

KANE COUNTY
DIVISION of TRANSPORTATION

Carl Schoedel, P.E.
Director of Transportation
County Engineer



41W011 Burlington Road
St. Charles, IL 60175
Phone: (630) 584-1170
Fax: (630) 584-5265

DATE: November 19, 2009

TO: Jean Weems
County Board Office

FROM: Linda Haines

SUBJECT: Agreements

3 – Agreement for Traffic Engineering Services, Kane County Sec. #09-00364-01-EG with TY Lin International Great Lakes, Inc. with Document Vet Sheet.
(Kane County Resolution #09-445)

TRANSMITTED FOR:

- ☐ YOUR INFORMATION AND FILE
- ☐ YOUR APPROVAL AND/OR CORRECTION
- ☐ AS REQUESTED
- ☒ SEE BELOW

REMARKS: Please have the Chairman sign, send to County Clerk for signature and seal, and then return to our office for further processing.

Thanks.

c: Tom Szabo

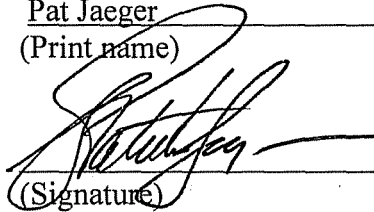
DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board

Name of Document: Agreement with TY Lin International Great Lakes, Inc. for Traffic Engineering Services, Kane County Sec. #09-00364-01-EG

Submitted by: Linda Haines

Date Submitted: _____

Examined by: Pat Jaeger
(Print name)


(Signature)

October, 2009
(Date)

Comments: _____

Chairman signed: Yes No 12-1-09
(Date)

Document returned to: County Clerk

**AN AGREEMENT BETWEEN THE COUNTY OF KANE AND
TY LIN INTERNATIONAL GREAT LAKES, INC.
FOR TRAFFIC ENGINEERING ASSISTANCE
KANE COUNTY SECTION NO. 09-00364-01-EG**

PURCHASE ORDER # _____

This AGREEMENT, made this 10th day of November 2009 between COUNTY OF KANE, a body corporate and politic of the State of Illinois (hereinafter referred to as the "COUNTY"), of 719 South Batavia Avenue, Geneva, Illinois 60134 and TY LIN INTERNATIONAL GREAT LAKES, INC., a Illinois corporation authorized to business in the State of Illinois and an Illinois licensed professional engineering firm with offices at 200 South Wacker Drive, Suite 1400, Chicago, Illinois 60606 (hereinafter referred to as the "CONSULTANT"). The COUNTY and the CONSULTANT are sometimes hereinafter collectively referred to as the "PARTIES" and individually as a "PARTY".

WITNESSETH

WHEREAS, it is deemed to be in the best interest of the COUNTY and the motoring public to improve and maintain the various highways throughout Kane County; and,

WHEREAS, the COUNTY desires to maintain adequate and efficient traffic flow on County Highways, utilizing the assistance of on-call traffic engineering services (hereinafter referred to as the "PROJECT"); and,

WHEREAS, in order to accomplish the PROJECT it is necessary to retain the services of a professional engineering firm to perform on-call traffic engineering assistance services for the PROJECT; and,

WHEREAS, the CONSULTANT has experience and professional expertise in all aspects of traffic engineering and is willing to perform said services for the PROJECT for an amount not to exceed One Hundred and Fifty Thousand Dollars (\$150,000.00),

WHEREAS, the COUNTY has determined that it is in the COUNTY'S best interest to enter into this AGREEMENT with the CONSULTANT.

NOW, THEREFORE, in consideration of the above stated preambles, the mutual covenants and agreements herein set forth, the PARTIES do hereby mutually covenant, promise, agree and bind themselves as follows:

1.0 INCORPORATION

- 1.1 All of the preambles set forth hereinabove are incorporated into and made part of this AGREEMENT.

2.0 SCOPE OF SERVICES

- 2.1 Services for the PROJECT are to be provided by the CONSULTANT according to the specifications set forth in Exhibit "A" which is attached hereto and incorporated herein. The services are sometimes hereinafter also referred to as the "work".

3.0 NOTICE TO PROCEED

- 3.1 Authorization to proceed with the work described and as otherwise set forth in Exhibit "A" shall be given on behalf of the COUNTY by the Kane County Engineer, in the form of a written notice to proceed (hereinafter "Notice to Proceed"), following execution of this AGREEMENT by the County Board Chairman of the COUNTY.

4.0 TECHNICAL SUBCONSULTANTS

- 4.1 The prior written approval of the Kane County Engineer shall be required before any sub-consultants are hired by the CONSULTANT to perform any of the work.
- 4.2 Any such sub-consultants shall be hired and supervised by the CONSULTANT and the CONSULTANT shall be solely responsible for any and all work performed by said sub-consultants in the same manner and with the same liability as if performed by the CONSULTANT.

5.0 TIME FOR PERFORMANCE

- 5.1 The CONSULTANT shall commence work on the PROJECT as directed in the Notice to Proceed. The COUNTY is not liable and will not pay the CONSULTANT for any work performed prior to the date of the Notice to Proceed or after termination of this AGREEMENT.
- 5.2 Within ten (10) days after the Notice to Proceed is mailed or otherwise transmitted to the CONSULTANT, the CONSULTANT shall submit a schedule for completion of the PROJECT. The schedule is subject to approval by the County Engineer.

6.0 COMPENSATION

- 6.1 The COUNTY shall only pay the CONSULTANT for work performed and shall pay only in accordance with the provisions of this AGREEMENT.
- 6.2 For work performed, the COUNTY shall pay the CONSULTANT based upon the hourly rates set forth in Exhibit "B", which is attached hereto and incorporated herein and which rates includes overhead and profit.

- 6.3 For direct expenses, the COUNTY shall pay the CONSULTANT for supplies and materials required for the completion of all work defined in Exhibit "A" which is attached hereto.
- 6.4 For direct expenses, the CONSULTANT shall include copies of receipts from suppliers for expendable materials with its invoice to the COUNTY. Computer charges will not be allowed as direct expenses.
- 6.5 Within 45 days of receipt, review and approval of properly documented invoices, the COUNTY shall pay or cause to be paid to the CONSULTANT partial payments of the compensation specified in this AGREEMENT. Payment will be made in the amount of sums earned less previous partial payments. However, the COUNTY reserves the right to hold back a sum equal to five percent (5%) of the total AGREEMENT sum to ensure performance satisfactory to the Kane County Engineer.
- 6.6 Total payments to the CONSULTANT under the terms of this AGREEMENT shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000.00).
- 7.0 DELIVERABLES.
- 7.1 The CONSULTANT shall provide the COUNTY, prior to the termination of this AGREEMENT, or at such time as the Kane County Engineer directs, any required deliverables related to work performed under this AGREEMENT.
- 7.2 Upon receipt, review and acceptance of all deliverables by the COUNTY (if required), final payment will be made to the CONSULTANT by the COUNTY.
- 8.0 CONSULTANT'S INSURANCE
- 8.1 The CONSULTANT shall, during the term of this AGREEMENT and as may be required thereafter, maintain, at its sole expense, insurance coverage including:
- A. Worker's Compensation Insurance in the statutory amounts.
 - B. Employer's Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) each accident/injury and Five Hundred Thousand Dollars (\$500,000) each employee/disease.
 - C. Commercial General Liability Insurance, (including contractual liability) with limits of not less than One Million Dollars (\$1,000,000) per occurrence bodily injury/property damage combined single limit; Two Million Dollars (\$2,000,000) excess liability coverage in the aggregate for injury/property damage combined single limit and Two Million Dollars (\$2,000,000) in the aggregate for products-completed operations.

D. Commercial Automobile Liability Insurance with minimum limits of at least One Million Dollars (\$1,000,000) for any one person and One Million Dollars (\$1,000,000) for any one occurrence of bodily injury or property damage.

E. Professional Errors and Omissions Insurance with a minimum limit of Three Million Dollars (\$3,000,000.00).

8.2 It shall be the duty of the CONSULTANT to provide to the COUNTY copies of the CONSULTANT'S certificates of insurance before issuance of the Notice to Proceed. The CONSULTANT shall provide the COUNTY and maintain a certificate of insurance for its General Liability Policy which certificate shall include the COUNTY as additional named insured. The additional named insured endorsement included on the CONSULTANT'S Commercial General Liability policy shall provide the following:

A. That the coverage afforded the additional named insured will be primary insurance for the additional named insured with respect to claims arising out of operations performed by or on behalf of the CONSULTANT;

B. That if the additional named insured has other insurance which is applicable to the loss, such other insurance will be only on an excess or contingent basis;

C. That the amount of the CONSULTANT'S liability under the insurance policy will not be reduced by the existence of such other insurance; and,

D. That the certificate of insurance shall contain a provision or endorsement that the coverage afforded will not expire, be canceled, materially changed, nor renewal refused until at least thirty (30) days prior written notice has been given to COUNTY.

8.3 The insurance required to be purchased and maintained by CONSULTANT shall be provided by an insurance company acceptable to the COUNTY with an AM Best rating of A- or better, and licensed to do business in the State of Illinois; and shall include at least the specified coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater. In no event shall any failure of the COUNTY to receive policies or certificates of insurance or to demand receipt of the same be construed as a waiver of the CONSULTANT'S obligation to obtain and keep in force the required insurance.

9.0 INDEMNIFICATION.

9.1 To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the COUNTY, and its officials, directors, officers, agents, and employees from and against any and all claims, damages, losses, and expenses, including but not limited to court costs and attorney's fees, arising out of or resulting from performance of the work, provided that such claim, loss or expense

is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the CONSULTANT, a sub-consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, excluding any proportionate amount of any claim, damage, loss or expense which is caused by the negligence of the COUNTY. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a PARTY or person described in this paragraph. In claims against the COUNTY and its officials, directors, officers, agents, and employees by an employee of the CONSULTANT, a sub-consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or a sub-consultant under workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 9.2 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents, and employees, from defending through the selection and use of their own agents, attorneys and experts, to defend any claims, actions or suits brought against them.
- 9.3 If any errors, omissions, intentional or negligent acts are made by the CONSULTANT or sub-consultant in any phase of the work, the correction of which requires additional field or office work, the CONSULTANT shall be required to perform such additional work as may be necessary to remedy same without undue delay and without charge to the COUNTY.
- 9.4 Acceptance of the work by the COUNTY will not relieve the CONSULTANT of the responsibility for the quality of the work, nor of the CONSULTANT'S liability for loss or damage to property or persons resulting therefrom.

10.0 SATISFACTORY PERFORMANCE.

- 10.1 The CONSULTANT'S and sub-consultant's standard of performance under the terms of this AGREEMENT shall be that which is to the satisfaction of the COUNTY and meets or exceeds the quality and standards commonly accepted in the industry in the Chicago metropolitan area.

11.0 CONFLICT OF INTEREST.

- 11.1 The CONSULTANT covenants that it has no conflicting public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of CONSULTANT'S services under this AGREEMENT.
- 11.2 The CONSULTANT, by its signature on this AGREEMENT, certifies that it has not been barred from being awarded a contract or subcontract under the Illinois

Purchasing Act; and further certifies that it has not been barred from contracting with a unit of State or Local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (Illinois Compiled Statutes, 1992, Chapter 720, paragraph 5/33E-3).

12.0 OWNERSHIP OF DOCUMENTS.

12.1 The CONSULTANT agrees that all survey data, reports, drafting, studies, specifications, estimates, maps, documents and computations prepared by the CONSULTANT under the terms of this AGREEMENT shall be properly arranged, indexed and delivered to the COUNTY within ninety (90) days of written request therefor. The CONSULTANT's obligation hereunder shall survive the termination of this AGREEMENT.

12.2 The documents and materials made or maintained under this AGREEMENT shall be and will remain the property of the COUNTY which shall have the right to use same without restriction or limitation and without compensation to the CONSULTANT other than as provided in this AGREEMENT.

13.0 COMPLIANCE WITH STATE AND OTHER LAWS.

13.1 The CONSULTANT and any sub-consultants will comply with all State, Federal and Local statutes, ordinances and regulations; and will obtain all permits as are applicable.

13.2 The CONSULTANT and any sub-consultants shall not discriminate against any worker, job applicant, employee or any member of the public, because of race, creed, color, sex, age, handicap, or national origin, or otherwise commit an unfair employment practice.

14.0 MODIFICATION OR AMENDMENT.

14.1 The terms of this AGREEMENT may only be modified or amended by a written document duly executed by both PARTIES.

15.0 TERM OF THIS AGREEMENT.

15.1 The term of this AGREEMENT shall begin on the date this AGREEMENT is fully executed and shall continue in full force and effect until the earlier of the following occurs:

A. The PARTY'S termination of this AGREEMENT in accordance with the terms of Section 16.0; or,

B. The expiration of 730 calendar days commencing from December 1, 2009 through November 30, 2011 as set forth on Exhibit A attached hereto..

- 15.2 In the event the required calendar days as stated in Section 15.1 B above are exceeded and/or anticipated personnel requirements are not adequate and remaining funds are not sufficient to complete the PROJECT, adjustments in total compensation to the CONSULTANT may, at the sole option of the COUNTY be determined through negotiation between the COUNTY and the CONSULTANT. The COUNTY shall however, have no obligation to agree to any adjustment in total compensation or in the term of this AGREEMENT.
- 15.3 The date of the first calendar day for this AGREEMENT shall be the date of receipt of the Notice to Proceed by the CONSULTANT from the COUNTY. In the event the PROJECT work is suspended by the COUNTY as recorded on the "Report of Starting and Completion Date," the calendar days for this AGREEMENT will also be suspended for a like amount of time.
- 15.4 Notwithstanding anything in Section 15.0 to the contrary, the Kane County Engineer may at his sole option, upon the request of the CONSULTANT, extend the term of this AGREEMENT for a period of time up to but not exceeding one year.
- 16.0 TERMINATION ON WRITTEN NOTICE.
- 16.1 Except as otherwise set forth in this AGREEMENT, the CONSULTANT shall have the right to terminate this AGREEMENT for cause upon serving sixty (60) days written notice upon the COUNTY.
- 16.2 The COUNTY may terminate this AGREEMENT at any time for any reason upon written notice to the CONSULTANT.
- 16.3 Upon termination of this AGREEMENT, the obligations of the PARTIES to this AGREEMENT shall cease, but they shall not be relieved of the duty to perform their obligations up to the date of termination. Notwithstanding anything in this AGREEMENT to the contrary however, the obligations of the CONSULTANT to indemnify and hold harmless the COUNTY as provided for in Section 9.0 of the AGREEMENT shall survive the termination of this AGREEMENT.
- 16.4 Upon termination of this AGREEMENT, all data, work products, reports and documents produced, as a result of this AGREEMENT shall become the property of the COUNTY.
- 17.0 ENTIRE AGREEMENT.
- 17.1 This AGREEMENT contains the entire agreement and understandings between the PARTIES.
- 17.2 There are no other covenants, promises, conditions or understandings, either oral or written, other than those contained herein.

18.0 NON-ASSIGNMENT.

18.1 This AGREEMENT shall not be assigned by either PARTY without prior written approval by the other PARTY requesting the assignment.

19.0 SEVERABILITY.

19.1 In the event any provision of this AGREEMENT is held to be unenforceable for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT, which will remain in full force and effect and enforceability in accordance with its terms.

20.0 GOVERNING LAW.

20.1 This AGREEMENT shall be governed by the laws of the State of Illinois both as to interpretation and performance.

20.2 Venue for any dispute arising hereunder shall be in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

21.0 NOTICE.

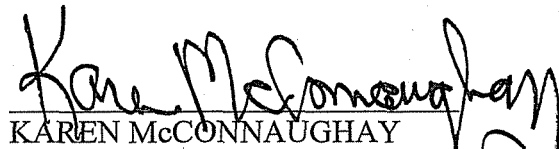
Any required notice shall be sent to the following addresses and party:

KANE COUNTY DIVISION OF TRANSPORTATION
41W011 Burlington Road
Saint Charles, IL 60175
Attn.: Carl Schoedel, P.E., Kane County Engineer

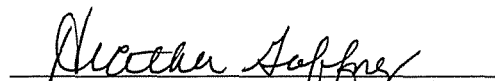
TY LIN INTERNATIONAL GREAT LAKES, INC.
200 South Wacker Drive, Suite 1400
Chicago, Illinois 60606
Attn.: Heather Gaffney, P.E., S.E., Senior Vice President/Regional Director

IN WITNESS WHEREOF, the parties set their hands and seals as of the date first written above.

COUNTY OF KANE


KAREN McCONNAUGHAY
CHAIRMAN, KANE COUNTY BOARD

TY LIN INTERNATIONAL, INC.


HEATHER J. GAFFNEY, P.E., S.E.
SENIOR VICE PRESIDENT

ATTEST:

JOHN A. CUNNINGHAM
KANE COUNTY CLERK

ATTEST:


DONALD A. JAKESCH, P.E.
VICE PRESIDENT

12
3
←
SEAL