1996 S. Kirk Rd. Suite 320
Geneva, IL 60134

# Kane County

## Forest Preserve District, Planning and Utilization Committee

## Agenda

Chair Cherryl Strathmann, President Christopher Kious, President Pro Tem, Mavis Bates, Executive Director Benjamin Haberthur
Ron Ford, Michelle Gumz, Mike Kenyon, Anita Lewis, Mike Linder, Vern Tepe

**Thursday, November 16, 2023** **2:00 PM** **3rd Floor Board Room**

**Afternoon*****

**I. Call To Order**

**II. Approval of Minutes of October 26, 2023**

**III. Public Comment (Each Speaker is limited to three minutes)**

**IV. Bids and Proposals**

**V. New or Unfinished Business**

**TMP-23-1585** Resolution Authorizing an Intergovernmental Agreement Between the Forest Preserve District of Kane County and the County of Kane For Volunteer Stream Corridor Restoration Services

**TMP-23-1525** Resolution Authorizing a Contract for Professional Engineering Services to Develop a Long-Term Planning Study at Fox River Bluff Bridge with Alfred Benesch & Company

**TMP-23-1526** Resolution Approving a Contract with Hey and Associates, Inc. for Professional Services to Develop Engineering Plans for the Mill Creek Greenway Forest Preserve

**VI. Closed Session to Discuss Land Acquisition, License Agreements, Potential Litigation and Personnel**

**VII. Communications**

**VIII. Chairman's Comments**

**IX. Adjournment**
**Adjournment until: Thursday, December 14, 2023 2:00 p.m. in person at the Forest Preserve District Administration Offices 1996 S. Kirk Road, Suite 320 Geneva, Illinois and via zoom https://zoom.us/j/6302325980?pwd=aURTSGJoRlVJNDRCcHJXd3dvaVVrUT09 Meeting ID: 630 232 5980 Password: 24680 The Request to Speak Form on our website must still be completed for guests to speak at the meeting.**

STATE OF ILLINOIS )
SS.
COUNTY OF KANE )

# FP RESOLUTION NO. TMP-23-1585

# RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF KANE COUNTY AND THE COUNTY OF KANE FOR VOLUNTEER STREAM CORRIDOR RESTORATION SERVICES

WHEREAS, the County of Kane, an Illinois County organized under the Counties Code, 55 I.L.C.S 5/1-1001 et.seq. (COUNTY) and the Forest Preserve District of Kane County, Illinois (DISTRICT), by virtue of its powers as set forth in the Downstate Forest Preserve Act 70 ILCS 805/0.001 et seq. are authorized to enter into this Intergovernmental Agreement; and

WHEREAS, the DISTRICT and the COUNTY desire to enter into an intergovernmental agreement to permit community volunteers to perform nuisance and invasive vegetation removal on both District and County owned property at Geneva Creek; and

WHEREAS, the COUNTY and DISTRICT share ownership of Geneva Creek; and

WHEREAS, the COUNTY desires to coordinate a project with the DISTRICT for the design permitting and construction of stream bank and stream channel stabilization along approximately 1,400LF of Geneva Creek; and

WHEREAS, the long term success of the project will be increased if a community volunteer program could be utilized on both properties to remove nuisance and invasive vegetation along the stream corridor before the stabilization project begins and continue after the project is complete; and

WHEREAS, the District already has an established Volunteer Program for Natural Areas Management to organize, train and oversee volunteers interested in performing management activities such as nuisance and invasive vegetation removal; and

WHEREAS, the District has agreed to utilize its Volunteer Program for Natural Areas Management to conduct nuisance and invasive vegetation removal on both the District-owned parcel to the east as well as the adjacent Kane County-owned parcel to the west.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Forest Preserve District of Kane County, Kane County, Illinois, that the President and Secretary of the District be, and hereby are, authorized to execute and deliver on behalf of the District, the intergovernmental agreement hereto and made a part hereof as attached.

APPROVED AND PASSED on this 12th day of December 2023.

| | |
|---|---|
| Christopher Kious | Myrna Molina |
| President, Kane Forest Preserve | Secretary, Kane Forest Preserve |
| Kane County, Illinois | Kane County, Illinois |

# AGENDA MEMORANDUM

**DATE:** November 16, 2023

**TO:** Forest Preserve District Planning and Utilization Committee

**FROM:** Jennifer Rooks-Lopez, Chief of Planning & Land Management
Ben Haberthur, Executive Director

**SUBJECT:** Presentation and approval of an Intergovernmental Agreement between the Forest Preserve District of Kane County and the County of Kane for Volunteer Stream Corridor Restoration Services at Geneva Creek

**PURPOSE:**
The purpose of this memorandum is to provide the Committee with information to consider the approval of an intergovernmental agreement between the Forest Preserve District of Kane County and the County of Kane for volunteer stream corridor Restoration Services at Geneva Creek and the Gunnar Anderson Forest Preserve.

**BACKGROUND:**
In the spring 2023, the department of Environmental and Water Resources contacted the District concerning potential improvements at Geneva Creek in the Gunnar Anderson Forest Preserve. The goal of the project is to improve approximately 1,400 LF of Geneva Creek. Currently Geneva Creek experiences severe erosion during moderate to high storm events. The erosion compromises the stability of the creek, the future of the Geneva Grotto and contributes to sediment pollution into the Fox River. The County and the Forest Preserve are owners of Geneva Creek south of Route 31. Construction of the Geneva Creek improvements is anticipated to begin in summer 2024.

The long-term success of the project will be increased if a community volunteer program could be utilized on both properties to remove nuisance and invasive vegetation along the stream corridor before the stabilization project begins and continue after the project is complete. The District already has an established Volunteer Program for Natural Areas Management to organize, train and oversees volunteers interested in performing management activities such as nuisance and invasive vegetation removal. This agreement would allow District Volunteers to assist in working on both County and District property along Geneva Creek.

**FINANCIAL IMPACT:**
There is no financial impact.

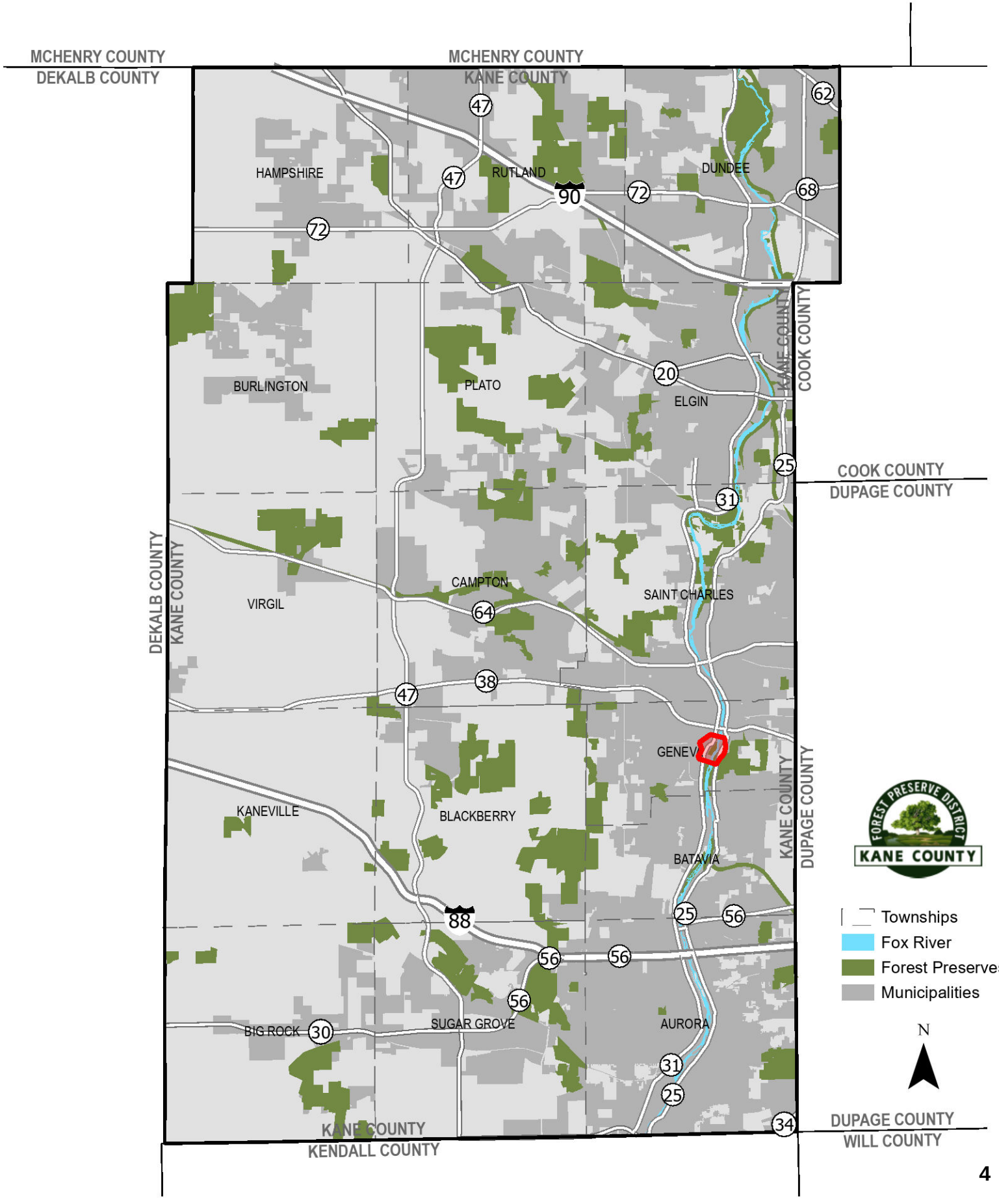
**RECOMMENDATION:**
Staff recommends the Committee approve the Intergovernmental Agreement between the Forest Preserve District of Kane County and the County of Kane for volunteer stream corridor Restoration Services at Geneva Creek as presented.

**ATTACHMENTS:**
*County Location Map*
*Site Plan*
*Intergovernmental Agreement*

# Gunnar Anderson F.P.

County Location Map

Geneva, IL



**INTERGOVERNMENTAL SERVICES AGREEMENT**
**Between the**
**COUNTY OF KANE, ILLINOIS and the FOREST PRESERVE DISTRICT OF KANE COUNTY, ILLINOIS**
**For**
**VOLUNTEER STREAM CORRIDOR RESTORATION SERVICES**

This intergovernmental agreement is made this ___ day of _____, 2023, by and between the County of Kane, Illinois, a unit of local government organized and existing under the laws of the State of Illinois (hereinafter referred to as "Kane County") and the Forest Preserve District of Kane County, Illinois, a forest preserve district and a unit of local government organized and existing under the laws of the State of Illinois (hereinafter referred to as "District"). For purposes of this Agreement, Kane County and the District shall collectively be referred to hereinafter as "the Parties".

## RECITALS

WHEREAS, the Parties are units of local government within the meaning of Section 10 of Article 7 of the Constitution of the State of Illinois; and

WHEREAS, the Parties are also public agencies within the meaning of the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, the Parties are authorized to contract among themselves to obtain or share services, or exercise, combine, or transfer any power or function in any manner not prohibited by law (5 ILCS 220/3); and

WHEREAS, Kane County owns and operates the Kane County Government Center at 719 S. Batavia Ave in Geneva, Illinois; and

WHEREAS, the Government Center property contains a segment of Geneva Creek, which flows westward along the southern edge of the county property and then through the Gunnar Anderson Forest Preserve before draining into the Fox River; and

WHEREAS, Geneva Creek through both Kane County and District parcels is severely degraded due to ongoing streambank and stream channel erosion that has not been addressed in the 52 years that Kane County has owned the property; and

WHEREAS, the Geneva Grotto is a locally significant structure on the western edge of the District property and immediately adjacent to Geneva Creek where significant stream erosion has occurred; and

WHEREAS, Kane County's Building Management Department, Kane County's Environmental and Water Resources Department, and the District are working together to fund and execute a stream channel and streambank stabilization project along Geneva Creek in 2024 by contracting with a vendor experienced in the design and construction of such improvements; and

WHEREAS, the long term success of the project will be increased if a community volunteer program could be utilized on both properties to remove nuisance and invasive vegetation along the stream corridor before the stabilization project begins and continue after the project is complete; and

WHEREAS, the District already has an established Volunteer Program for Natural Areas Management to organize, train and oversee volunteers interested in performing management activities such as nuisance and invasive vegetation removal; and

WHEREAS, the District has agreed to utilize its Volunteer Program for Natural Areas Management to conduct nuisance and invasive vegetation removal on both the District-owned parcel to the east as well as the adjacent Kane County-owned parcel to the west.

NOW THEREFORE, for and in consideration of the mutual covenants herein the parties agree as follows:

1. **SERVICES**: The District shall, in accordance with its own Volunteer Program, organize and oversee volunteers and staff to assist with the nuisance and invasive vegetation removal along Geneva Creek on Kane County's parcel. Specifically, the District shall ensure all volunteers are properly trained, when appropriate, and the District shall collect and maintain volunteer waiver forms. Additionally, the District shall coordinate with Kane County regarding dates for vegetation removal. Finally, the District shall oversee the work conducted by volunteers.

2. **LIMITATION OF SERVICES**: The District shall consult with Kane County regarding the specific vegetation removal plans, and shall not deviate from the plans without Kane County's prior consent.

3. **AGREEMENT TERM**: The term of this Agreement shall commence on the date of this Agreement and shall continue for one (1) year ("Term"). This Agreement will automatically renew for additional one (1) year terms, unless either party provides notice within 30 days of such renewal that the party no longer wishes to continue the agreement.

4. **CONFIDENTIALITY**: The District shall not disclose to any third party or use, except in connection with the performance of Services hereunder, any confidential information of Kane County in the possession of the District, unless otherwise required by law or court order.

5. **INDEMNITY**: The District agrees to save, hold harmless, defend and indemnify the Kane County and its Officers, Agents, and Employees, from any and all liability or loss incurred by Kane County resulting from the District's noncompliance with any laws or regulations of any governmental authority having jurisdiction over the District and/or the District's performance of this contract and the District's violation of any of the terms and conditions of this Agreement, and from the District's negligence arising

from, in any manner and in any way connected with, the terms and conditions of this Agreement and arising from the District's performance thereunder.

6. **TERMINATION:** Either party may terminate this Agreement at any time with thirty (30) days written notice to the other.

7. **NOTICE:** Any notice required or permitted to be given hereunder shall be in writing an shall be deemed given:
   (i) When delivered personally to the individual designated below; or
   (ii) On the third business day after sent by registered or certified mail, postage prepaid, addressed as follows:

   TO FOREST PRESERVE DISTRICT OF KANE COUNTY:
   Contact: Benjamin Haberthur
   Address: 1996 South Kirk Rd, Suite 320
   Geneva, IL 60134
   Phone: 630-208-8661
   E-mail: haberthurBen@kaneforest.com

   TO KANE COUNTY:
   Contact:
   Address:
   Phone:
   E-mail:

8. **SEVERABILITY**: In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

9. **ASSIGNMENT**: Neither party may assign or otherwise transfer this Agreement without the written consent of the other party. This Agreement shall inure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

10. **GOVERNING LAW**: This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and the County of Kane.

11. **ENTIRE AGREEMENT**: This Agreement, including the recitals and schedules, set forth the entire agreement between the parties with respect to the subject matter hereof and the Agreement shall be amended only in writing signed by both parties.

12. **COUNTERPARTS**: This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed.

13. **NO THIRD-PARTY BENEFICIARIES:** This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either

expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party.

14. **AUTHORIZATION:** The Parties represent that all necessary acts have been taken to authorize and approve this agreement in accordance with applicable law, and this Agreement, when executed by the Parties hereto, shall constitute a binding obligation of the Parties, legally and enforceable at law and equity against both.

N WITNESS WHEREOF, the parties have executed this Agreement effective this ___ day of _____, 2023.

KANE COUNTY, ILLINOIS

By:_____
Corinne Pierog, Kane County Board Chairman

FOREST PRESERVE DISTRICT OF KANE COUNTY

By:_____
Christopher W. Kious, President

STATE OF ILLINOIS )
SS.
COUNTY OF KANE )

# FP RESOLUTION NO. TMP-23-1525

## RESOLUTION AUTHORIZING A CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES TO DEVELOP A LONG-TERM PLANNING STUDY AT FOX RIVER BLUFF BRIDGE WITH ALFRED BENESCH & COMPANY

WHEREAS, the Forest Preserve District of Kane County, Kane County, Illinois, finds it necessary and desirable to retain the services of Alfred Benesch & Company of Naperville, Illinois, for professional engineering services, to create a bridge assessment report with four rehabilitation options; and

WHEREAS, Alfred Benesch & Company was retained in 2017 to author the District's Bridge assessment report; and

WHEREAS, Alfred Benesch & Company have performed on call bridge inspections for the District since 2017 including the Fox River Bluff Bridge; and

WHEREAS, Alfred Benesch & Company has submitted a proposal for the professional engineering services, which include four rehabilitation options and cost estimates, for a total of $35,000.00. Additionally, $5,000.00 shall be set aside as contingency to cover any unanticipated additional costs that may arise during design for a total project amount of $40,000.00.

NOW, THEREFORE, BE IT RESOLVED that the Forest Preserve District Board of Commissioners of Kane County, Kane County, Illinois, that Alfred Benesch & Company of Naperville, Illinois, be retained to provide professional engineering services for the Fox River Bluff Bridge at a cost not to exceed Forty thousand dollars ($40,000.00).Click or tap here to enter text.

APPROVED AND PASSED on this 12th day of December 2023.

| | |
|---|---|
| Christopher Kious | Myrna Molina |
| President, Kane Forest Preserve | Secretary, Kane Forest Preserve |
| Kane County, Illinois | Kane County, Illinois |

# AGENDA MEMORANDUM

**DATE:** November 16, 2023

**TO:** Forest Preserve District Planning & Utilization Committee

**FROM:** Jennifer Rooks-Lopez, Chief of Planning & Land Management

**SUBJECT:** Presentation and Approval of a contract with Alfred Benesch & Company for professional engineering services to develop a long-term planning study at Fox River Bluff Bridge with Alfred Benesch & Company

**PURPOSE:**
The purpose of this memorandum is to provide the Committee with information to consider the approval of a contract with Alfred Benesch & Company, Naperville, Illinois for professional Engineering services, to create a bridge assessment report with four rehabilitation options for the Fox River Bluff Bridge AT Red Gate Road.

**BACKGROUND:**
In 2012 the District was gifted the Fox River Bluff Bridge at Red Gate Road from the City of St. Charles. Since that time, the wooden decking of the bridge has experienced an accelerated rate of decline. Staff makes surface repairs as necessary but is having difficulty keeping up. At only 11 years old, the bridge should not be experiencing these issues and initial inspections indicate the problem may with the timber treatment used at installation. Moving forward an overall assessment of the bridge is required to identify the extent of the damage and to offer solutions for next steps. Alfred Benesch & Company drafted the District's 2017 Bridge Assessment Report and has maintained an on call inspection service contract with the District since that time. Through those two past services, they are intimately familiar with the issue affecting the Fox River Bluff Bridge. This proposal is the next step to determine the overall extent of damage, and planning repairs. A scope of work was developed and a total fee for service was established at $35,000. Additionally, $5,000.00 shall be set aside as contingency to cover any unanticipated additional costs, that may arise during design and construction, for a total possible cost of $40,000.

**FINANCIAL IMPACT:**
Funds totaling $45,202.57 are available within account 03-21-24-7050 Bridge Replacements and Repairs to cover this expense.

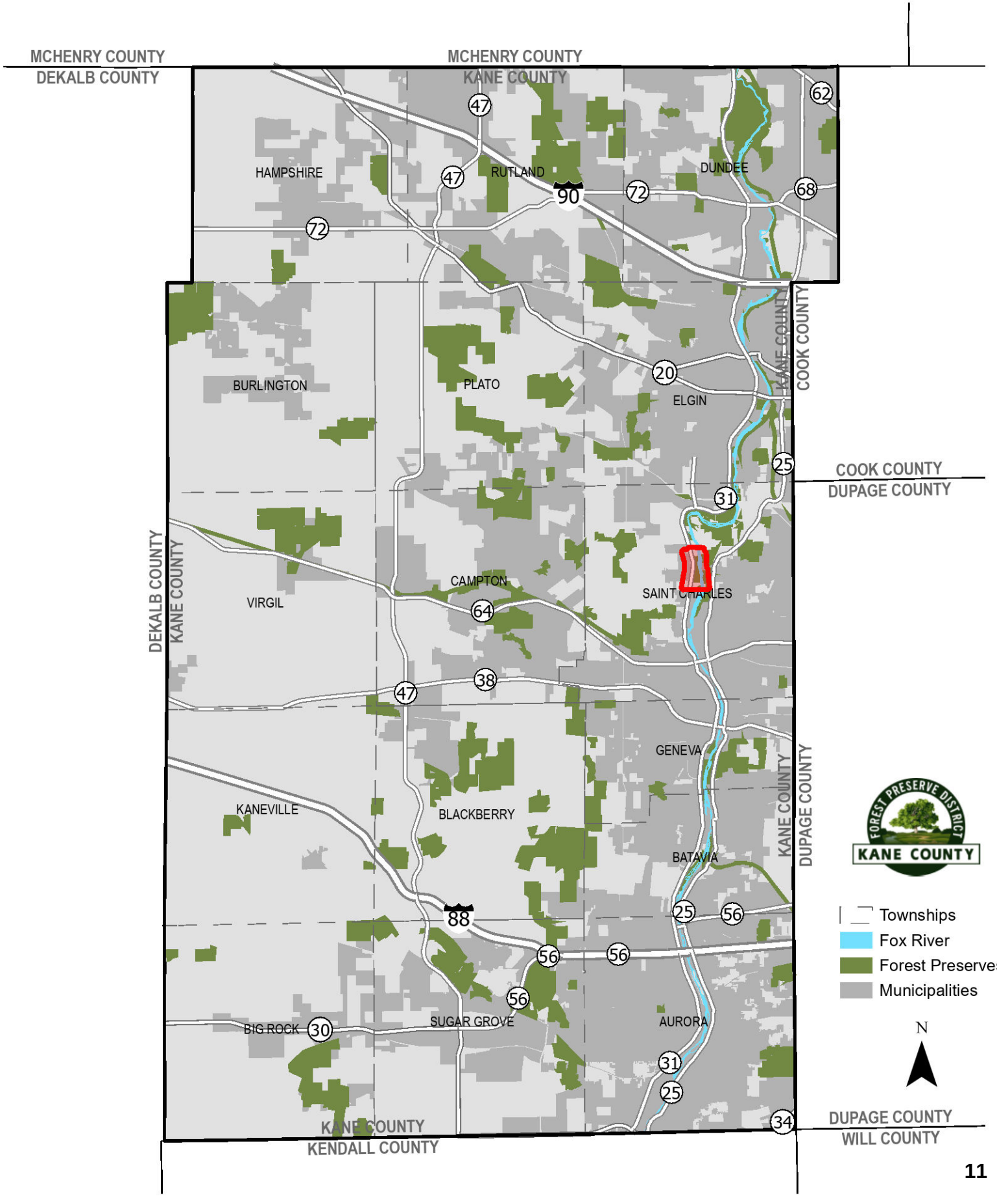
**RECOMMENDATION:**
Staff recommends approval of a contract with Alfred Benesch & Company of Naperville Illinois for professional engineering services which include conceptual architectural and engineering designs and cost estimates for $35,000.00, plus a contingency for & $5,000.00 to cover any unanticipated additional costs that may arise in an amount not to exceed $40,00.00.

**ATTACHMENTS:**
*Red Gate/Fox River Bluff Location Map*
*Proposal: Fox River Bluff West N2, N4 & N5 Long-Term Planning Study – Alfred Benesch & Company*

# Fox River Bluff West F.P.

County Location Map

St Charles, IL



Alfred Benesch & Company
1230 East Diehl Road, Suite 109
Naperville, IL 60563
www.benesch.com
P 630-577-9100
F 630-577-9199

October 6, 2023

Ms. Jennifer Rooks-Lopez, CPRP, LEED AP BD&C
Chief of Planning and Land Management
Forest Preserve District of Kane County
1996 S. Kirk Rd., Suite 320
Geneva, IL 60134

**Subject: Fox River Bluff West N2, N4 & N5 Long-Term Planning Study**

Dear Ms. Rooks-Lopez:

Alfred Benesch & Company (Benesch) is pleased to submit this proposal to provide Bridge Planning services for the Forest Preserve District of Kane County (FPDKC), Illinois. Attached you will find the Scope of Services and Fee Estimate (Attachment A) required to successfully complete the project. Your authorization to proceed with these services constitutes an acceptance of the Standard Terms and Conditions for Professional Services (Attachment B) which are incorporated and made a part of this agreement.

We understand that the FPDKC is requesting a long-term study for the Fox River Bluff boardwalk structures on either side of the Red Gate Bridge over the Fox River in St. Charles, Illinois. The study will be performed as detailed in Attachment A.

If this scope, schedule, fee, and conditions are acceptable to FPDKC, please sign and return one copy for our records. We thank you for the opportunity to work again with FPDKC to assist with your inspection and maintenance needs. If you have any questions or we can be of further assistance, please do not hesitate to call.

Very truly yours,

Andrew Keaschall, PE, SE, VMA
Senior Vice President

Forest Preserve District of Kane County

_____
Signature

_____
Name

_____
Title

_____
Date

AJK:mrb

Attachment A: Scope of Services and Fee Estimate
Attachment B: Standard Terms and Conditions for Professional Services

**Scope of Services and Fee Estimate**

The Fox River Bluff West N2, N4, and N5 structures are approximately 1,600 feet of elevated boardwalk on either side of the Red Gate Bridge over the Fox River in St. Charles, Illinois (see Location Map attached). In early 2023, Benesch prepared a brief memo evaluating the condition of timber members at limited locations along the three structures based on observations made during FPDKC replacement of deteriorated deck planks. As a follow up to this memo, the FPDKC is requesting a long-term study for these three structures. The purpose of the study is to develop a long-term plan for maintenance and/or rehabilitation of the existing structures to address continual deterioration of timber deck planks and beams. The following outlines the scope of work to complete this planning study:

**1.0 Inspection**

The three boardwalk structures were last inspected on May 26, 2021. The long-term planning study will begin with a new visual inspection of the structures and update of the Bridge Assessment Reports. We are assuming that the deck planks will not be removed for the inspection; therefore, it will be difficult to properly assess the timber beams and definitively determine their true condition. The updated Bridge Assessment Reports - in combination with the site observations from the recent deck plank replacement project - will be used as the basis for recommendations in this planning study.

**2.0 Long-Term Planning Study**

Benesch will prepare a Long-Term Planning Study that addresses all three structures. The study will generally, but not explicitly, follow the format of an IDOT Bridge Condition Report (BCR) with an emphasis on presenting rehabilitation alternatives for the FPDKC to choose from based on project needs, desires and constraints. Benesch will review available information provided by FPDKC, including existing bridge plans, shop drawings, available structural capacity calculations, as well as proposed project documents pertaining to these boardwalks. The study will summarize the existing condition of each structure based on the updated Bridge Assessment Reports mentioned in Section 1.0 above and provide conceptual rehabilitation options based on the alternatives outlined in the memo and summarized below:

1. Localized Deck Plank and Beam Replacement (deteriorated members only).
2. Full Deck Plank and Localized In-Kind Beam Replacement (span by span). Multiple decking options will be considered (up to 3 decking alternatives).
3. Full Deck Plank and Full Beam Replacement (span by span). Multiple decking and/or beam options will be considered (up to 3 decking and 3 beam alternatives).
4. Deck Plank and Beam Replacement (full superstructure). New superstructure types/materials will be considered (up to 3 alternatives).

The conceptual rehabilitation options to be considered within the study will assume reuse of the substructure elements (bent caps, columns and abutments) and that full structure replacements are not desired. Planning level cost estimates will be included where necessary.

Deliverable: The Long-Term Planning Study will be submitted electronically in PDF format to the FPDKC for review and approval. The study will include the updated Bridge Assessment Reports as attachments.

Additional scope notes: The following tasks are not anticipated and therefore are not included in the proposed scope of work:

- Inspection equipment rental.
- Destructive and non-destructive testing.
- Bridge load capacity ratings.
- Life Cycle Cost Analysis.

**3.0 Quality Control**

- Report will be reviewed for quality prior to submittal.
- Benesch will adhere to our Quality Control Plan developed specifically for bridge inspection, planning and design projects.

**4.0 Administration and Coordination**

- Coordination and discussions will be held via conference calls and e-mails as required.
- Meeting and meeting minutes are not anticipated nor included in this proposal.
- Normal accounting and reporting procedures will be conducted.

**SCHEDULE**

Benesch can begin work on this project immediately upon notice to proceed (NTP). The Long-Term Planning Study will be submitted to the FPDKC within 90 days of NTP. The duration of this contract will be 180 days from NTP or until June 30, 2024, whichever comes first.

**COST**

Benesch shall be compensated the lump sum amount of $35,000, which includes all in-house direct costs. Outside direct costs are not anticipated nor are any included in this proposal. Additional services or modifications to the agreement, including associated costs, shall be in writing and signed by both parties prior to beginning the work.

**Location Map**

# ATTACHMENT B - STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

## SECTION 1 – Services by Consultant

**1.1 General**

Consultant shall provide services under this Agreement only upon request of the Client, and only to the extent defined and required by the Client. These services may include the use of outside services, outside testing laboratories, and special equipment.

Attachments to this Agreement are as identified on the signature page to this Agreement or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this Agreement.

**1.2 Scope of Services and Fees**

The services to be performed by Consultant and the associated fee are attached hereto and made a part of this Agreement or by using serially numbered Work Authorizations, all as identified on the signature page to this Agreement, and shall be performed by the Consultant in accordance with the Client's requirements. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

It is mutually understood that Consultant's fee is not a firm contractual amount, except the total fee by the Consultant shall not be exceeded unless authorized in writing by the Client. The intent of the Scope of Services is to identify the services to be provided by Consultant. However, it is specifically understood that by written notice to Consultant, Client can decrease or, with concurrence of Consultant, increase the Scope of Services.

## SECTION 2 – Payments to Consultant

**2.1 Method of Payment**

Payment for Consultant's personnel services and direct expenses shall be based on the Method of Payment which is identified on the signature page to this Agreement or serially numbered Work Authorizations, attached hereto, and made a part of this Agreement.

**2.2 Payment for Personnel Services**

**2.2.1 Payment**

Payment for the services rendered by Consultant's personnel shall be based on the hours of chargeable time and in accordance with Consultant's Schedule of Unit Rates, which is identified on the signature page to this Agreement and attached hereto, and made a part of this Agreement.

**2.2.2 Chargeable Time**

Chargeable time for Consultant's personnel is that portion of their time devoted to providing services requested by Client. Chargeable time for field personnel located away from Consultant's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for Consultant observed legal holidays or during an employee's sick leave or vacation time. Travel time from Consultant's office to an assigned work site, and return to Consultant's office, is chargeable time; or if more economical for Client, Consultant shall lodge its personnel overnight near the work site in lieu of traveling back to Consultant's office at the end of each work day.

**2.2.3 Overtime Rates**

The basis for payment to Consultant for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

**2.3 Payment for Direct Expenses**

**2.3.1 Payment**

For Direct Expenses incurred by Consultant, payment to Consultant by the Client shall be in accordance with Consultant's Schedule of Unit Rates.

**2.3.2 Direct Expenses**

For the purposes of this Agreement, Direct Expenses to be contracted and managed by Consultant and payable by Client to Consultant shall include: Outside Services including the services and reimbursable expenses for firms other than Consultant which are necessary for the work the Consultant is directed to perform; Laboratory Tests and related reports necessary for the work the Consultant is directed to perform, either by the Consultant or by an outside service for the Consultant; Special Equipment expenses including the costs of the Consultant locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by Consultant at the time of the request for services which are necessary to enable Consultant to provide the services requested; vehicles furnished by Consultant for Consultant's authorized travels and for Consultant's field personnel; Per Diem expense or actual costs of maintaining Consultant's field personnel on or near the Project site, for each day of field assignment away from Consultant's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

**2.4 Payment Conditions**

**2.4.1** Consultant shall submit monthly invoices for all personnel services and direct expenses under this Agreement and a final invoice upon completion of services.

**2.4.2** Invoices are due and payable upon receipt by Client. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

**2.4.3** In the event of a disputed or contested invoice, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

**2.4.4** If Client fails to make payment in full to Consultant of amounts owed pursuant to this Section 2 within forty-five (45) days of the date of the invoice, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until paid in full, including interest. Consultant shall have no liability to Client for delays or damages caused by such suspension of services. Client agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Consultant as a result of Client's failure to make payments in accordance with this Agreement. No final plans, documents or reports will be released for any purpose until Consultant has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with Consultant's costs of doing business, subject to Client's review and concurrence.

## SECTION 3 - Term of Agreement

**3.1 Term**

Consultant's obligations to perform under this Agreement shall extend from the date of execution until terminated by either party.

**3.2 Abandonment of Work**

Client shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

**3.3 Termination of Agreement**

**3.3.1 Termination with Cause**

The obligation to provide further services under this Agreement may be terminated with cause by either party by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. In the event of termination by Consultant caused by failure of the Client to perform in accordance with the terms of this Agreement, Client shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment. In the event of termination by the Client caused by failure by Consultant to perform in accordance with the terms of this Agreement, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination and provide information and documents developed under the terms of this Agreement to the Client. Upon receipt of all other information and documents, Client shall pay Consultant for services performed prior to the effective date of the termination.

**3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this Agreement without cause at any time. In the event of such termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment.

**3.4 Payment for Work Upon Abandonment or Agreement Termination**

If Client abandons requested work or terminates this Agreement, Consultant shall be paid on the basis of work completed to the date of abandonment or effective date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

## SECTION 4 - General Considerations

**4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which Consultant shall provide hereunder shall be subject to the oversight and general guidance of Client.

**4.1.2** While upon the premises of Client or property under its control, all employees, agents, and subconsultants of Consultant shall be subject to Client's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, Consultant shall be and remain an independent Consultant and that the employees, agents or subconsultants of Consultant shall not be considered employees of or subject to the direction and control of Client. Consultant shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

**4.2 Insurance**

**4.2.1** Consultant shall furnish Client a certificate of insurance upon request showing amounts and types of insurance carried by Consultant, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by Consultant under this Agreement it will give Client notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance.

Consultant will name the Client as additional insured on Consultant's commercial general liability insurance.

**4.3 Successors and Assigns**

**4.3.1** Client and Consultant each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

**4.3.2** Neither Consultant nor Client shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be 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. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than Client and Consultant except as otherwise provided herein.

**4.4 Compliance with Law**

**4.4.1** Consultant shall exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**4.4.2** Neither the Consultant nor the Consultant's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

**4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by Client prior to this Agreement shall remain Client's property. Consultant shall be permitted to rely on Client furnished documents and Client shall make available to Consultant copies of these materials as necessary for the Consultant to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of service in respect to the Project and Consultant shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and the occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others acting on behalf of Client on extensions of the Project or on any other project. Further, Consultant makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by Consultant in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to Client. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or subconsultants, and Client shall indemnify and hold harmless Consultant and Consultant's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

**4.6 Consultant's Personnel at Project Site**

**4.6.1** The presence or duties of the Consultant personnel at a Project site, whether as onsite representatives or otherwise, do not make the Consultant or its personnel in any way responsible for those duties that belong to the Client and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The Consultant 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 and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except Consultant's own personnel.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Consultant neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

**4.7 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Consultant's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of Consultant's experience and qualifications and represent Consultant's judgments as an experienced and qualified professional consultant familiar with the construction industry. Consultant makes no warranty that the Client's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates. If Client wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, Client will employ an independent cost estimator, contractor, or other appropriate advisor.

**4.8 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.8.1** If Consultant, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of Consultant's services will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination.

**4.8.2** In the event that the Agreement is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that Consultant shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.8.3** Client also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon Consultant any duties or obligations other than those imposed by law.

## SECTION 5 - Professional Responsibility

**5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the “Standard of Care”). Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant’s services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined there is a deficiency that fails to meet the standard of care and it is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

**5.2 Limitation of Liability**

Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total liability to Client is limited to the amount paid under the contract or $50,000 whichever is greater, this being the Client's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

**5.3 No Special or Consequential Damages**

Client and Consultant agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

**5.4 Indemnification**

To the fullest extent permitted by law, Client and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

**5.5 No Third Party Beneficiaries**

Client and Consultant expressly agree that this Agreement does not confer upon any third party any rights as beneficiary to this Agreement. Consultant accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

Client agrees that Consultant's services and work products are for the exclusive present use of Client. Client agrees

that Consultant's compliance with any request by Client to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this Agreement nor does it create or confer any third party beneficiary rights on any third party.

## SECTION 6 - Miscellaneous Provisions

**6.1 Notices**
Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

**6.2 Joint Preparation**
For purposes of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

**6.3 Headings**
Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement

**6.4 Severability**
If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**6.5 Dispute Resolution**
If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that, with the exception of claims that are subject to the applicable venue's small claims court jurisdiction, each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

**6.6 Equal Opportunity**
Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

**6.7 Governing Law**
This Agreement is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this Agreement shall be governed by the laws of the State of Illinois.

**6.8 Entire Agreement**
This Agreement, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire Agreement between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this Agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

## SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES

☐ ***Supplemental Condition is incorporated herein when the applicable box is checked.***

☐ **S.1 Location of Underground Utilities**

It shall be the Client's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the Client elects not to assume this responsibility, Client shall notify Consultant and shall compensate Consultant for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. Client shall indemnify and hold Consultant harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, Consultant will not begin work until this has been accomplished.

☐ **S.2 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

☐ **S.3 Disposition of Samples and Equipment**

**S.3.1 Disposition of Samples**

No samples and/or materials will be kept by Consultant longer than thirty (30) days after submission of the final report unless agreed otherwise.

**S.3.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Consultant will, after completion of testing, return such samples and materials to Client, or have the samples and materials disposed of in accordance with Client's directions and all applicable laws. Client agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. Client recognizes and agrees that Consultant at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**S.3.3 Contaminated Equipment**

All laboratory and field equipment contaminated in Consultant's performance of services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. At Client's expense, such equipment shall be delivered to Client, or disposed of in the same manner specified in S.3.2 above. Client agrees to pay Consultant the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to Client pursuant to this Agreement.

STATE OF ILLINOIS )
SS.
COUNTY OF KANE )

# FP RESOLUTION NO. TMP-23-1526

## RESOLUTION APPROVING A CONTRACT WITH HEY AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES TO DEVELOP ENGINEERING PLANS FOR THE MILL CREEK GREENWAY FOREST PRESERVE

WHEREAS, the Forest Preserve District of Kane County, Kane County, Illinois, finds it necessary and desirable to retain the services of Hey and Associates, Inc. of Volo, Illinois, for professional services which include engineering, permitting and bidding services for the Mill Creek Greenway Forest Preserve; and

WHEREAS, the District has secured an Open Space Land Acquisition and Development grant (OSLAD) from the Illinois Department of Natural Resources (IDNR) which pays up to $600,000.00 for the redevelopment; and

WHEREAS, the District used a qualification based selection process to select a consultant that will provide professional services in accordance with the project requirements; and

WHEREAS, Hey and Associates, Inc. has submitted a proposal not to exceed $67,600 for professional services, which include engineering, permitting, and bidding services for the Mill Creek Greenway Forest Preserve. Additionally, $11,100 shall be set aside as contingency to cover any unanticipated additional costs that may arise during design and construction for a total project amount of $78,700; and

NOW, THEREFORE, BE IT RESOLVED that the Forest Preserve District Board of Commissioners of Kane County, Kane County, Illinois, that qualified proposal, hereto attached as Exhibit A, from Hey and Associates, Inc. of Volo, Illinois, be retained to provide engineering, permitting and bidding services for the Mill Creek Greenway Forest Preserve at a cost not to exceed Seventy-Eight Thousand and Seven Hundred dollars ($78.700).

APPROVED AND PASSED on this 12th day of December 2023.

| | |
|---|---|
| _____ | _____ |
| Christopher Kious | Myrna Molina |
| President, Kane Forest Preserve | Secretary, Kane Forest Preserve |
| Kane County, Illinois | Kane County, Illinois |

# AGENDA MEMORANDUM

**DATE:** November 16, 2023

**TO:** Forest Preserve District Planning & Utilization Committee

**FROM:** Jennifer Rooks-Lopez, Chief of Planning & Land Management

**SUBJECT:** Presentation and Approval of a Contract with Hey and Associates, Inc., for Professional Services to Develop Engineering Plans for the Mill Creek Greenway Forest Preserve.

**PURPOSE:**

The purpose of this memorandum is to provide the Committee with information to consider the approval of a contract with Hey and Associates, Inc. of Volo, Illinois for professional services, which include engineering, permitting and bidding services for the Mill Creek Greenway Forest Preserve.

**BACKGROUND:**

The District was award an Open Space Land Acquisition and Development (OSLAD) for improvements to the Mill Creek Greenway Forest Preserve. This project will include a new shelter, parking lot, restroom, archery range, walking trails and restore almost 60 acres of prairie.

The District utilized a request for qualifications process to select a firm for professional services. Five firms responded and Hey and Associates, Inc. of Volo, Illinois was selected for this project. A scope of work was developed and a total fee for services was established at $67,000. Additionally, $11,100 shall be set aside as contingency to cover any unanticipated additional costs, that may arise during design and construction, for a total possible cost of $78,700.

**FINANCIAL IMPACT:**

Funds totaling $1,250,000 were budgeted in FY23/24 for engineering and construction in Account #03-35-35-7050, project 31013 & 30803 for this project.
The construction portion of the project is estimated to cost $1,100,000. The OSLAD grant will reimburse the District a maximum of $600,000 of the construction and engineering costs.

**RECOMMENDATION:**

Staff recommends approval of a contract with Hey and Associates, Inc. of Volo, Illinois for professional services for Mill Creek Greenway Forest Preserve for $67,600, plus a contingency for & $11,100 to cover any unanticipated additional costs that may arise during design and construction in an amount not to exceed $78,700.

**ATTACHMENTS:**

*Mill Creek Greenway Location Map*

*Proposed Mill Creek Greenway Site Improvement Plan*

*Proposal for Mill Creek Greenway Forest Preserve Improvements: Hey and Associates, Inc.*

KANE COUNTY

**Attachment A-2 Site Location Map**
**Forest Preserve District of Kane County**
**Mill Creek Greenway Archery & Prairie Project**

Mill Creek Greenway Forest Preserve
2023 OSLAD Conceptual Plan

**Hey and Associates, Inc.**
Engineering, Ecology and Landscape Architecture

*8755 W Higgins Rd., suite 835*
*Chicago, Illinois 60631*
*Phone (773) 693-9200*
*Fax (847) 740-2888*

November 7, 2023

Ms. Jennifer Rooks-Lopez, CPRP, ASLA, LEED AP
Chief of Planning and Land Management
Forest Preserve District of Kane County
1996 S. Kirk Road, Suite 320
Geneva, IL 60134

Proposal No.: 23-0359

Re: Proposal for Professional Engineering Services
Mill Creek Greenway Forest Preserve

Dear Ms. Rooks-Lopez:

Thank you for selecting Hey and Associates, Inc. (Hey) to provide a proposal for design and permitting services for improvements (Project) at the Mill Creek Greenway Forest Preserve. We have prepare the following Scope of Services and associates proposed fees.

**SCOPE OF SERVICES**

**Task 1. Project Initiation and Kick-off Meeting**

We will start work upon notice to proceed from the District. After notice to proceed we will execute subconsultant agreements for all approved subconsultants. We will also coordinate and attend one project kick-off meeting. Meeting may be held at the District's office, on-site, or virtually.

*Timeline:* Prime contract award mid-December 2023; subcontracts executed by end of 2023.

*Deliverables:* Signed prime contract and subcontracts.

**Task 2. Data Collection and Pre-Design Services**

We will complete research and conduct field work necessary to prepare base mapping for use during project design.

- Initiate a JULIE design locate. Utility information will be provided when received.
- Collect topographic data and locate objects within the project area. The survey area is expected to be approximately 17 acres.
- We will complete a delineation of wetlands and Waters of the U.S., and Isolated Waters of Kane County, within the limits of the proposed project. Note that the delineation report will be completed outside of the growing season due to project schedule and regulatory agencies may require additional data collection at a later time.
- Complete subsurface geotechnical investigations including four 15-foot soil borings by

subconsultant.

· Finally, we will prepare the base mapping incorporating all elements from data collection.

*Timeline:* Late December 2023 through February 2024 (weather dependent).

*Deliverables:* Topographic survey, wetland delineation report and geotechnical report, base mapping.

**Task 3. Budget Review and Coordination Meeting to Review Existing Conditions and Concept Plan**

We will attend one virtual meeting with District staff to review existing conditions and discuss any effects new information may have upon project goals and objectives. We will also discuss and review how the portions of the site plan to be provided by the District will be incorporated into the plans. Prior to this meeting we will also prepare an initial review and opinion on the overall project construction budget that can be used by FPDKC for budget planning purposes.

*Timeline:* January/February 2023 pending completion of data collection and pre-design services

*Deliverables:* Meeting agenda and minutes

**Task 4. Preliminary Engineering (50% Construction Documents)**

We will commence preliminary engineering for replacement of an entry road , parking lot area, and stormwater or BMP solutions, and related site improvements.

· Prepare a preliminary plan set which we anticipate will include the following pages: cover, general notes, existing conditions, demolition, layout, grading and drainage, SE/SC, planting, and details.
· Prepare a list of anticipated required specifications.
· Prepare a preliminary opinion of probable cost to construct the project.
· Prepare a brief technical memo describing anticipated permitting requirements.
· Attend one virtual meeting to review preliminary engineering prior to proceeding with final design.

*Timeline:* March 2023

*Deliverables:* 50% construction documents as described above, meeting agenda, and meeting minutes.

**Task 5. Final Engineering (95% and 100% Construction Documents)**

We will prepare plans and specifications necessary to publicly bid and construct an entry road, parking lot, picnic shelter, a double restroom and storage building, an elevated hunting platform, archery range and cantilevered sports shelters, and interpretive signage depicted on the concept plan provided with the RFQ.

· Prepare a final plan set which we anticipate will include the following pages: cover, general notes, existing conditions, demolition, layout, grading and drainage, soil erosion and

sediment control, planting, and details.

· Prepare specifications referencing the IDOT Standard Specifications for Road and Bridge Construction, with Special Provisions for any modifications to the Standard Specification and work not covered by the Standard Specifications. We assume "front end" documents (e.g. Advertisement, Instructions to Bidders, Bid Form, General Terms and Conditions, Bonding and other forms, Contract, etc.) will be provided by the District.

· Prepare a final opinion of probable cost to construct the project.

· Plans, specifications, and estimates will be provided for review at 95% and 100% complete.

*Timeline:* April 2023 (95% construction documents); May 2024 (100% construction documents).

*Deliverables:* 95% and 100% construction documents as described above, meeting agendas, and meeting minutes.

**Task 6. Permitting**

We will prepare applications to obtain permits necessary for Project implementation. Please note permit application fees are not included and shall be paid directly by the District to the review agency charging any such fees.

Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), and Illinois Department of Natural Resources (IDNR)

· USACE Section 404 Nationwide Permit application for any impacts to wetlands/waters of the U.S.

· Correspondence with USFWS regarding federally listed threatened/endangered species.

· Correspondence with IDNR regarding state biological resources.

· Correspondence with IDNR SHPO and USACE regarding state and federal cultural resources.

Kane-DuPage Soil and Water Conservation District (KDSWCD)

· KDSWCD Soil Erosion and Sediment Control review (USACE permit requirement).

Illinois Environmental Protection Agency (IEPA)

· IEPA NPDES)ILR10 permitting will be necessary as the Project is expected to disturb more than 1.0 acre.

Kane County

· Stormwater permit application

· Building permit application and/or Health Department approval for structures and other site improvements

*Timeline:* Start submitting applications April 2023 concurrent with completion of 95% construction documents.

*Deliverables:* Various permit applications as described above, and responses to regulatory agency comments.

**Task 7. Bid Phase Assistance (optional)**

We will assist the District during public bidding of construction including the following. We will provide digital copies of the bid packages to the District for distribution to potential bidders, review and respond to questions from potential bidders, review the submittals, and prepare addenda if necessary.

*Timeline:* June 2024

*Deliverables:* As described above

**Task 8. Construction Administration (optional)**

We will provide construction phase support to the District on an as-needed basis. The following subtasks could be offered, but we understand that these services are optional, at the discretion of the District. .

- Attend an on-site preconstruction meeting with the Contractor, District, and applicable regulatory agencies.
- Review and respond to RFIs submitted by the Contractor. This task also includes assisting the District prepare change orders as may be desired and/or required.
- Review submittals and shop drawings from the Contractor.
- Attend field meetings to review progress and inspect work for compliance with the contract documents.
- Review progress invoices submitted by the Contractor.
- Prepare change orders/review change order requests as required.
- Conduct a pre-final inspection upon notification of substantial completion and prepare a punch list describing any observed deficiencies. Upon notification that all punch list work has been completed, conduct a final inspection and provide a recommendation for project close out.
- Prepare as-built record drawings depicting built improvements. Said as-builts will be sealed by a design professional for submittal to the IDNR as per OSLAD grant requirements.

*Timeline:* July 2024 through August 2024 +/-

*Deliverables:* Responses to RFIs, submittal responses, change orders, inspection reports, punch lists, as-built record drawings, and other communication as requested.

**FEES**

The following fees and reimbursable expenses are proposed to complete the above scope of work.

| Task | Description | Fee |
|---|---|---|
| 1 | Project Initiation and Kick-off Meeting | $1,600 |
| 2 | Data Collection and Pre-Design Services | $17,700 |
| 3 | Budget Review and Coordination Meeting to Review Existing Conditions and Concept Plan | $4,700 |
| 4 | Preliminary Engineering (50% Construction Documents) | $16,400 |
| 5 | Final Engineering (95% and 100% Construction Documents) | $19,600 |
| 6 | Permitting | $7,600 |
| 7 | Bid Phase Assistance (optional) | $2,200 |
| 8 | Construction Administration (optional) | $8,900 |
| | Total Tasks (1-6)<br>Total Optional Tasks (7-8)<br>**Total All Tasks (1-8)** | $67,600<br>$11,100<br>**$78,700** |

Reimbursable expenses shall be included in the lump sum fees noted above and include, but are not necessarily limited to, travel, reproductions, shipping/delivery, aerial photographs, phone and other communication charges, consultants and subcontractor fees, equipment and supply costs related to the execution of the project. Any additional meetings or supplemental work would be in addition to the above amount or by separate proposal. Our Standard Terms and Conditions are attached.

We appreciate this opportunity to submit this proposal. Please let us know if there are any questions or if you would like to discuss.

Sincerely,

Jeffrey A. Wickenkamp, PE
Project Manager

## Compensation

| *Profession* | *Hourly Bill Rate* |
|---|---|
| **Engineering** | |
| Senior Principal Civil Engineer | $225 |
| Principal Civil Engineer | $200 |
| Senior Civil Engineer | $180 |
| Civil Engineer I to V | $125-165 |
| Water Resources Specialist I to V | $120-160 |
| Engineering Technician I to V | $110-150 |
| Lake and Survey Services Manager | $150 |
| **Ecological Services** | |
| Senior Principal Ecologist | $200 |
| Senior Project Scientist | $175 |
| Environmental Services Manager | $155 |
| Environmental Scientist I to V | $105-145 |
| Environmental Intern | $50 |
| **Landscape Architecture** | |
| Senior Landscape Architect | $180 |
| Landscape Architect I to V | $115-155 |
| Landscape Designer | $110 |
| **Erosion Control** | |
| Senior Erosion and Sediment Control Specialist | $175 |
| Erosion and Sediment Control Specialist | $110 |
| **Design Support** | |
| CAD Technician | $100 |
| GIS Specialist | $100 |
| **Administration** | |
| Senior Administrator | $120 |
| Accounting Administrator | $95 |
| Administrative/Marketing Assistant | $90 |
| **Expert Testimony** | |
| Rates to be determined on per-project basis | |

## Reimbursable Expense

Reimbursable expenses shall be reimbursed at cost plus an 8% administrative service charge. Such expenses shall include, but are not necessarily limited to travel, reproduction, shipping/delivery, aerial photographs, phone and other communication charges, consultants and subcontractor fees, equipment and supply costs related to the execution of the project. Fixed reimbursable expense costs are as follows:

| | |
|---|---|
| Travel | $ .65/mile |
| Copies | $ .20/page |
| Software/Digital Resource Charge | $100.00/project |
| ATV Usage | $ 40.00/hour |
| ATV Discing, Herbicide, Spraying, Mowing | $ 45.00/hour |
| Boat Usage | $ 75.00/hour |
| Chain Saw Usage | $ 20.00/hour |
| Additional Plotting, B & W | $ .90/sq. ft. |
| Additional Plotting, Color | $ 2.75/sq. ft. |
| Additional Plotting, Mylar | $ 4.50/sq. ft. |
| Flow Meter | $ 50.00/day |
| GPS Rover | $350.00/day |
| Total Station/GPS Equipment | $100.00/day |
| Unmanned Aerial Reconnaissance | Per Project |

## Insurance

Throughout the duration of the project, Hey will procure and maintain the following insurance:

| **Liability** | **Limits of Liability** |
|---|---|
| Workers' Compensation and | |
| Employer's Liability | $ 500,000 each incident |
| Commercial General Liability | $ 2,000,000 |
| Professional Liability | $ 2,000,000 |
| Automobile Liability | $ 1,000,000 |

Within the limits of this insurance, Hey agrees to hold the Client harmless from and against loss, damage, injury or liability arising directly from the negligent acts or omissions of employees, agents, or subcontractors of Hey.

Client will limit any and all liability, claim for damages, losses, cost of defense, or expenses to be levied against Hey on account of any design defect, error, omission, or professional negligence to a sum not to exceed the amount of Hey's fee under this agreement. Should the Client require other types of insurance coverage, limits in excess of the above limits, and/or certificates naming any other(s) than the Client as additional insured parties, Hey's cost of obtaining such coverage, limits, or certificates shall be reimbursable by the Client.

## Billing

Billings shall be on a monthly basis and are payable upon receipt. An additional charge of 1½ percent per month (18% per annum) shall be applied to any balance unpaid more than 30 days beyond date of invoice. Client shall pay any attorney's fees, court costs or other expenses incurred collecting delinquent accounts.

Hey and Associates Inc. (Hey), with seven (7) days written notice, reserves the right to suspend or terminate work under this agreement on any account that is past due. The Client's obligation to pay for the work contracted is in no way dependent upon the Client's ability to obtain financing, zoning, permit approval by governmental or regulatory agencies, or upon the Client's successful completion of the project. The rates presented herein are effective for the period January 1, 2023 through December 31, 2023.

## Limitation of Costs

Hey will not be obligated to continue performance or incur costs beyond the estimated costs unless the Client agrees in writing to a revised cost estimate.

## Client's Responsibilities

Client shall arrange for access to and make all provisions for Hey to enter upon private and public property as required for Hey to perform services under this Agreement. Client shall provide Hey with all existing available information regarding this project as required. Hey shall be entitled to rely upon information and documentation provided by the Client or consultants retained by the Client in relation to this project, however Hey assumes no responsibility or liability for their completeness or accuracy.

## Cost Opinions

Any cost opinions or project economic evaluations provided by Hey will be on the basis of experience and judgment, but, because Hey has no control over market conditions or bidding procedures, we cannot warrant that bids, construction cost, or project economics will not vary from these opinions.

## Standard of Care

The standard of care for all services performed by Hey under the agreement will be the care and skill ordinarily used by members of Hey's profession practicing under similar circumstances at the same time and in the same locality. Hey makes no warranties, express or implied, under this Agreement or otherwise, in connection with Hey's services.

## Means & Methods

Hey will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the construction of the subject project(s).

## Mutual Indemnification

Subject to the foregoing provisions, Hey agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, employees and agents from and against any liabilities, damages and costs (including reasonable attorneys' fees and costs of defense) arising out of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused, during the performance of Services under this Agreement, by the negligent acts, errors or omissions of Hey or anyone for whom Hey is legally responsible, subject to any limitations of liability contained in this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Hey, its officers, directors, employees and agents from any liabilities, damages and costs (including reasonable attorney's fees and costs of defense) to the extent caused by the negligent acts, errors or omissions of the Client, the Client's contractors, consultants or anyone for whom Client is legally liable.

## Copyright Indemnification

To the fullest extent permitted by law, Client shall indemnify and hold harmless Hey from and against any and all costs, losses and damages (including but not limited to all attorney fees and charges, all court or arbitration or other dispute resolution costs, and any time spent by Hey in defense of any such claims) resulting from any claims brought against Hey alleging copyright, trademark, or patent infringement or any other cause of action or regulatory decision resulting from Heys use of, or reliance on, the design, plans and specifications provided by the Client for the Project. This provision shall survive the completion of the services provided under this Agreement.

## Consequential Damages

To the fullest extent permitted by law, Client and Hey 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 Project.

## Termination

Either party may terminate this Agreement upon not less than seven (7) days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the terminating party. Hey may terminate this Agreement for its convenience and without cause by providing not less than seven (7) days written notice. If Client terminates this Agreement for its convenience and without cause, Client agrees to compensate Hey for services performed prior to the termination, together with Reimbursable Expenses incurred and costs attributable to termination, including the costs attributable to Hey's termination of consultant agreements and authorized Additional Services.

## Dispute Resolution

Client and Hey agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. If such mediation is unsuccessful in resolving a Dispute, then such Dispute shall be resolved by a court of competent jurisdiction.