applicable billing class for all services performed, plus reimbursable expenses and ENGINEER's consultants' charges, if any.
  3. ENGINEER's Standard Hourly Rates and Schedule of Fees are attached as Appendix 2.
  4. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1st of each calendar year) to reflect equitable changes in the compensation payable to ENGINEER, subject to the written approval of OWNER.

#### 7.02 Additional Services:

- A. For additional services of ENGINEER's employees engaged directly on a Specific Project, OWNER shall pay ENGINEER an amount equal to the cumulative hours charged to the Specific Project by each class of

ENGINEER's employees' times standard hourly rates for each applicable billing class; plus reimbursable expenses and ENGINEER's consultants' charges, if any. ENGINEER's standard hourly rates are attached as Appendix 2.

- B. If any of the following services are required, they will be provided for explicitly in the scope of the Task Order or a subsequent Task Order:
1. Additional and Extended Services during construction made necessary by:
    - a. Work damaged by fire or other cause during construction
    - b. A significant amount of defective or neglected work of any contractor
    - c. Prolongation of the time of the construction contract
    - d. Default by contractor under the construction contract
  2. Archaeological or Botanical Investigations: ENGINEER will assist OWNER in engaging the services of an archaeologist or botanist, if required, to perform the field investigations necessary for agency review through a subsequent Task Order.
  3. Permit and Plan Review Fees: All permit and plan review fees payable to regulatory agencies shall be paid for by OWNER.
  4. Preparation for and/or Appearance in Litigation on Behalf of OWNER: This type of service by ENGINEER will be provided through a subsequent and separate Task Order.
  5. Revising Designs, Drawings, Specifications, and Documents: Any services required after these items have been previously approved by state or federal regulatory agencies, because of a change in the Task Order-17-R0559 specified project scope or where such revisions are necessary to comply with changed state and federal regulations that are put in force after Services have been partially completed, will be provided through a subsequent Task Order
  6. Services Furnished during Re-advertisement for Bids, if Ordered by OWNER: If a Contract is not awarded pursuant to the original bids, any services of this type will be provided through a subsequent Task Order.
  7. Services Related to Buried Wastes and Contamination: Should buried solid, liquid, or potentially hazardous wastes or subsurface or soil contamination be uncovered at the site, follow-up investigations may be required to identify the nature and extent of such wastes or subsurface soil or groundwater contamination and to determine appropriate methods for managing of such waste or contamination and for follow-up monitoring. Investigation, design, or construction-related services related to buried solid, liquid, or potentially hazardous wastes or soil or groundwater contamination will be provided through a subsequent and separate Task Order.

#### 8.01 Insurance.

A. Before any work is commenced under this Agreement or any task order, and throughout the duration of this Agreement, ENGINEER shall maintain the following insurance coverage:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Minimum General Aggregate shall be no less than \$2,000,000;
2. Automobile Liability: \$1,000,000 combined single limit per accident or bodily injury and property damage;
3. Professional Liability: \$1,000,000 single limit for errors and omissions, professional/malpractice liability;
4. Worker's Compensation and Employers' Liability: Worker's Compensation limits as required by the Labor Code of the State of Illinois and Employers' Liability limits of \$500,000 per accident; and

5. Excess or Umbrella Liability: \$5,000,000 combined single limit of each occurrence and \$5,000,000 Minimum General Aggregate.

8.02. Indemnification

- A. To the fullest extent permitted by Laws and Regulations, ENGINEER shall indemnify and hold harmless The Village of Gilberts, its official, employees, and agents from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to ENGINEER's services provided under this Agreement, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is the later of the "Date Signed" by the parties below:

**Village of Gilberts**

Date Signed: 17 Oct 17  
By [Signature]  
Title Village Administrator  
Attest [Signature]

**ROBINSON ENGINEERING, LTD.**

Date Signed: 10-17-17  
By [Signature]  
Title Exec. Vice President  
Attest: [Signature]