

**VILLAGE PRESIDENT**  
Seth Speiser

**VILLAGE CLERK**  
Jerry Menard

**VILLAGE TRUSTEES**  
Ray Matchett, Jr.  
Steve Smith  
Mike Blaies  
Mathew Trout  
Dean Pruett  
Elizabeth Niebruegge

# VILLAGE OF FREEBURG

**FREEBURG MUNICIPAL CENTER**  
14 SOUTHGATE CENTER, FREEBURG, IL 62243  
PHONE: (618) 539-5545 • FAX: (618) 539-5590  
Web Site: www.freeburg.com

**VILLAGE ADMINISTRATOR**  
Tony Funderburg

**VILLAGE TREASURER**  
Bryan A. Vogel

**PUBLIC WORKS DIRECTOR**  
John Tolan

**POLICE CHIEF**  
Stanley Donald

**VILLAGE ATTORNEY**  
Weilmuenster Law Group, P.C

April 13, 2015

## NOTICE

### MEETING OF THE PUBLIC WORKS COMMITTEE Trash/Water/Sewer (Pruett/Matchett/Blaies)

A Public Works Committee Meeting of the Village of Freeburg will be held at the Municipal Center, Executive Board Room, on **Wednesday, April 15, 2015, at 6:00 p.m.**

### PUBLIC WORKS COMMITTEE MEETING AGENDA

- I. Items To Be Reviewed
  - A. Old Business
    1. Approval of March 4, 2015 Minutes
    2. Sewer Project
    3. Sewer issues
    4. Water Main Extension along Rentchler Road
    5. Countryside Lane annexations
    6. GIS Implementation
    7. SLM water issues
    8. FSH Minutes
    9. Water Tower Painting
    10. Water Violation – Restricted Status List
  - B. New Business
    1. TWM Contract Agreement for Save Site Water Main Extension to Plum Hill Road
    2. Spring Clean Up – closing roads
    3. Scheid/Towers 412-414 E. Mill Sewer Connection
    4. Sewer Plant
  - C. General Concerns
  - D. Public Participation
  - E. Adjourn

At said Committee Meeting, the Village Board of Trustees may vote on whether or not to hold an Executive Session to discuss potential litigation, [5 ILCS, 120/2 - (c)(11)]; the selection of a person to fill a public office [5 ILCS, 120/2 - (c) (3)] personnel [5 ILCS, 120/2 - (c) (1)]; or real estate transactions [5 ILCS, 120/2 - (c) (5)].



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## PUBLIC WORKS COMMITTEE MEETING Trash/Water/Sewer (Pruett/Matchett/Blaies) March 4,, 2015 at 6:00 p.m.

The Public Works Committee Meeting was called to order at 6:07 p.m. on Wednesday, March 4,, 2015, by Chairman Dean Pruett. Members present were Chairman Dean Pruett, Trustee Ray Matchett, Trustee Mike Blaies, Mayor Seth Speiser, Village Clerk Jerry Menard (absent), Trustee Elizabeth Niebruegge, Trustee Matt Trout, Trustee Steve Smith, Public Works Director John Tolan, Village Administrator Tony Funderburg and Office Manager Julie Polson.

### A. OLD BUSINESS:

1. Approval of February 11,, 2015 minutes: *Trustee Ray Matchett motioned to approve the February 11, 2015 minutes and Trustee Mike Blaies seconded the motion. All voting yea, the motion carried.*
2. Sewer project: Tony said the next step is to get the railroad permit. We did cut the checks yesterday for the easements. Once Fred Helms has them, Julie will record the easements. Once that done, John will take the project over and we'll be moving forward.
3. Sewer issues: John said the bills totaled \$51,000 for the collapsed line at the west plant with the collapsed line.
4. Water main extension along Rentchler Road: TWM is working on it. Tony believes we need to do this project in order to make the water better in that area.
5. Countryside Lane annexations: Tony said we are waiting on Belleville. We have talked to everyone there about it, and they say it shouldn't be a problem. John has been getting prices on pipe and materials in order to be ready to move forward once the road issue has been resolved.
6. GIS Implementation: John advised they are working on it.
7. SLM Water Issues: John said he does not have anything new on this, other than at FSH meeting, they mentioned the plant manager retired after 34 years. Our next water notice will go out in a couple of weeks.
8. FSH Minutes: Included in the packet. FSH and SLM are moving forward with the emergency interconnect.
9. Water Tower Painting: John received an email from Tim Pruett who wants to move on this project. Starting now, John's big concern is the weather.

10. Water Violation – Restricted Status List: John will send out the notice in a couple of weeks. He will take the next round of samples at the end of the month. Matt asked how long this will last and John said about 6 months.

**B. NEW BUSINESS:** Mayor Speiser talked to Charlie Kaiser about the Village purchasing property for the new sewer plant.

**C. GENERAL CONCERNS:** None.

**D. PUBLIC PARTICIPATION:** None

**E. ADJOURN:** *Trustee Ray Matchett motioned to adjourn at 6:16 p.m. and Trustee Mike Blaies seconded the motion. All voting yea, the motion carried.*

  
Julie Polson,  
Office Manager



# RHUTASEL and ASSOCIATES, INC.

CONSULTING ENGINEERS • LAND SURVEYORS

## LETTER AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**To:** President and Board of Trustees  
Village of Freeburg  
14 Southgate Center  
Freeburg, Illinois 62243

Date: March 27, 2015

### ***Section 1. Definitions and Parties to the Agreement.***

RHUTASEL and ASSOCIATES, INC., hereinafter referred to as the "ENGINEER", is pleased to submit this proposal/contract for services to:

#### **Village of Freeburg**

hereinafter referred to as "CLIENT", for the following project:

#### **Facilities Planning Study Update**

### ***Section 2. Scope of Professional Services.***

The ENGINEER agrees to provide the following basic services:

- A. Review the 2009 Facilities Planning Study and re-evaluate the future wastewater treatment needs of the village.
- B. Review and adjust the population projections utilizing the latest available information.
- C. Based on revised projections, evaluate treatment options available to meet those needs.
- D. Prepare estimates of probable construction cost for the proposed treatment alternatives.
- E. Discuss the Facilities Planning Study amendments with the IEPA and submit the revisions for their review and approval.
- F. Project funding cost and propose sewer rate increases needed to meet the projected debt revenue.

#### **Reply To:**

4 Industrial Drive, P.O. Box 97  
Freeburg, Illinois 62243-0097  
Phone: (618) 539-3178  
Fax: (618) 539-3174  
E-mail: raai.freeburg@rhutasel.net

[www.rhutasel.net](http://www.rhutasel.net)

201 South Locust Street  
Centralia, Illinois 62801-3508  
Phone: (618) 532-1992  
Fax: (618) 532-1993  
E-mail: raai.centralia@rhutasel.net



# Terms and Conditions of Letter Agreement for Professional Engineering Services

**Performance of Services:** The Engineer shall perform the services outlined in the Agreement or on the attached Exhibit in consideration of the stated fee and payment terms. The Engineer shall act as an independent contractor and shall perform the services provided for in this Agreement in accordance with the generally accepted standards of care of Engineer's profession.

**Additional Services:** The Engineer agrees to perform Extra Work and Additional Services as may be required during the development of the Project which may include studies, reports, and actions beyond the scope of basic services. Because Extra Work and Additional Services vary greatly in scope, complexity, and timing, they will be negotiated as separate and additional elements of service, and paid for under the current Compensation Schedule.

**Access to Site:** Client will provide the Engineer with access to the site for activities necessary for the performance of the services.

**Billing/Payment:** The Client agrees to pay the Engineer for all services performed and all costs incurred. Invoices for the Engineer's services shall be submitted, at the Engineer's option, either upon completion of such services or on a monthly basis. Invoices shall be due and payable upon receipt. If any invoice is not paid within 30 days, the Engineer may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend or terminate the performance of services. Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (annual rate equals 18%) on the unpaid balance. In the event any portion of an account remains unpaid 60 days after the billing, the Engineer may institute collection action and the Client shall pay all costs of collection, including reasonable attorney's fees.

**Client Furnished Material:** The Client agrees to furnish the Engineer full information as to the Project requirements including, but not limited to, any special or extraordinary considerations for the Project or special services needed, and also make available all pertinent existing data.

**Hazardous Materials:** When hazardous materials are known, assumed or suspected to exist at a project site, the Engineer is required to take appropriate precautions to protect the health and safety of his employees, and to comply with applicable laws and regulations. The Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he has so informed the Engineer.

**Insurance:** The Engineer agrees to maintain worker's compensation and employer's liability insurance of a form and in an amount as required by state law, comprehensive general liability and automotive liability insurance, and professional liability insurance.

**Other Professionals:** The Client agrees to provide such legal, accounting, independent cost estimating, insurance counseling, and other professional services appropriate to the Project. These services shall be furnished at the Client's expense and the Engineer shall be entitled to rely upon the accuracy and completeness thereof.

**Job Site Safety:** The Engineer is responsible solely for his employees' activities on the job site. Neither the professional activities of the Engineer nor the presence of his employees shall be construed to imply that the Engineer has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the job site.

**Information for the Sole Use and Benefit of the Client:** All opinions and conclusions of the Engineer, whether written or oral, and any plans, specifications or other documents and services provided by the Engineer are for the sole use and benefit of the Client and are not to be provided to any other person or entity without the prior written consent of the Engineer. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Engineer or the Client.

**Certifications, Guarantees and Warranties:** The Engineer shall not be required to execute any document that would result in the Engineer certifying, guaranteeing or warranting the existence of any conditions.

**Construction Cost Estimate:** Construction cost estimates, if any, prepared by the Engineer, represent the Engineer's best judgment as a design professional. It is recognized, however, that neither the Engineer nor the Client has control over the cost of labor, materials or equipment, over the Contractors' methods of determining bid prices or over competitive bidding, market or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget or from any estimates of cost prepared by Engineer.

**Limitation of Liability:** The Client recognizes the inherent risks connected with projects of this type. The Client agrees to limit the Engineer's liability to the Client and to all construction contractors and subcontractors on the project, due to the Engineer's negligent acts, errors or omissions, such that the aggregate liability of the Engineer to all those named shall not exceed \$50,000 or the Engineer's total fee for services rendered on the project, whichever is greater.

**Ownership of Documents:** All documents produced by the Engineer under this Agreement are instruments of the Engineer's professional service and shall remain the property of the Engineer and may not be used by the Client for any other purpose without the prior written consent of the Engineer.

**Dispute Resolution:** Any claims or disputes between the Client and the Engineer arising out of the services to be provided by the Engineer or out of this Agreement shall be submitted to non-binding mediation.

**Governing Law:** This Agreement shall be covered by the Laws of the State of Illinois.

**Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and are binding on Engineer and Client.

**Termination of Services:** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client shall pay the Engineer for all services rendered to the date of termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as the result of termination.

**Attorney Fees & Costs:** In any action incurred to enforce this Agreement or defend the services provided in accord with this Agreement, the prevailing party shall be entitled to reasonable attorney's fees.

Initialed: GEH 3/27/15  
Engineer Date Client Date



**RHUTASEL and ASSOCIATES, INC.**  
**COMPENSATION SCHEDULE**



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**HOURLY RATES**

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Principal Engineer .....	\$165/hour
Sr. Project Engineer .....	\$137/hour
Structural/Sr. Civil Engineer .....	\$155/hour
Project Engineer .....	\$105/hour
Principal Surveyor .....	\$165/hour
Project Surveyor .....	\$105/hour
Resident Engineer .....	\$120/hour
Design/Construction Engineer .....	\$95/hour
Design Surveyor .....	\$88/hour
Resident Technician .....	\$95/hour
Technician V .....	\$90/hour
Technician IV .....	\$80/hour
Technician III .....	\$67/hour
Technician II .....	\$56/hour
Technician I .....	\$45/hour

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**REIMBURSABLE EXPENSES**

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Travel .....	\$0.55/mile
Nuclear Density Gauge (Troxler) .....	\$150/½ day
B&W Photocopies .....	\$0.15/copy
Color Photocopies .....	\$1.50/copy
Large Format Prints .....	\$3.00/sheet
All Other Expenses including Subconsultants .....	Cost + 20%

*Reimbursable expenses may be subject to change at any time due to price fluctuations of suppliers.*

*If assignment requires overtime (over 8 hours per day) Monday through Friday or anytime on Saturday, these rates will be increased 50% (one and a half time) for those overtime hours. If assignment requires overtime on Holidays or Sundays, these rates will be increased 100% (double time) for those overtime hours. There will be a four (4) hour minimum charge on all weekend and Holiday assignments.*





## Contract Agreement for Professional Services Environmental Engineering (Water Distribution System Design)

This agreement is a legal and binding contract between two parties, **TWM Inc.**, and you, **Village of Freeburg**, as the **CLIENT**. When you see the words "us", "we", and "our" they mean **TWM Inc.** When you see the words "you" or "your", they refer to you as the **CLIENT**. Please read this Contract carefully. It confirms our understanding of the work you desire and the terms and conditions under which we will do that work.

This Contract describes the specific professional services that you have requested we provide on the proposed project, **Save Site Water Main Extension to Plum Hill Road** which we will refer to as simply the "**project**". As you have described it to us, this project involves two phases of survey and design as described below.

**Project Corridor Phase I:** Approximately 7,500 feet along the westerly half of White Oaks Club Road from the northerly right of way line of Jefferson Road to southerly right of way line of Peabody Road;

**Project Corridor Phase II:** approximately 700 feet along the westerly half of Save Road from the southerly right of way line of Jefferson Road north 700 feet; approximately 2,800 feet along the northerly half of Jefferson Road from the westerly right of way line of save Road to the easterly right of way line of Rentchler Road; approximately 6,000 feet along the northwesterly half of Rentchler Road from the southerly right of way line of Jefferson Road to 600 feet northeasterly of Dunlap Road.

### SCOPE OF SERVICES - BASIC SERVICES

We agree to provide the following specific professional services. For the purposes of this and project, you agree with us that these services, as listed, will be considered our **Basic Scope of Services**.

#### A. Topographic Right of Way Survey

1. We will prepare a topographic survey of the project corridor. The limits of the topographic survey are described as above within the Project Corridor.
  - We shall provide horizontal and vertical control, referenced to Illinois State Plane Coordinate System, West Zone 1202, NAD 1983 and NAVD 88.
  - We shall locate existing visible improvements within the project corridor.
  - We shall prepare a topographic survey drawing (AutoCAD). We will provide the electronic drawing in \*.dwg.
  - Contours shall be shown at one (1) foot intervals.
2. We will make a J.U.L.I.E. **Design Stage Request**, which is intended for architects, engineers and other customers who are in the design stage of a project. At this stage, J.U.L.I.E. is then supposed to fax a list of utility engineering contacts for their members with utilities in the general area. We must then contact each facility owner's office to notify them of our request. J.U.L.I.E. member companies typically respond in one of three ways within fourteen days of receiving our request. Those are:
  - Perform an actual field location at the proposed site, or
  - Provide drawings indicating the location of the member's buried facilities for the proposed site, or
  - Request that we send drawings of the proposed project / site to the member, then mark their existing facilities on the provided prints or provide copies of the utility's record information and return these documents to us.

If the J.U.L.I.E. member field locates their utilities, we will then survey those surface markings in order to indicate the approximate horizontal location of those utilities underground, and will add to our topographic survey the horizontal location of those utilities as marked.

If the J.U.L.I.E. member simply provides drawings, or marks up drawings provided by us, we will indicate the approximate horizontal location of those utilities, scaled to the best of our ability, on our topographic survey.

We will also add to our topographic survey:

- Other utilities that are above ground and visible on site.
3. We shall identify and perform survey calculations of the existing right of way of White Oaks Road, Peabody Road, Save Road and Rentchler Road as described above in the Project Corridor by using existing monumentation and records obtained from the St. Clair County Recorder's Office and Highway Department. An entire survey of each parcel will not be performed.



**B. Engineering Design, Permitting and Bidding**

- 1 We will evaluate conceptual design concepts to address any concerns, and if applicable provide alternate solutions available to you which TWM, Inc. recommends.
- 2 We will prepare final construction drawings sealed by an Illinois Registered Professional Engineer indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  - The construction drawings will typically be the water main routing and approved IEPA detail sheets indicating the specific construction requirements.
- 3 Based on the construction documents, we will prepare an opinion of probable construction cost.
  - The opinion of cost will be provided with major work items allocated into appropriate unit price cost categories.
  - We will also provide a basis of payment bid spreadsheet for the purposes of bidding the project.
- 4 We will provide technical criteria, written descriptions, and design data for use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist you in consultations with such authorities.
- 5 Permits to be applied for include:
  - We will prepare and submit application for IEPA NPDES NOI Storm Water Permit if the site disturbance exceeds one (1) acre. (This permit requires the preparation of a Storm Water Pollution Prevention Plan)
  - We will prepare and submit IEPA Water Construction Permit
  - We will assist you with submittal of IEPA Water Operating Permit.
- 6 We will prepare and furnish bidding documents.
- 7 We will provide sets of Contract Documents to bidders invited to bid.
- 8 We will assist you in solicitation of bids for the Work and maintain a record of prospective bidders to whom Bidding Documents have been issued, and attend a site pre-bid conference,
- 9 We will issue addenda as appropriate to clarify, correct, or change the bidding documents.

**PROPOSED SCHEDULE**

Unless you tell us otherwise, we will begin to schedule work on the project as soon as you accept this Contract and return it to us with your signature.

**FEES - BASIC SCOPE OF SERVICES**

We agree to provide the **Basic Scope of Services** listed above in exchange for your payment of the following fees:

**A. Topographic Right of Way Survey**

Project Corridor Phase I: Topographic and Right of Way Survey For a Lump Sum Fee of **\$16,500.00**

Project Corridor Phase II: Topographic and Right of Way Survey For a Lump Sum Fee of **\$22,800.00**

**B. Engineering Design, Permitting and Bidding**

Project Corridor Phase I: Engineering Design, Permitting & Bidding For a Lump Sum Fee of **\$15,000.00**

Project Corridor Phase II: Topographic and Right of Way Survey For a Lump Sum Fee of **\$21,000.00**



## BILLING AND PAYMENT

We will bill you, at the address listed for you in this contract, for the **Scope of Services – Basic Services** we have provided as well as for any additional services you request in the following manner:

- A. For all services we will bill you monthly for a percentage of the lump sum fees based upon our estimate of the percentage of services we have provided to date.

Should submission of any of the surveys, studies or plans above be unduly delayed by you, by any regulatory review or agency, or by any other event that is not within our control, we reserve the right to bill you for the percentage of services provided to date, and to then bill for the balance of any lump sum fee upon eventual submission.

For all of the above, payment is due when you receive our respective invoice. You agree to both process and pay our invoices promptly. While we are not obligated to do so, if after thirty (30) days, any portion of any invoice remains unpaid, you agree that we have the right to charge you interest, at a rate of up to 1½ percent per month for any balance unpaid.

Except as provided by law or allowed in writing by us, our invoices are not subject to unilateral set-offs, back charges or discounts by you. You must pay the full amount of the invoice. Unless otherwise specified within this Contract, you can not retain any money due to us, or otherwise reduce the amount of any invoice we send to you.

If you have a question about or disagree with any portion of any invoice, you should notify us in writing within fifteen (15) calendar days of receipt of the invoice, specifically describing the reason for your dispute. We will then work towards resolving any issue with you within thirty (30) calendar days. Any portion of the invoice that is not in dispute remains due and should be paid by you by the due date.

In the event we are providing services as a subconsultant through you, we may agree to a provision that payment to us is delayed until you receive payment from your client. However, even under such an agreement, you must make payment to us within seven (7) calendar days of you being paid by your client. Should your client hold payment from you because of some issue with your work, but an issue unrelated to our work, you are still obligated to pay us for the work we have performed, even though you may not have yet been paid by your client, and you agree to do so within sixty (60) calendar days.

## INFORMATION WE NEED FROM YOU

We need you to provide to us with some specific information so we can perform our Scope of Services. That includes:

1. Any additional information available to you or to your consultants or contractors that might be applicable, necessary or helpful to us in performing our Scope of Services.

## ADDITIONAL SERVICES

You may request that we provide any additional services not included in the **Basic Scope of Services** above, and do so either on your verbal authority at our current hourly rates, or by requesting a written addendum to this contract. We may also request authorization for additional services via a written contract addendum. Any such addendum will also identify adjustments to the project schedule and fees in order to include the requested additional services.

As a firm, we may offer other services that you have not requested we provide. If you have not requested those services from us, they are not included within the **Basic Scope of Services** listed above, and therefore also not included in any lump sum fee listed above. If the nature of the project requires or warrants additional services but you choose not to secure those services from us, you still retain the responsibility to secure those services from another appropriate and qualified consultant.

### Additional Services Requiring the Village of Freeburg's Written Authorization

If authorized in writing by Owner, TWM, Inc. shall furnish or obtain from others Additional Services of the types listed below.

- a. Providing construction surveys and staking to enable Contractor to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.



- b. Providing record drawings or "as-built" surveys.
- c. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project or preparation, or review of environmental assessments and impact statements.
- d. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing.
- e. Furnishing services of Consultants for other than Basic Services.
- f. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
- g. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
- h. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

## EXCLUDED SERVICES

As a firm, we specifically list services that we do not provide and therefore exclude from this Contract and from our **Basic Scope of Services**. Specifically Excluded Services are:

1. Potholing or excavating to determine the location of subsurface utilities.
2. Performing any geo-technical or soils testing.
3. Performing any environmental assessment.
4. Investigating or performing any archeological (Phase I, II, or III) study that might be required by the Illinois Historic Preservation Agency.
5. Performing any water main testing including flow testing, pressure testing, air testing, etc.
6. Verifying that the work of any other design professional is in compliance with any local, state or federal ordinance, code, law or other regulation as they apply to this project other than that stated in the Basic Services Section of this contract.

Although these services will not be provided by us, they may still be necessary for the project. It is your responsibility to make that determination and to procure any such services from an appropriate and qualified consultant. When you do, you agree to provide their findings or plans to us so that we can evaluate their potential impact upon the services we have agreed to provide.

We are not responsible for addressing within our design or fees, any environmental conditions you might encounter or find, including but not limited to garbage, dumping sites, petroleum tanks or radioactive waste, nor are we responsible for non-compliance with any permit requirements associated with the above, or for any other requirement not included within our Scope of Services.

## INSURANCE

We agree to obtain insurance from a reputable insurance company and to maintain that insurance throughout the term of this contract. Our current insurance coverage and limits are included in this Contract as **Attachment II – Schedule of Insurance**. At your request, we will provide you with a certificate of insurance on the standard ACCORD form issued by an authorized representative of our insurer, as evidence that we have obtained insurance coverage applicable to this Agreement.

As to Professional Liability / Errors & Omissions Insurance, we agree to maintain that insurance throughout the design and construction of this project, and for a period of one year following substantial completion, provided that coverage is reasonably available at commercially affordable premiums. For the purposes of this Contract, "reasonably affordable" and "commercially available" mean that more than half the design professionals practicing in the State of Illinois and in this specific discipline are able to obtain such coverage.

You may request that we secure and provide project specific insurance with higher limits than we would normally carry, and for a specific length of time, provided that you also agree to pay for the higher cost of the premiums for that insurance.

## RIGHT OF ENTRY

Throughout the term of this Contract, you agree to obtain and grant to us and our personnel, reasonable and necessary nonexclusive access to the project site and property so that we can fulfill our **Basic Scope of Services** listed above. While on the project site and property, our personnel will



make every reasonable effort to protect that property and to comply with applicable safety procedures, including those specifically communicated to us by you. You understand that the use of surveying or other equipment may unavoidably cause some minor damage to trees, shrubs, crops or sod, the correction of which is not a part of this Contract.

You also agree to obtain and grant to us permission to erect a sign on the project site, should we choose to do so, identifying us as the project engineer and / or surveyor, and to allow that sign to remain on site during construction, reasonably protected from damage.

**QUALIFICATIONS**

We employ Licensed / Registered Land Surveyors, Licensed Professional Engineers, and Licensed Structural Engineers. When appropriate, our work will be performed by or under the direct supervision of one of those professionals and when applicable, documents submitted to you or on your behalf will bear the seal of the respective Surveyor or Engineer and certification to that effect.

**SPECIFIC TERMS AND CONDITIONS**

This Contract is based upon the following specific terms and conditions:

- a. You are responsible for paying any and all permit and / or application fees, utility connection fees, any fees required by statute or ordinance, any fees associated with a Municipality's adopted subdivision or development code, and any fees for activities including but not limited to, legal recordation, Illinois EPA water permits, NPDES NOI permits, wetlands delineation studies, archeological studies, municipal review, or title report. If you should require us to pay any such fees anyway and then request reimbursement from you, you agree to reimburse us for the cost of the actual fees plus a fifteen (15) per cent surcharge in order to offset costs for processing, the cost of money, and professional liability insurance.
- b. You agree to not initiate any construction based upon our plans until any and all required permits and approvals are received from any issuing agency. Should you disregard this limitation and initiate work or seek bids prior to plan approval or permits being issued, and should the municipality or issuing agency require modifications to the plans as we submitted, we are not responsible for the revised bid prices that may result, or for the cost to remove, modify or otherwise change any construction performed prior to the issuance of a permit.
- c. When we submit any drawings, plans, specifications, plats, descriptions, or other documents to you for your review you agree to review them within thirty (30) days to determine if they are generally acceptable and if so, to note your approval, which shall not be unduly withheld.
- d. As part of your review, should you detect what you believe to be errors, necessary changes, or failure on our part to complete our responsibilities under the Basic Scope of Services above, you are to immediately notify us. We will then correct any errors you note or complete any remaining tasks, as necessary.
- e. If we have agreed to a lump sum fee for our services, that fee, as proposed, does not include making multiple revisions to the civil engineering design.
- f. If your review is delayed for some reason, we may temporarily suspend work until you are able to complete the review, so that we are able to make any required changes before proceeding with the project.
- g. You agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should you fail or refuse to comply with any local, state or federal ordinance, code, law or other regulation as they apply to this project, or should your other consultants, subconsultants, contractors or subcontractors, fail or refuse to comply with any local, state or federal ordinance, code, law or other regulation as they apply to this project, and an injury, claim or loss arises or is alleged as a result.
- h. You agree to name us as an additional insured and have your insurance carrier issue to us a certificate of insurance and an endorsement to your policy using ISO Form CG 20 07 07 04, or an equivalent acceptable to us. This endorsement protects us from liability in respect to any bodily injury, property damage, or personal and advertising injury, caused in whole or in part by your acts or omissions or the acts and omissions of others acting on your behalf.

**ATTACHMENTS**

The following are attached to this Contract and are hereby incorporated into the Contract and made part of it by this reference.

**ATTACHMENT I: GENERAL TERMS AND CONDITIONS**

**ATTACHMENT II: SCHEDULE OF INSURANCE**



**ACCEPTANCE**

This Contract and any and all attachments comprise the final and complete agreement between you and us. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Contract. Execution of this Contract signifies that each party has read the document thoroughly, has had any questions explained by independent counsel and is satisfied. Amendments to this Contract shall not be binding unless made in writing and signed by both you and by us.

IN WITNESS WHEREOF, the parties hereto have made and executed this **CONTRACT** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015

**VILLAGE OF FREEBURG**

\_\_\_\_\_  
**Seth Speiser**  
Mayor, Village of Freeburg

**Address for giving notices:**  
14 Southgate Center  
Freeburg, Illinois 62243  
Tel. No. 618.539-5545  
Fax No. 618.539-5590  
E-Mail: [jpolson@freeburg.com](mailto:jpolson@freeburg.com)

**THOUVENOT, WADE & MOERCHEN, INC.**

\_\_\_\_\_  
*Marsha J. Maller*  
**Marsha J. Maller P.E.**  
Land Development Manager

**Address for giving notices:**  
4940 Old Collinsville Road  
Swansea, Illinois 62226  
Tel. No. (618) 624-4488  
Fax No. (618) 624-6688  
E-Mail: [mmaller@twm-inc.com](mailto:mmaller@twm-inc.com)

**ATTACHMENT I - GENERAL TERMS AND CONDITIONS**

**GOVERNING LAW.** Because of our corporate headquarters location, this Contract, its validity, interpretation and performance, will be governed by the laws of the State of Illinois.

**TITLES.** The paragraph titles used in this Contract, and in any attachments, are only for general reference and are not part of the Contract.

**SEVERABILITY AND SURVIVAL.** If any provision of this Contract is later held unenforceable for any reason it will be deemed void, but all remaining provisions will continue in full force and effect. Notwithstanding completion or termination of this Contract for any reason, your rights, duties and obligations, as well as ours, will survive the completion of the work or the termination of the Contract, and remain in full force and effect until they are fulfilled.

**ASSIGNMENT.** Neither you or we can transfer, sublet or assign any rights under, or interest in, this Contract without the prior written consent of the other, with one exception: if you fail to pay for the services we provide, we retain the right to assign this Contract to a collection agency or attorney in order to collect the past due account.

**TERMINATION.** Either you or we may terminate this Contract at any time with or without cause upon giving the other party thirty (30) calendar day's prior written notice. Regardless of who initiates termination, within thirty (30) calendar days of such termination you agree to pay us for all services rendered and all costs incurred up to the date of termination.

**SUSPENSION OF SERVICES.** If you suspended work on the project for more than thirty (30) calendar days in the aggregate, we are obviously entitled to compensation for the services we performed and the charges we incurred prior to that suspension. Upon resumption, we may also be entitled to a fair adjustment to our fees to help offset the resulting demobilization and remobilization costs, as well as a fair adjustment in the project schedule because of the suspension. You also agree that we are entitled to be paid, and that you will pay us, for all the services we provide to you, even if you subsequently decide not to proceed with your project.

**DEFINITIONS.** Sometimes people assume the meaning of specific words commonly used in the construction industry, but that presumed meaning may not be accurate. For the purposes of this Contract, and unless otherwise specified in this Contract, you agree with us that the following words, and their derivative words or phrases, will have the meaning indicated below:

- **CERTIFY, CERTIFICATION:** A statement of our opinion, to the best of our professional knowledge, information and belief, and based on observed conditions. Any such statement of opinion does not constitute a warranty, either express or implied. You understand that our certification does not relieve you or your contractors of any responsibility or obligation they may have by industry custom or under any contract.
- **COST ESTIMATE:** An opinion of probable construction cost made by us. If we provide a cost estimate or an opinion of probable construction cost, you recognized that we have no control over the actual costs of labor, equipment or materials, or over the methods used by contractors and bidders to determine prices or bidding. Any opinion of probable construction costs is therefore based upon our reasonable professional judgment, experience, and the data available to us at the time, and does not constitute a warranty, express or implied, that any bids or the negotiated price of the work will not vary from your budget or from that opinion of probable cost previously prepared by us.
- **DAY, DAYS:** The term "day" means a calendar day of 24 hours. The term "days" means consecutive calendar days of 24 hours each, or any fraction of a single day.
- **INSPECT, INSPECTION:** The visual observation of the Work involved in this project as it is being constructed, in order to permit us, as experienced and qualified professionals, to determine that the Work, when completed by the Contractor, generally conforms to the plans, specifications and Contract Documents. If we make any such inspections for you, you agree that we are not guaranteeing, and that we have no authority or control over, the Contractor's performance or his failure to perform the Work in accordance with the Contract Documents. We also have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor, or for the Contractor's safety precautions and programs, or for the failure of the Contractor to comply with any laws or regulations relating to performing or furnishing the Work under their Contract.
- **RECORD DOCUMENTS:** Drawings prepared by us upon the completion of construction. These are typically based upon marked-up drawings and other data furnished to us by the Contractor and / or others showing significant changes in the Work made during construction. Some refer to these as "as-builts", but because Record Documents are prepared using unverified information provided by others, we don't make any warranty as to the absolute accuracy or completeness of the drawings we prepare, and in fact because of the source of the information we use, the drawings we provide to you may not accurately reflect what was built.
- When you see the words "**us**", "**we**", and "**our**" they generally refer to **TWM INC.**, as well as our officers, partners, employees, agents and subconsultants.
- When you see the words "**you**" or "**your**", they generally refer to you as the **CLIENT**, as well as your officers, partners, employees, agents and subconsultants.

**SCOPE OF SERVICES.** Both you and we have agreed to a list of Basic Services that we will provide to you at an agreed upon price. Those services are listed in the Scope of Services section. Services not specifically listed in this section are excluded from the scope of our work and we therefore assume no responsibility to perform those services. If you ask us to perform additional services we will do so at our prevailing fee schedule. On some projects we are asked to provide only surveying or construction staking services, or to design only specific aspects of the project, while someone else provides those aspects of the design not provided by us. This may be the case in a "design-build" project as well, where the contractor provides some "design" services. In all such cases you agree that we have no responsibility, and accept no responsibility, for any design performed by others, or for detecting errors in their design, or for bringing any such possible errors to your attention.

**TIMELINESS OF PERFORMANCE; DELAYS.** We will perform our services with due and reasonable diligence consistent with sound professional practices. However, we are not responsible for delays caused by factors beyond our reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, your failure to furnish timely information or approve or disapprove of our services or work product promptly, or delays caused by your faulty performance or by Contractors at any level. When such delays beyond our reasonable control occur, you agree that we are not responsible for damages, nor shall we be deemed to be in default of this Contract.

**INFORMATION PROVIDED BY OTHERS.** We may need you to provide to us with some specific information so we can perform our Scope of Services. Typically that at least includes a current title insurance commitment or title insurance policy pertaining to the subject property so that we can determine the legal description of the property and the easements, covenants, conditions and restrictions encumbering it. You are also obligated to provide us with any additional information available to you or to your other consultants or contractors that might be applicable, necessary or helpful to us in performing our Scope of Services. With all such information you acknowledge that we have to trust the accuracy, completeness and sufficiency of information when it is provided by you or someone else. Still, there are a number of possible reasons why the information may not be accurate, including that errors or omissions may have occurred in the information when assembled and provided by you, or you may fail to produce all the necessary or appropriate documents or information. Even so, you agree that for any information provided by you or others, we are entitled to rely upon it, and to assume that it is accurate, complete, and in compliance with applicable rules, regulations, codes and laws. You therefore also agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should you provide documents or other information for our use, and an injury, claim or loss arises or is alleged based upon errors, omissions, inaccuracies or code violations contained within the information you or someone else provides.

**ATTACHMENT I - GENERAL TERMS AND CONDITIONS (CONTINUED)**

**UNDERGROUND UTILITIES & SUBSURFACE CONDITIONS.** Our Scope of Services may require that we indicate the location of underground utilities on our survey or plans. If so, we will request that the location of those underground utilities be identified by surface markings. We do this by calling J.U.L.I.E. (State of Illinois) or DIG-RITE (State of Missouri) or any other appropriate "one-call" utility location service. You also agree to provide us with any information you might have about easements, pipelines, personal communication cables, or any subsurface conditions that might not otherwise be known or located. We then prepare our survey / plans indicating the locations of existing underground utilities, as they have been marked, or disclosed by you. However, you again recognize and understand that in order for us to provide this service, we are dependent upon information provided by others, and that the information upon which we must rely may contain errors or be incomplete for a number of reasons, including: 1) joint utility location services or their members may refuse to locate buried utilities during the design phase of a project; 2) the actual location of utilities sometimes deviates from the surface location marked by joint location services; 3) not all utilities are members of joint location services and therefore may not be notified by them, and; 4) member utilities may not respond to all requests for utility location. You should also recognize and understand that surface location markings do not identify the depth of underground utilities. You therefore agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should the markings provided by a utility location service prove inaccurate or incomplete, and property damage, injury or economic loss arises or is alleged because of a contractor's reliance on underground utility information contained in plans prepared by us.

**WHILE WE WILL INDICATE SUBSURFACE UTILITIES ON OUR PLANS AND SURVEYS IN A MANNER CONSISTENT WITH THE ORDINARY STANDARD OF CARE, UNLESS SPECIFICALLY REQUIRED TO DO SO IN THE SCOPE OF SERVICES, WE WILL NOT EXCAVATE, UNCOVER OR INSPECT ACTUAL UNDERGROUND UTILITIES TO INDICATE A MORE PRECISE LOCATION, CONDITION OR CAPACITY, OR TO TRY TO DETERMINE THE EXISTENCE OF ANY SUBSURFACE CONDITION THAT MIGHT IMPACT THE EVENTUAL CONSTRUCTION OF THE PROJECT.**

**ENVIRONMENTAL & HEALTH HAZARDS.** Both you and we acknowledge that our scope of work does not include any services related to asbestos or hazardous or toxic materials. However, while working on the site, should we encounter any materials or conditions that we suspect could be hazardous or toxic, we will notify you of that suspicion so that you can investigate. In that event, or in the event that any other party encounters or suspects asbestos or hazardous or toxic materials at the jobsite or any areas adjacent, we may, at our option and without liability for consequential or any other damages, suspend the performance of our services on the project until you retain an appropriate specialist, consultant, or contractor to identify, abate and / or remove the hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations.

**CHANGED CONDITIONS.** Once this Contract is in place, it is possible that conditions change, and that something occurs or is discovered that was not originally contemplated or known by us. You agree to rely on our judgment as to the continued adequacy of this Contract in such cases. Should we identify changed conditions that in our opinion necessitate renegotiation of this Contract, both we and you will promptly, and in good faith, enter into that renegotiation. If we can not agree to new Contract terms, you and we each have the absolute right to terminate this Contract, in which case you agree to pay us for the services we have rendered through the date of termination.

**STANDARD OF CARE.** Services provided by us under this Contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Both you and we owe a duty of care to the public that requires both of us to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety. You will make no request of us that, in our reasonable opinion, would be contrary to our professional responsibilities to protect the public. You will take all actions and render all reports required of you in a timely manner. Should you fail or refuse to take any required actions or render any required notices to appropriate public authorities in a timely manner, you agree that we have the right to exercise our professional judgment in reporting to appropriate public officials or taking other necessary action. You agree to take no action against us or attempt to hold us liable in any way for carrying out what we reasonably believe to be our public responsibility. You also agree that in this situation, we have the right to immediately terminate this Contract and cease providing services, without the notice we would normally provide under the Termination or Suspension of Services sections of this Contract.

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

**JOBSITE SAFETY.** Our employees will perform their work in a safe manner and in accordance with applicable rules and regulations. We are responsible for the safety of our own employees on the jobsite but will follow instructions of the General Contractor when those employees are in an area of the jobsite controlled by the General Contractor. Both you and we agree that the General Contractor is solely responsible for jobsite safety, and you agree that it is your responsibility to make that evident to your General Contractor. Neither our professional activities, nor the presence of our employees or subconsultants at a construction site, will relieve the General Contractor or any other entity of their responsibility for jobsite safety or for their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Neither we nor any of our employees has the 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. You also agree that in order to further protect all of us, you, we, and any subconsultants we employ, will be indemnified and made additional insureds under the General Contractor's general liability insurance policy, endorsed under ISO Form CG 20 10 11 85, unless a different form is proposed and accepted by us.

**CONFIDENTIALITY.** If any data or information furnished to us by you is marked **CONFIDENTIAL**, or if you direct us to keep confidential any data generated by us for this project, we will not disclose that data or information to any person or entity, other than our own employees, any subconsultants working for us on the project, the general contractor and subcontractors, or any appropriate or required governmental or regulatory agency. These provisions do not apply to information in whatever form that comes into the public domain, nor do they restrict us from giving notices required by law or from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction. These provisions also do not apply to information that in our opinion is necessary for us to defend ourselves from any suit or claim.

You agree that the technical methods, techniques and pricing information contained in any proposal submitted by us pertaining to this project or contained in this Contract or any Addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without our express written consent.

**CONFIDENTIAL COMMUNICATIONS.** In some cases, you may ask us to provide you with an opinion about the past performance, current performance, or the qualifications of other entities under contract to you, or who you are considering for contracts. We assume that if you ask us to do so, you want a candid answer. However, we may be reluctant to provide a frank report or opinion that is not favorable, if you intend to share that report or opinion with others. You therefore agree to keep any such communications confidential, and to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) arising or alleged because you failed to do so, or because we provided any such confidential opinions or reports to you or to your agents.

**ATTACHMENT I - GENERAL TERMS AND CONDITIONS (CONTINUED)**

**OWNERSHIP OF INSTRUMENTS OF SERVICE.** All reports, plans, specifications, computer files, field data, notes and other documents prepared by us are instruments of the professional services we provide. They are not products. This is an important distinction when considering the implications of "product liability" versus "professional liability". We therefore shall be deemed the owner and author of said drawings and data, and shall retain all rights to them, including all statutory and other reserved rights, the right to reuse specific design elements created by us, and the ownership of the copyright imbedded therein. If you have paid us in full for the services provided under this Contract, we will, at your request, supply you with one Mylar set of final plans for the project, and grant a limited royalty-free license for you to use those plans for the purposes of advertising, promotion, and construction, and the operation and maintenance of the Project. However, by accepting any such plans or documents you agree that use or reuse for any purpose other than the work covered under this Contract, or any modification without our written permission, is at your sole risk. You agree to indemnify and hold us harmless from all claims, damages and expenses, including attorneys' fees, to release us from all claims and liability, to waive all claims against us, and to pay to defend us, if you or anyone else acting on your behalf, uses or reuses these data for any other purpose or work.

**ELECTRONIC MEDIA / FILES.** Data transferred in electronic format is easily altered, even unintentionally; therefore creating the possibility that unwanted errors might be introduced into the data via the transfer process. These errors might result from incompatible software or hardware settings; from damage to the electronic media; from electrical charges; from unauthorized changes made by you or another party; or from similar events. It is generally difficult to determine when and how such errors were first introduced, and therefore who is responsible for the change. Like our paper documents, electronic data are instruments of the professional services we provide. They are not products. As such, we normally do not provide clients with drawings or other data as electronic files.

If for some reason your project does require that we provide data in electronic format, the terms of doing so should be negotiated as part of this Contract and reduced to writing herein. In that case, if you have paid us in full for the services provided under this Contract, we will supply you with a Compact Disc (CD) containing the specified electronic files in the format in which they were created, and grant you a limited License for Use of Electronic Data. This license is not intended for any purpose or project other than the project that is the subject of this Contract, and is not transferable to any other party. We will also require that you sign a **License for Use of Electronic Data / Non-Disclosure Agreement / Agreement for Release of Liability** form. By your signature on this form you agree to indemnify and hold us harmless from all claims, damages and expenses, including attorneys' fees, to release us from all claims and liability, to waive all claims against us, and to pay to defend us, if you or anyone else acting on your behalf, uses or reuses these data for any other purpose or work. We make no warranties, either express or implied, of the merchantability and fitness for any particular purpose, for any electronic files we might provide. Should you find any difference between electronic versions of any drawing or document and the printed version that is signed and sealed by us, the printed document prevails.

**UNAUTHORIZED CHANGES.** In the event you allow, authorize, consent to or approve of anyone else making changes to any plans, specifications or other construction documents prepared by us, and those changes are not approved in writing by us, you recognize that said changes and the results thereof are not our responsibility. You therefore agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should you, or any of your agents or representatives other than us, make unauthorized changes to drawings and data provided by us.

**SUPPLANTING DESIGN PROFESSIONAL.** If, for any reason, we do not complete all the services contemplated by this Contract, we cannot be certain of the accuracy, completeness or workability of any documents prepared by us, especially if they are used, changed, or completed by you or someone else. Since the accuracy of any such documents would no longer be in our control, we also can not be held responsible for assuring that accuracy. Accordingly, you agree, to the fullest extent permitted by law, to indemnify and hold us harmless from any claim, liability, or cost (including reasonable attorney's fees and defense costs) for injury or loss arising or alleged because of such use or completion, or for any unauthorized changes made by any party to any documents prepared by us. Nothing in this paragraph indemnifies us from our own negligence or breach of our obligations under this Contract.

**DEFECTS IN SERVICE.** Should you discover what you suspect to be a defect in our work or services, you agree to promptly report that suspicion to us as soon as you become aware of it, so that we can investigate and take measures to correct any such defect and to minimize the consequences of it. You further agree to impose a similar notification requirement on all your contractors, and that they do so with all subcontractors, at any level. The intent is to avoid the potentially higher cost of change orders by identifying and correcting any such defects as early as possible. Therefore, failure by you or your contractors or subcontractors to notify us as required in this section, will limit our cost of remedying any such defects to the sum that remedy would have cost had we been given prompt notification.

**BETTERMENT.** Betterment, or unjust enrichment, means that a person, who is negatively impacted because of an alleged error, recoups not only their actual losses caused by the error, but gains an advantage or profit because of it. This Contract does not allow betterment or unjust enrichment. Therefore, if due to an oversight by us, any required item or component of the project is omitted from the project construction documents, our responsibility is limited to the cost over and above what it would have cost you had the component or item been designed, specified and constructed in the first place: In other words, not the cost of the item itself, but only the premium cost to add the omitted item out of normal sequence.

**CONSEQUENTIAL DAMAGES.** Notwithstanding any other provision of the Contract, you or we will not be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by you or us, or by your or our employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**CERTIFICATIONS, GUARANTEES, & WARRANTIES.** We will not be required to sign any documents, no matter who makes the request, which would result in our having to certify, guarantee, or warrant the existence of conditions, when we did not observe the existence of those conditions and can not otherwise determine their existence. You agree not to make the resolution of any dispute with us, or the payment of any amount due to us, in any way contingent upon our signing any such certification. In addition, we will not be required to execute any documents subsequent to the signing of this Contract that in any way might, in our sole judgment, increase our contractual or legal obligations or risks, or the availability or cost of our professional or general liability insurance.

**CONTINGENCY.** You and we agree that although our mutual goal may be the creation of a "perfect" set of project plans and documents, it is improbable that "perfection" can ever be attained. Because of the possibility for omissions, ambiguities or inconsistencies in the drawings and specifications, bidders might interpret the plans and specifications differently than we intended. In addition, influences beyond our control, such as increases in material prices, bidder workload, and labor costs, could all possibly impact bid prices. Therefore, project costs could be higher than you or we initially anticipate and deviate from any pre-bid estimate of those costs prepared by us. You and / or the owner therefore agree to set aside a reserve in the amount of 10 percent of the project construction costs as a contingency, to be used, if necessary, to pay for any increased costs. You and the Owner further agree to make no claim by way of direct or third-party action against us or our subconsultants with respect to such increased costs.

**NON-SOLICITATION OF EMPLOYEES.** During the term of this agreement and for a period of two (2) years afterwards, you agree that you will not solicit to hire nor hire any of our employees, whether or not you became aware of them through the performance of this Agreement. Furthermore, you agree for the same time period not to participate or facilitate in any way in the attempt of any other company to solicit to hire or hire any of our employees.

**ATTACHMENT I - GENERAL TERMS AND CONDITIONS (CONTINUED)**

**DISPUTE RESOLUTION.** Should any disagreement or conflict arise between you and us in relation to this Contract during or following the completion of the project, we both agree to work diligently to try to amicably resolve our differences. We both agree to first do so through informal discussion and agreement. Should those discussions not resolve the matter, you and we agree to attempt resolution through nonbinding mediation, in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this Agreement. Mediation is to commence within thirty (30) days from the date of receipt of any written claim, dispute or other matter in question, and both of us will mutually select the certified mediator or certified mediation service. You and we further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers, or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to all agreements.

However, nothing in this Section prohibits us from proceeding with any legal action necessary to enforce the payment provisions of this Contract, should you fail to pay for services rendered by us. In such cases, we are not required to first utilize mediation in the pursuit of collections and may in fact initiate legal action in an attempt to secure payment.

**STATUTES OF REPOSE.** Any legal action by either you or us against the other arising out of or in any way connected with the services to be performed under this Contract, is barred after any statute of limitation set by state law, or after five (5) years have passed from the date the project or project phase is substantially completed, whichever is shorter, and under no circumstances will any such claim be initiated by either you or us beyond those dates. In the event this Contract is terminated early, the date of Contract termination will be used in place of a substantial completion date.

**THIRD PARTY BENEFICIARIES.** Nothing contained in this Contract should be interpreted to create a contractual relationship with, or a cause of action in favor of, a third party against either you or us. Our services under this Contract are being performed solely for your benefit, and no other entity shall have any claim against us because of this Contract or the performance or nonperformance of services under this Contract. You agree to include a provision in all you contracts with contractors and other entities involved in this project to carry out the intent of this Section.

**FAILURE TO PAY FOR SERVICES PROVIDED.** Failure to make payment to us in accordance with the terms herein is a material breach of this Contract. If payment for services we provide to you is not received by us within thirty (30) calendar days of the invoice date, you agree that while we are not obligated to do so, we have the right to charge interest at a rate of up to one and one-half (1½) percent (or the maximum allowable by law, whichever is lower) on the PAST DUE amount each month it remains past due. Any payments you then make will first be applied to the accrued interest and then to the unpaid principal. In addition we may take additional actions, which may include:

- **SUSPENSION OF SERVICES.** We may suspend performance of services by giving you five (5) calendar days' notice. If we do so, we have no liability whatsoever to you for any costs or damages as a result of such suspension caused by any breach of this Contract.
- **TERMINATION OF SERVICES.** We may terminate this Contract. Payment remains due for services provided regardless of termination of this Contract by either of us.
- **MECHANICS LIEN.** We may file a lien against your property to protect our financial interests under this Contract.
- **LEGAL ACTION.** We may file suit against you to enforce the payment provisions of this Contract.

In the event that we find it necessary or prudent to file a lien or take legal action in order to enforce the payment provisions of this contract, you agree to compensate us for our cost of doing so. Among others things, those costs include our time, at current billing rates, and the expenses we incur in our collection efforts. They also include reasonable attorney's fees, court costs and related expenses incurred by us. You agree that in addition to any judgment or settlement sums due, you will pay these fees, costs and expenses to us.

**GENERAL INDEMNIFICATIONS.** We agree, to the fullest extent permitted by law, to indemnify and hold you (as well as your officers, directors and employees and their heirs and assigns) harmless from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by our negligent acts, errors or omissions under this Contract, or those of anyone for whom we are legally liable.

You agree, to the fullest extent permitted by law, to indemnify, defend and hold us (as well as our officers, directors, employees and their heirs and assigns, and any individuals and entities we retain for performance of the services under this Contract, including but not limited to our subconsultants and their officers, directors, employees, heirs and assigns) harmless from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by your negligent acts, errors or omissions in connection with the Project, or those of your contractors, subcontractors or other consultants, or anyone for whom you are legally liable.

You are not obligated to indemnify us in any manner whatsoever for our own negligence. We are not obligated to indemnify you in any manner whatsoever for your own negligence. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of both of us, they shall be borne by each party in proportion to each party's negligence.

**LIMITATION OF LIABILITY.** The potential risks of the project, in recognition of the relative benefits to both you and us, have been allocated in such a manner that you agree, to the fullest extent permitted by law, to limit our liability, and the liability of our subconsultants, to you, and to all construction contractors and subcontractors on the project, for any and all claims, losses, costs, and damages of any nature whatsoever, or claims or expenses from any cause or causes. **As such, unless a higher limit is requested by you and agreed to by us, the total aggregate liability for us and our subconsultants to all those named, defaults to, and shall not exceed, \$25,000.** This limitation applies regardless of cause of action or legal theory, pled or asserted. You also agree that you will not seek damages in excess of the contractually agreed limitations indirectly through suits with other parties who may join us as a third party defendant.

Limitations on liability and indemnities in this Contract are business understandings between you and us and shall apply to all the different theories of recovery, including breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action. However, these limitations on liability and indemnities will not apply to any losses or damages that have been found by a trier of fact to have been caused by our sole or gross negligence or our willful misconduct.

**ENTIRE AGREEMENT.** This Contract contains the entire agreement between you and us and supersedes any prior understanding or agreements, whether verbal or in writing, in relation to this project and the specific Scope of Services outlined in this Contract.



**ATTACHMENT II – SCHEDULE OF INSURANCE**

The following reflects TWM Inc.'s Insurance Coverage and Limits in effect as of April 1, 2014.

**General Liability Insurance - The Hartford Insurance Company**

- **Commercial General Liability Insurance** - on a broad-form occurrence basis with limits of \$1,000,000 per each occurrence and \$2,000,000 in the general aggregate.
- **Contractual Liability**
- **Cross Liability**

**Automobile Liability Insurance - The Hartford Insurance Company**

- **Automobile Liability Insurance** - personal injury and property damage with combined single limits (each accident) of \$1,000,000.

**Excess / Umbrella Liability - The Hartford Insurance Company**

- **Excess / Umbrella Liability** – on a broad-form occurrence basis with limits of \$5,000,000 per occurrence and in the aggregate.

**Worker's Compensation Insurance - The Hartford Insurance Company / USL & H – All States**

- **Worker's Compensation Insurance** – as required by statute, including Employers' Liability, with limits of:
  - \$1,000,000 each accident
  - \$1,000,000 disease – each employee
  - \$1,000,000 disease – policy limit

**Professional Liability Practice Policy – Hall & Company – Ace American Insurance Company**

- **A/E Professional Liability Insurance Policy** – with limits of \$2,000,000 per claim and \$2,000,000 in the annual aggregate.

