

RESOLUTION NO.  
R53-2010

A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A CERTAIN AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE VILLAGE OF WOODRIDGE AND JAMES J. BENES AND ASSOCIATES, INC.

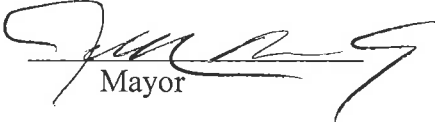
BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois, that the Mayor and Village Clerk be and the same are hereby authorized to execute an agreement for consultant services between the Village of Woodridge, Illinois and James J. Benes and Associates, Inc. relating to engineering services, a copy of which is attached hereto as "Exhibit A", which is by this reference expressly incorporated herein, subject to the approval of the Village Attorney.

BE IT FURTHER RESOLVED that the Village Clerk of the Village of Woodridge forward a certified copy of this Resolution to James J. Benes and Associates, Inc; 950 Warrenville Rd. Suite 101, Lisle, IL 60532; Attention: Mr. Gary Cottingham with a copy to the Director of Public Works.

ADOPTED this 4th day of November, 2010.

Trustee Banks	<u>Aye</u>	Trustee Kagann	<u>Aye</u>
Trustee Beavers	<u>Aye</u>	Trustee McManus	<u>Aye</u>
Trustee Cunningham-Picek	<u>Aye</u>	Trustee Pittinger	<u>Absent</u>
Mayor Murphy		-	

APPROVED this 4th day of November, 2010.

  
Mayor

ATTEST:

  
Village Clerk

Filed in the office of the Village Clerk and published in pamphlet form by authority of the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois this 4th day of November, 2010.

  
Village Clerk

AGREEMENT FOR CONSULTANT SERVICES

This AGREEMENT, made and entered into this 1st day of January, 2011, by and between the VILLAGE OF WOODRIDGE, an Illinois municipal corporation (“VILLAGE”) and JAMES J. BENES AND ASSOCIATES, INC. (“CONSULTANT”);

WITNESSETH

WHEREAS, CONSULTANT is a firm of consulting engineers experienced in the field of general municipal engineering, drainage, and site development improvements; and,

WHEREAS, the VILLAGE has a need for consulting engineering services on a periodic basis for purposes of answering questions on general municipal engineering, reviewing plans and generating reports relating to general municipal engineering, drainage, and site development improvement issues; and,

WHEREAS, the VILLAGE desires to retain the services of the CONSULTANT for periodic consultation with respect to general municipal engineering, drainage, and site development improvement issues; and,

WHEREAS, CONSULTANT desires to provide such consulting services upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants and conditions hereinafter set forth, the adequacy and sufficiency of which the parties hereto hereby stipulate, the parties agree as follows:

1. INCORPORATION OF RECITALS: The above “Whereas” clauses are expressly incorporated herein as substantive provisions of this Agreement.
2. ENGINEERING SERVICES – DAY-TO-DAY CONSULTATION:
  - A. The VILLAGE employs CONSULTANT and the CONSULTANT accepts such employment to perform ongoing consulting services on a periodic basis with respect

to general municipal engineering, drainage and site development improvement issues, including, but not limited to, consultation, plan review report generation, etc. (“ASSIGNMENTS”).

- B. ASSIGNMENTS shall be undertaken by CONSULTANT at the request of the VILLAGE’S Director of Public Works or his designee including execution of documents on behalf of the VILLAGE in the capacity of “Village Engineer”. When any ASSIGNMENT requires a written response or report by the CONSULTANT, such request shall be in writing.
- C. The CONSULTANT shall be paid a monthly retainer of \$1,000.00 for compensation of all periodic activities, resources, and support provided to Public Works staff, explicitly excluding any work related to third party site development improvement issues subject to reimbursement agreements.

However when any assignment given to the CONSULTANT that the CONSULTANT reasonably believes would exceed ONE (1) hour the CONSULTANT shall provide a not to exceed estimate to complete the work before proceeding. Upon completion of the assignment, the CONSULTANT shall be reimbursed for all time devoted to any given ASSIGNMENT based on the CONSULTANT’S cost. The CONSULTANT’S cost shall be the sum of direct labor cost, other direct costs, and indirect costs incurred to complete the ASSIGNMENT. These costs are defined as follows:

“Direct Labor costs”: Shall be the actual amount paid to employees and partners for time chargeable, during a normal eight (8) hour work day, with respect to an ASSIGNMENT.

“Other Direct costs”: Shall be customary, usual, and identifiable out-of-pocket expenses incurred by the CONSULTANT with respect to an ASSIGNMENT.

“Indirect costs”: Shall be a factor intended to cover indirect salary and overhead costs and shall be calculated by multiplying Direct Labor costs by a factor of 1.703.

The Direct Labor costs by job classification are as follows for ASSIGNMENTS made during the Agreement term ending April 30, 2012.

<u>CLASSIFICATION</u>	<u>Hourly Rate</u>	
	<u>From</u>	<u>To</u>
Principal.....	\$59.00 to	\$59.00
Associates.....	\$42.50 to	\$42.75
Engineers.....	\$27.75 to	\$42.00

Environmental Scientist.....	\$39.50 to	\$39.50
Draftsmen and Technicians.....	\$19.75 to	\$24.50

3. METHOD OF PAYMENT TO CONSULTANT: The CONSULTANT shall submit an invoice once a month for services performed during the invoiced period. The CONSULTANT's invoice shall specify the work that was completed. When related to site development improvement issues it shall note what project those costs were attributable to in order for the VILLAGE to seek reimbursement. Payment will be made in full on the basis of approved invoices and supporting documentation.

4. OWNERSHIP OF DOCUMENTS: The CONSULTANT agrees that all survey data, reports, drawings, studies, specifications, estimates, maps and computations prepared by or for CONSULTANT under the terms of this Agreement shall be properly arranged, indexed and delivered to the VILLAGE upon termination or completion of the work. These documents shall become and remain the property of the VILLAGE, which shall have the right to use same at the VILLAGE'S sole risk without restriction or limitation and without compensation to the CONSULTANT other than that provided in this Agreement. The parties acknowledge and agree that the VILLAGE'S use of any such document for purposes other than the ASSIGNMENT for which such document was prepared, or as directed by the CONSULTANT with respect to a subsequent ASSIGNMENT ("ALTERNATE USES"), shall be solely at the risk of the VILLAGE and the VILLAGE shall indemnify and hold harmless CONSULTANT from all claims, losses and expenses, including attorney's fees, arising out of or resulting from ALTERNATE USES.

5. INDEMNIFICATION: The CONSULTANT shall indemnify and hold harmless the VILLAGE from loss or expense, including reasonable attorneys' fees for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of the CONSULTANT.

The VILLAGE shall indemnify and hold harmless the CONSULTANT, up to the same amount that CONSULTANT undertakes to indemnify the VILLAGE under this Agreement, from loss or expense, including reasonable attorneys' fees, for claims for personal injuries



The CONSULTANT'S General Liability policy shall be endorsed with the following language: "The Village of Woodridge, its officers, employees and agents are named as additional insureds as their interests may appear with respect to any assignment."

Certificates of insurance shall be provided to the VILLAGE on standard certificate forms, signed by an authorized agent of the brokerage firm or carrier providing the certificates. Carriers providing coverage shall be reputable, and only those insurance companies having an A.M. Best rating of A; class VI or better shall be used unless prior written approval is obtained from the VILLAGE. Carriers shall also be required to furnish a thirty (30) day notice of cancellation or material alteration to the Village at the following address: Village of Woodridge, 1 Plaza Drive, Woodridge, Illinois 60517-4199, Attention: Director of Public Works.

7 TERMINATION: This Agreement shall commence as of the date first above written and shall terminate on April 30, 2012. By mutual written agreement of both parties, this Agreement may be extended for two (2) one (1) year terms of May 1, 2012 – April 30, 2013, and May 1, 2013 – April 30, 2014, subject to any mutually agreed increase in price.

Notwithstanding any provision contained in this Agreement to the contrary, this Agreement may be terminated by either the CONSULTANT or the VILLAGE upon the giving of thirty (30) days prior written notice to the other party to this Agreement. In the event of termination by either party, the CONSULTANT shall be paid for the value of all acceptable work performed prior to the effective date of termination, based upon the payment terms of this Agreement.

8 CERTIFICATE OF CONSULTANT: The Certificate of Consultant, a copy of which is attached hereto as Exhibit "A" and made a part hereof, be and the same is hereby incorporated herein by reference.

9 DRUG FREE WORKPLACE: The State of Illinois Drug Free Workplace Certification, a copy of which is attached hereto as Exhibit "B" and made a part hereof, be and the same is hereby incorporated herein by reference.

10 NOTICES: All notices hereunder shall be in writing and shall be served either personally or by certified or registered mail to:

A. VILLAGE at:

Village of Woodridge  
ATTN: Village Administrator  
5 Plaza Drive  
Woodridge, Illinois 60517-4199

B. CONSULTANT at:

James J. Benes & Associates, Inc  
ATTN: President  
950 Warrenville Road, Suite 101  
Lisle, Illinois 60532

C. To such other person or place which either party hereto by its prior written notice shall designate for notice to it from the other party hereto.

11. CAPTIONS AND PARAGRAPH HEADINGS: The captions and paragraph headings incorporated herein are for convenience only and are not part of this Agreement and further shall not be used to construe the terms hereof.

12. GENDER: Unless the provisions of this Agreement otherwise require, words imparting the masculine gender shall include the feminine; words imparting the single number shall include the plural, and words imparting the plural shall include the singular.

13. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the respective parties, their successors, heirs and assigns. Notwithstanding the foregoing, this Agreement shall not be assigned by either party hereto without the prior written consent of the other party to this Agreement.

14. PREVAILING WAGES: In accordance with the law and the provisions of 820ILCS 130/0.01 et seq., entitled "an Act regulating wages of laborers, mechanics, and other workers employed in any public works by the state, county, city or any public body or any political

subdivision or by anyone under contract for public works”, not less than the prevailing rate of wages shall be paid to all laborers, workmen and mechanics performing work under this contract. CONSULTANT shall thoroughly familiarize themselves with the provisions of the above mentioned act and shall prepare any and all documents in strict compliance therewith and shall maintain compliance with the same throughout the term of the project including submitting all required documentation to the VILLAGE. Copies of the prevailing rate of wages for this VILLAGE are on file in the office of the Village Clerk of the Village of Woodridge. The CONSULTANT shall be responsible for monitoring the current prevailing wage and adjusting their rates accordingly. All bonds shall include a provision as will guarantee the faithful performance of each prevailing wage clause as provided by this contract.

15. EQUAL EMPLOYMENT OPPORTUNITY: In the event of the CONSULTANT’S non-compliance with the provisions of this equal employment opportunity clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of the Human Rights ("Department"), the CONSULTANT may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the CONSULTANT agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, order of protection status, physical or mental disability unrelated to ability, military status or an unfavorable discharge from the military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under utilization.
2. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the department's rules and regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, order of protection status, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such act and rules and regulations, the contractor will promptly so notify the department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit reports as required by the department's rules and regulations, furnish all relevant information as may from time to time be requested by the department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.
6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's rules and regulations.
7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the department in the event any subcontractor fails or refuses to comply therewith. In addition, the CONSULTANT will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for

contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

#### Subcontracts

Each public subcontractor shall in turn include the equal employment opportunity clause set forth within these rules and regulations in each of its subcontracts under which any portion of the contract obligations are undertaken or assumed, said inclusion to be either verbatim or by reference so that the provisions of the clause will be binding upon such subcontractors.

#### Contracts or Subcontracts with Religious Entities –

The requirements of the equal employment clause set forth above with respect to non-discrimination because of religion shall not apply to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion for the carrying on by such corporation, association, educational institution or society of its activities.

16. COMPLIANCE WITH FREEDOM OF INFORMATION ACT: The VILLAGE is required by law to comply with the provisions of the Freedom of Information Act, 5 ILCS 140/1 et seq., as amended from time to time (“Act”). The Act requires the VILLAGE to provide, if requested to do so by any person, copies of documents that may be in your possession and related to this contract. As a condition of this contract, CONSULTANT agrees to and shall provide to the VILLAGE, copies of any and all such documents when directed to do so by the VILLAGE. All such documents shall be delivered to the Village Clerk’s Office NO LATER THAN five (5) working days after the date of the VILLAGE’S direction to provide such documents. Failure of the CONSULTANT to provide documents within said five (5) working days as provided above shall result in the assessment of any and all penalties, damages, and/or costs incurred by the VILLAGE to the CONSULTANT which shall be paid immediately by the CONSULTANT upon demand of the same by the VILLAGE.

17. EMPLOYMENT OF ILLINOIS WORKERS: The CONSULTANT shall be fully responsible to comply with the law and the provisions of 30 ILCS 570, entitled "Employment of Illinois Workers on Public Works Act," as it applies to this Agreement. The CONSULTANT shall familiarize themselves with the requirements by referencing the Illinois Department of Labor's website at: <http://www.state.il.us/agency/idol>.

18. ADDITIONAL WORK: Should the CONSULTANT be selected to provide engineering services to the VILLAGE on another project outside of the scope of this Agreement; the terms and conditions contained herein shall still apply.

19. ENTIRE AGREEMENT: This Agreement sets forth the entire understanding of the parties. It may only be amended, modified or terminated by a written instrument signed by the parties.

20. COUNTERPARTS: This Agreement is executed in counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

21. GOVERNING LAW: This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, County of DuPage.

IN WITNESS THEREOF, the VILLAGE has caused this instrument to be executed by its Mayor and Village Clerk and their corporate seal affixed hereto on the day and year first above written and the CONSULTANT has caused this instrument to be executed on its behalf by a Partner, being duly authorized by James J. Benes & Associates, Inc.

VILLAGE OF WOODRIDGE, an  
Illinois municipal corporation,

By:   
Mayor

ATTEST:

  
Village Clerk

(Seal)

James J. Benes & Associates

By: *Gary L. Cottingham*  
Gary L. Cottingham, President

ATTEST:

*James E. Darnell*  
James E. Darnell, Secretary  
STATE OF ILLINOIS)

COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County aforesaid, in the State aforesaid, DO HEREBY CERTIFY that Gary L. Cottingham, President of James J. Benes & Associates, Inc., and James E. Darnell, Secretary of said partnership, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as President and Secretary and they appeared before me this day in person and acknowledged that they signed and delivered the said instrument, as their own free and voluntary acts and as the free and voluntary acts of said partnership.

GIVEN under my hand and Notarial Seal this 25 day of October, 2010.



*Tori Aper*  
Notary Public

## EXHIBIT A

### CERTIFICATE OF CONSULTANT

I hereby certify that I am the President and duly authorized representative of the firm of James J. Benes and Associates, whose address is 950 Warrenville Road, Ste. 101 Lisle, IL 60532. I hereby represent that neither I nor the above firm represent has:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement.
- b) Agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Contract; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation or consideration of any kind, or in connection with, procuring and carrying out the Agreement.

In addition, I and the firm I herein represent:

- d) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- e) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- f) are not presently indicted for criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (e) of this certification;
- g) have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- h) have not been barred from signing this Agreement as a result of a violation of Sections 33E-3 and 33E-4 of the Criminal Code of 1961 (Chapter 38 of the Illinois revised Statutes); and

i) are not in default on an educational loan as provided in Public Act 85-827

The Consultant certifies that, pursuant to Chapter 24, Section 11-42.1-1 of the Illinois Revised Statutes, 1989, they are not delinquent in the payment of any tax administered by the Illinois Department of Revenue.

Where the Consultant is unable to certify to any of the statements in this certification, Consultant shall attach an explanation to this Agreement.

I acknowledge that this certification is to be furnished to the Illinois Department of Transportation, in connection with this Contract, involving participation of State highway funds, and is subject to applicable State and Federal Laws, both criminal and civil.

Date: 10/25/10

By: [Signature]  
President

SUBSCRIBER and SWORN TO before me this 25 day of October, 2010.

[Signature]  
Notary Public



## EXHIBIT B

### STATE OF ILLINOIS DRUG FREE WORKPLACE CERTIFICATION

This certification is required by the Drug Free Workplace Act (Illinois revised Statutes, Chapter 127, para. 52.81). The Drug Free Workplace Act, effective January 1, 1992, requires that no grantee or contractor shall receive a grant or be considered for the purposes of being awarded a contract for the procurement of any property or services from the State unless that grantee or contractor has certified to the State that the grantee or contractor will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the contract or grant and debarment of contracting or grant opportunities with the State for at least one (1) year but not more than five (5) years.

For the purpose of this certification, "grantee" or "contractor" means a corporation, partnership, or other entity with twenty-five (25) or more employees at the time of issuing the grant, or a department, division, or other unit thereof, directly responsible for the specific performance under a contract or grant of \$5,000 or more from the State.

The contractor/grantee certifies and agrees that it will provide a drug free workplace by:

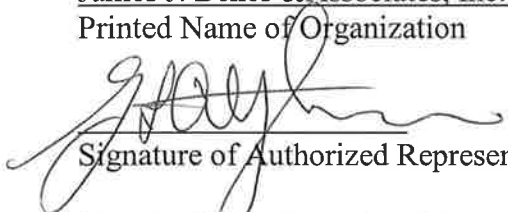
(a) Publishing a statement:

- (1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace.
- (2) Specifying the actions that will be taken against employees for violations of such prohibition.
- (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
  - (A) abide by the terms of the statement; and
  - (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

- (b) Establishing a drug free awareness program to inform employees about:
- (1) The danger of drug abuse in the workplace;
  - (2) The grantee's or contractor's policy of maintaining a drug free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon an employee for drug violations.
- (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- (d) Notifying the contracting or granting agency within (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
- (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse or rehabilitation program by, any employee who is so convicted, as required by Section 5 of the Drug Free Workplace Act.
- (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place
- (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATE ON BEHALF OF THE DESIGNATED ORGANIZATION.

James J. Benes & Associates, Inc.  
 Printed Name of Organization

  
 Signature of Authorized Representative

Gary L. Cottingham -President  
 Printed Name & Title

10/25/10  
 Date

