

VILLAGE PRESIDENT
Seth Speiser

VILLAGE CLERK
Jerry Menard

VILLAGE TRUSTEES
Mathew Trout
Dean Pruett
Lisa Meehling
Ray Matchett, Jr.
Mike Blaies
Denise Albers

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 & Keck, P.C.

July 10, 2017

NOTICE

MEETING OF THE PUBLIC WORKS COMMITTEE Trash/Water/Sewer (Blaies/Meehling/Pruett/Trout)

A Public Works Committee Meeting of the Village of Freeburg will be held at the Municipal Center, Executive Board Room, on **Wednesday, July 12, 2017, at 5:45 p.m.**

PUBLIC WORKS COMMITTEE MEETING AGENDA

- I. Items To Be Reviewed
 - A. Old Business
 - 1. Approval of June 14, 2017 Minutes
 - 2. Sewer Project/New Sewer Plant
 - 3. Sewer issues/Sewer Fuel Odors
 - 4. FSH Minutes
 - 5. Sewer Main – Jack’s Car Wash
 - 6. Shampoodles Lift Station Upgrade
 - 7. IEPA Violation Notice W-2017-50013
 - 8. W. Apple St. Water Line Extension
 - 9. Private Sewer at Potter/West Street
 - 10. East Water Tower Work
 - B. New Business
 - 1. TWM Contract Wastewater Facilities Plan Contract
 - 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 (Blaies/Meehling/Pruett/Trout) Wednesday, June 14, 2017 at 5:45 p.m.

The Public Works Committee Meeting was called to order at 5:56 p.m. on Wednesday, June 14, 2017, by Chairman Mike Blaies. Members present were Chairman Mike Blaies, Trustee Lisa Meehling (absent), Trustee Dean Pruett, Trustee Matt Trout, Mayor Seth Speiser, Village Clerk Jerry Menard, Trustee Denise Albers, Trustee Ray Matchett, Public Works Director John Tolan, Village Administrator Tony Funderburg and Office Manager Julie Polson. Guests present: Janet Baechle, Stan Koerber and Shari Wall.

A. OLD BUSINESS:

1. Approval of May 10, 2017 minutes: Trustee Dean Pruett motioned to approve the May 10, 2017 minutes and Trustee Matt Trout seconded the motion. All voting yea, the motion carried.
2. Sewer project: Public Works Director John Tolan advised Haier was out cleaning up today. John tested the sewer today by Parrish. He has talked to both Travis and Tim about what items need to be done and who will be responsible for them. He would like a punchlist prepared by Travis to reflect that. Some of those include curb and gutter at Jim's Auto's entrance, and also oiling and chipping that whole area by Jerry's Auto – Micks.
3. Sewer issues/Sewer Fuel Odors: John stated the odors are gone and EPA is sending the canisters back.
4. FSH Minutes: John said the emergency interconnect is up and going.
5. Sewer Main – Jacks Car Wash: John hopes to get the sewer lined in the next 6 – 8 weeks. He is hoping that will also help with the fuel odors.
6. Shampoodles Lift Station: John advised they are set to upgrade this on July 5th and 6th.
7. IEPA Violation Notice W-2017-50013: TWM submitted the renewal application today.
8. W. Apple St. Water Line Extension: Tony said we are working on obtaining the easements. John confirmed the residents don't have to annex. We just need the easement.
9. Private Sewer at Potter/West Street: John said they cameraed the area today to get the depths for TWM. They will come back with a proposal.
10. East Water Tower Work: John said the company that was going to inspect it is balking at the size of the hatch. He will contact the company that did it the last time.

B. NEW BUSINESS:

1. Resident Ron Gill's Concerns: John said this was taken care of today.

John advised SLM switched to free chlorine residuals and will run till July. Jesse has been fire hydrant flushing. The THM samples that we took in May came back very, very good. John advised the SAVE site leaks that were up high were taken care of by lineman, Matt Amann.

C. GENERAL CONCERNS: None.

D. PUBLIC PARTICIPATION: None.

E. ADJOURN: *Trustee Dean Pruett motioned to adjourn the meeting at 6:04 p.m. and Trustee Matt Trout seconded the motion. All voting aye, the motion carried.*



Julie Polson,
Office Manager

F.S.H. WATER COMMISSION
TUESDAY, MAY 23, 2017

1. CALL TO ORDER. The meeting of F.S.H. Water Commission was called to order by President Ken Vielweber in the Village of Freeburg at 7:30 PM with the following present: Ken Vielweber, Joel Boeving, John Tolan, Gary Wittenauer, Chad Rhutasel and Bryan Vogel.

2. MINUTES. Joel Boeving motioned and John Tolan seconded to approve the April 25th minutes. Motion carried. (4-0)

3. JUNE MEETING AND HEARING DATE. Next meeting and hearing date will be June 27, 7:30 PM.

4. GUESTS. Ameren Illinois representatives, Don Eveker, Kurt Anheuser and Kenneth Keleher were in attendance. Ameren Illinois is requesting permission to install a regulator station with pipeline on F.S.H. property. The footprint would be a 20 X 20 pad located 30' from the building. A one-time easement fee of \$310-\$1,000 was proposed. The trustees took it under advisement along with the possibility of negotiating for gas service as well.

5. CORRESPONDENCE & REPORTS. Joel distributed April S.L.M. minutes. Joel reported that S.L.M. is aware of Millstadt's request for water through F.S.H. via Smithton.

6. TREASURER'S REPORT. Treasurer's report, claims and bills for April were presented. A motion to approve the bills and reports presented was made by Gary Wittenauer, seconded by Joel Boeving. Motion carried by roll call vote. (4-0)

7. INVESTMENTS. As of 5/23/17:

Bank	Amount	Rate	Term	Maturity	Payments	Cert. #
Citizens Bank	\$250,000.00	3.00%	84 MO	09/10/17	Quarterly	11977641
Citizens Bank	\$150,000.00	2.20%	84 MO	10/17/23	Monthly	11977639
Citizens Bank	\$100,000.00	2.97%	84 MO	08/06/17	Monthly	11977640
Citizens Bank	\$150,000.00	2.12%	60 MO	03/20/21	Quarterly	11977644
Citizens Bank	\$300,000.00	1.75%	84 MO	09/06/20	Quarterly	11977643
Money Market	\$367,406.86	1.25%	N/A		Monthly	11977602

8. ENGINEER'S REPORT.

A. Chad Rhutasel reported there was a complaint with respect to interconnect project. A pile of dirt was still in a yard. Tim will contact Haier Plumbing.

B. The Millstadt feasibility study is about completed.

9. HYDRO SERVICES, INC.

A. Chad Rhutasel reported that water was all clear today but Freeburg had some issues with dirty water on Saturday. John Tolan and Chad had called S.L.M. to discuss the issue. S.L.M. noted they were having a little problem.

10. COMMISSIONER'S COMMENTS.

A. Vielweber: Ken reported that Nolan Shook has completed some building maintenance and repairs and will finalize the work soon.

B. Boeving: None.

C. Tolan: None.

D. Wittenauer: None.

11. ADJOURN. Gary Wittenauer motioned and Joel Boeving seconded to adjourn at 8:14 PM; motion carried. (4-0). The meeting was adjourned until June 27, 7:30 PM.

Bryan A. Vogel / Clerk

Ken Vielweber / Chairman

AGREEMENT BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT, made as of _____ between the Village of Freeburg, whose mailing address is 114 Southgate Center, Freeburg, Illinois 62243, hereinafter known as **OWNER** and Thouvenot, Wade & Moerchen, Inc., whose mailing address is 4940 Old Collinsville Road, Swansea, Illinois 62226, hereinafter known as **ENGINEER**. **OWNER** intends to prepare and submit to the IEPA (Illinois Environmental Protection Agency), a Wastewater Treatment Facility Plan. Said Facility Plan is Step 1 in the IEPA three step process to construct and obtain a NPDES (National Pollutant Discharge Elimination System) permit for improvements and expansion to the Village of Freeburg West Wastewater Treatment Facility, located at 5516 Willow Springs Lane, as situated near Apple Street. When completed and submitted by the **ENGINEER**, and subsequently approved by the IEPA, said Facility Plan shall provide the **OWNER** with a feasible implementation plan and IEPA approval to proceed with IEPA Step 2 (Design Phase) and Step 3 (Construction Phase). Said Wastewater Treatment Facility Plan shall also meet the planning requirements necessary for the **OWNER** to acquire an IEPA Low Interest Loan from the State of Illinois IEPA Low-Interest Revolving Loan Program to finance Step 2 and Step 3 costs.

OWNER and **ENGINEER** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **ENGINEER** and the payment for those services by **OWNER** as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 General

1.1.1 ENGINEER shall provide for **OWNER** professional engineering services in all phases of the **Project** to which this Agreement applies as hereinafter provided. These services will include serving as **OWNER**'s professional engineering representative for the **Project**, providing professional engineering consultation and advice and furnishing customary environmental engineering services.

1.1.2 The ENGINEER agrees to take affirmative steps to assure that small, minority, and women's business enterprises are utilized when possible as sources of suppliers, equipment, construction and services in accordance with Part 35.3145 (d). As required by the award conditions of USEPA's Assistance Agreement with the IEPA, the **ENGINEER** acknowledges that the fair share percentages are 5% of MBE's and 12% for WBE's.

1.2 IEPA Facility Plan

The Facility Plan will be completed in conformance with the Illinois Environmental Protection Agency's requirements for Step 1 Facility Plans as prepared by Thouvenot, Wade & Moerchen, Inc.

Services performed under this Step 1 Phase will include:

- 1.2.1** Introduction of the Village's background information including location, historical population, makeup of customer base, conditions affecting growth, and 20 year design population/customer base.
- 1.2.2** Detailed description of the existing collection system and treatment facilities, along with a clear identification for the need of the proposed project(s), as provided by the Village from previous planning documents.
- 1.2.3** The discharge from the existing West Wastewater Treatment Facility is the Kinney Branch to Richland Creek. According to the Illinois' 2014 303(d) List, Kinney Branch is listed as an impaired waterway. The Facility Plan will review information regarding an anti-degradation analysis pursuant to Ill. Adm. Code 35 Section 302.105 for a new or modified NPDES Permit.
- 1.2.4** Discussion of existing and proposed NPDES Permit limits. Detailed discussion of the chosen alternative's capability to maintain compliance with all applicable laws and regulations in addition to addressing the identified system need(s).
- 1.2.5** Basis of Design for Chosen Alternative. The preliminary engineering data will include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc. to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm Code 370.
- 1.2.6** Cost & Effectiveness Analysis. Prior to choosing a methodology for attaining the project's goal, both the cost and effectiveness of various alternatives were evaluated.
- 1.2.7** Inventory of environmental impacts of chosen alternative and a discussion of the measures required during design and construction to mitigate or minimize negative environmental impacts.
- 1.2.8** Reproducible 8.5 x 11-inch map(s) showing the project(s) location(s) relative to the community.

- 1.2.9 Detailed cost estimate for the alternative selected, including both capital and O, M & R costs over the 20-year planning period. The estimate will include cost items for design engineering, construction engineering, bidding, legal, construction and contingency.
- 1.2.10 Implementation plan for the proposed project including the anticipated construction schedule, the financial schedule, including necessary financial arrangements for assuring adequate annual debt service and O,M & R coverage requirements and a description of the dedicated source of revenue necessary for loan repayment. List any other funding involved in the project.
- 1.2.11 Detailed description of the existing residential rate structure, average water consumption or the basis for billing, current average monthly residential bill, any proposed rate changes and the proposed average monthly residential bill as a result of the project(s).

Three Copies of the Facilities Plan and related documents will be submitted to Infrastructure Financial Assistance Section (IFAS), Illinois Environmental Protection Agency

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance

If authorized in writing by **OWNER**, **ENGINEER** shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.7 inclusive. These services are not included as part of Basic Services except to the extent provided in paragraphs 1.1 and 1.2; these will be paid for by **OWNER** as indicated in Section 5.

- 2.1.1 Services resulting from significant changes in the general scope, extent or character of the **Project** or its design including, but not limited to, changes in size, complexity, **OWNER's** schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond **ENGINEER's** control.
- 2.1.2 Providing renderings or models for **OWNER's** use.
- 2.1.3 Preparing alternate planning documents requested by **OWNER** after submission of Facility Plan to the IEPA for approval.
- 2.1.4 Assisting the **OWNER** with services for easement acquisitions and/or negotiations for real estate purchases.
- 2.1.5 Preparation of operating, maintenance and staffing manuals.
- 2.1.6 Preparation of modified or new NPDES permit.
- 2.1.7 Preparing to serve or serving as a consultant or witness for **OWNER** in any litigation, arbitration or other legal or administrative proceeding involving the **Project**.
- 2.1.8 Additional services in connection with the **Project**, including services that are to be furnished by **OWNER** in accordance with Section 3, and services not otherwise provided for in this Agreement.
- 2.1.9 Conducting any IEPA required Sewer System Evaluation Survey (SSES) or Fiscal Sustainability Plan (FSP).

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of **ENGINEER**.

- 3.1 Designate in writing a person to act as **OWNER's** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER's** policies and decisions with respect to **ENGINEER's** services for the **Project**.
- 3.2 Provide all criteria and full information as to **OWNER's** requirements for the **Project**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which **OWNER** will require to be included in the **Project**.
- 3.3 Assist **ENGINEER** by placing at **ENGINEER's** disposal all available information pertinent to the **Project** including previous reports and any other data relative to design or construction of the **Project**.
- 3.4 Arrange for access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under this Agreement.

- 3.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ENGINEER**, obtain advise of an attorney, insurance counselor and other consultants as **OWNER** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.
- 3.7 Furnish approvals and permits from all governmental authorities having jurisdiction over the **Project** and such approvals and consents from others as may be necessary for completion of the **Project**.
- 3.8 Furnish, or direct **ENGINEER** to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.
- 3.9 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIODS OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for **ENGINEER's** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **Project**.
- 4.2 After acceptance by **OWNER** of the **ENGINEER's** Facility Plan and issuance of an IEPA approval, the services to be rendered under this contract shall be considered complete.
- 4.3 If **OWNER** has requested significant modifications or changes in the general scope, extent or character of the **Project**, the time of performance of **ENGINEER's** services shall be adjusted equitably.
- 4.4 This contract shall remain in force for a period of 15 months or until IEPA approval for the Facility Plan has been issued.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER

5.1.1 For Basic Services. **OWNER** shall pay **ENGINEER** for Basic Services rendered under Section 1.

Lump sum fee \$31,900.

5.1.2 Other Provisions Concerning Payments

If **OWNER** fails to make any payment due **ENGINEER** for services and expenses within thirty days after receipt of **ENGINEER'S** statement therefor, **ENGINEER** has the right to increase the amounts due at the rate of 1% per month from said thirtieth day, and in addition, **ENGINEER** may after giving seven days written notice to **OWNER**, suspend services under this Agreement until **ENGINEER** has been paid in full all amounts due for services, expenses and charges.

5.1.3 For Additional Services. **Owner** shall pay **ENGINEER** for Additional services rendered under Section 2 as follows:

5.1.3.1 General. For Additional Services of **ENGINEER'S** principals and employees engaged directly on the **Project** and rendered pursuant to paragraph 2.1 (except services as a consultant or witness under paragraph 2.1.6), on an hourly basis in accordance with the then current Fee Schedule.

5.1.3.2 Serving as a Witness. For services rendered by **ENGINEER' s** principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding in accordance with paragraph 2.1.6, at the rate of \$1,200 per 8-hour day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph 5.1.3.1).

5.1.4 For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, **OWNER** shall pay **ENGINEER** the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

SECTION 6 - GENERAL CONSIDERATION

6.1 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2 Reuse of Documents

All documents including Drawings and Specifications prepared or furnished by **ENGINEER** (and **ENGINEER's** independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the **Project** and **ENGINEER** shall retain an ownership and property interest therein whether or not the **Project** is completed. **OWNER** may make and retain copies for information and reference in connection with the use and occupancy of the **Project** by **OWNER** and others; however, such documents are not intended or represented to be suitable for reuse by **OWNER** or others on extensions of the **Project** or on any other **Project**. Any reuse without written verification or adaptation by **ENGINEER** for the specific purpose intended will be at **OWNER's** sole risk and without liability or legal exposure to **ENGINEER**, or to **ENGINEER's** independent professional associates or consultants, and **OWNER** shall indemnify and hold harmless **ENGINEER** and **ENGINEER's** independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle **ENGINEER** to further compensating at rates to be agreed upon by **OWNER** and **ENGINEER**.

6.3 Insurance

6.3.1 **ENGINEER** shall procure and maintain insurance for protection from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

6.3.2 **ENGINEER** shall also procure Professional Liability / Errors & Omissions Insurance, and maintain same throughout the design and construction of the **Project**, and for a period of two years following substantial completion, provided that coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "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.

6.3.3 **OWNER** may request that **ENGINEER** secure and provide project specific insurance for a specific length of time and with higher limits than **ENGINEER** would normally carry, provided that **OWNER** also agrees to pay for the higher cost of the premiums for said insurance.

6.4 Controlling Law

This Agreement is to be governed by the law of the State of Illinois.

6.5 Successors and Assigns

6.5.1 **OWNER** and **ENGINEER** each is hereby bound and the partners, successors, executors, administrators and legal representatives of **OWNER** and **ENGINEER** are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

6.5.2 Neither **OWNER** nor **ENGINEER** shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent **ENGINEER** from employing such independent professional associates and consultants as **ENGINEER** may deem appropriate to assist in the performance of services hereunder.

6.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than **OWNER** and **ENGINEER**, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of **OWNER** and **ENGINEER** and not for the benefit of any other party.

6.6 Access to Records

6.6.1 **ENGINEER** shall maintain books, records, documents and other evidence directly pertinent to performance of Agency loan work under this agreement consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accounts Professional Standard (666 Fifth Avenue, New York, New York 10019; June 1, 1987). The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The **ENGINEER** will provide facilities for such access and inspection.

6.6.2 Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.

6.6.3 The **ENGINEER** agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection 6.6.1 above, to the Agency. Where the audit concerns the **ENGINEER**, the auditing agency will afford the **ENGINEER** an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

6.6.4 Records under subsection 6.6.1 above shall be maintained and made available during performance on Agency loan Work under this agreement and until three years from day of final Agency loan audit for the **PROJECT**. In addition, those records which relate to any "dispute" appeal under an Agency loan agreement, or litigation, or the settlement of claims arising out of such performance, costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

6.7 **Contingent Fees**

ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage of contingent fee.

6.8 **Certification Regarding Debarment, Suspension and other Responsibility Matters.**

ENGINEER certifies that the services of anyone that has been debarred or suspended under Federal Executive Order 12549 has not or will not be used for planning, design and construction. See attached Exhibit A.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement.

7.1.1 **Exhibit A Certification Regarding Debarment Suspension and other Responsibility Matters**
Exhibit B General Terms and Conditions
Exhibit C Current Fee Schedule

7.2 This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between **OWNER** and **ENGINEER** and supersede prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

ENGINEER:

Village of Freeburg _____

Thouvenot, Wade & Moerchen, Inc. _____

Seth Speiser
(Mayor)



Randall Burk
(Vice-President)

Address for giving notices:

Address for giving notices:

14 Southgate Center _____

4940 Old Collinsville Road _____

Freeburg, Illinois 62243 _____

Swansea, Illinois 62226 _____

**EXHIBIT A - CERTIFICATION REGARDING DEBARMENT SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

EPA Project Control Number _____

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicated for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Randall Burk, Vice-President
Typed Name & Title of Authorized Representation


Signature of Authorized Representative

Date

6/16/2017

I am unable to certify the above statements. My explanation is attached.

EXHIBIT B - GENERAL TERMS AND CONDITIONS

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

SEVERABILITY AND SURVIVAL. If any provision of this Agreement 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 Agreement for any reason, **OWNER's** rights, duties and obligations, as well as **ENGINEER's**, will survive the completion of the Work or the termination of the Agreement, and remain in full force and effect until they are fulfilled.

SUSPENSION OF SERVICES. If **OWNER** suspends Work on the project for more than thirty (30) calendar days in the aggregate, **ENGINEER** is obviously entitled to compensation for the services performed and the charges incurred prior to that suspension. Upon resumption, **ENGINEER** may also be entitled to a fair adjustment to its fees to help offset the resulting demobilization and remobilization costs, as well as a fair adjustment in the project schedule because of the suspension. **OWNER** also agrees that **ENGINEER** is entitled to be paid, and that **OWNER** will pay **ENGINEER**, for all the services provided, even if **OWNER** subsequently decides not to proceed with the **Project**.

TIMELINESS OF PERFORMANCE; DELAYS. **ENGINEER** will perform its services with due and reasonable diligence consistent with sound professional practices. However, **ENGINEER** is not responsible for delays caused by factors beyond **ENGINEER's** 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, **OWNER's** failure to furnish timely information or approve or disapprove of our services or work product promptly, or delays caused by **OWNER's** faulty performance or by Contractors at any level. When such delays beyond **ENGINEER's** reasonable control occur, **OWNER** agrees that **ENGINEER** is not responsible for damages, nor shall **ENGINEER** be deemed to be in default of this Agreement.

INFORMATION PROVIDED BY OTHERS. **ENGINEER** may need **OWNER** to provide some specific information so **ENGINEER** can perform its Scope of Services. **OWNER** is also obligated to provide **ENGINEER** with any additional information available to **OWNER** or to **OWNER's** other consultants or contractors that might be applicable, necessary or helpful to **ENGINEER** in performing its Scope of Services. With all such information **OWNER** acknowledges that **ENGINEER** has to trust the accuracy, completeness and sufficiency of information when it is provided by **OWNER** 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 **OWNER**, or **OWNER** may fail to produce all the necessary or appropriate documents or information. Even so, **OWNER** agrees that for any information provided by **OWNER** or others, **ENGINEER** is entitled to rely upon it, and to assume that it is accurate, complete, and in compliance with applicable rules, regulations, codes and laws. **OWNER** therefore also agree, to the fullest extent permitted by law, to indemnify and hold **ENGINEER** harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should **OWNER** provide documents or other information for **ENGINEER's** use, and an injury, claim or loss arises or is alleged based upon errors, omissions, inaccuracies or code violations contained within the information **OWNER** or someone else provides.

UNDERGROUND UTILITIES & SUBSURFACE CONDITIONS. **ENGINEER's** Scope of Services may require that **ENGINEER** indicate the location of underground utilities on survey or plans. If so, **ENGINEER** will request that the location of those underground utilities be identified by surface markings. **ENGINEER** does 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. **OWNER** also agree to provide **ENGINEER** with any information **OWNER** might have about easements, pipelines, personal communication cables, or any subsurface conditions that might not otherwise be known or located. **ENGINEER** then prepares the survey / plans indicating the locations of existing underground utilities, as they have been marked, or disclosed by **OWNER**. However, **OWNER** again recognizes and understand that in order for **ENGINEER** to provide this service, **ENGINEER** is dependent upon information provided by others, and that the information upon which **ENGINEER** 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. **OWNER** should also recognize and understand that surface location markings do not identify the depth of underground utilities. **OWNER** therefore agree, to the fullest extent permitted by law, to indemnify and hold **ENGINEER** 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 **ENGINEER**.

While **ENGINEER** will indicate subsurface utilities on its plans and surveys in a manner consistent with the ordinary standard of care, unless specifically required to do so in the Scope of Services, **ENGINEER** 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 **OWNER** and **ENGINEER** acknowledge that **ENGINEER's** scope of work does not include any services related to asbestos or hazardous or toxic materials. However, while working on the site, should **ENGINEER** encounter any materials or conditions that **ENGINEER** suspects could be hazardous or toxic, **ENGINEER** will notify **OWNER** of that suspicion so that **OWNER** 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, **ENGINEER** may, at its option and without liability for consequential or any other damages, suspend the performance of **ENGINEER's** services on the project until **OWNER** retains 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 Agreement is in place, it is possible that conditions change, and that something occurs or is discovered that was not originally contemplated or known by **ENGINEER**. **OWNER** agrees to rely on **ENGINEER's** judgment as to the continued adequacy of this Agreement in such cases. Should **ENGINEER** identify changed conditions that in **ENGINEER's** opinion necessitate renegotiation of this Agreement, both **ENGINEER** and **OWNER**

EXHIBIT B - GENERAL TERMS AND CONDITIONS (CONTINUED)

will promptly, and in good faith, enter into that renegotiation. If the parties can not agree to new Agreement terms, each have the absolute right to terminate this Agreement, in which case OWNER agrees to pay for the services ENGINEER has rendered through the date of termination.

STANDARD OF CARE. Services provided by ENGINEER under this Agreement 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 OWNER and ENGINEER owe a duty of care to the public that requires both parties to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety. OWNER will make no request of ENGINEER that, in ENGINEER's reasonable opinion, would be contrary to ENGINEER's professional responsibilities to protect the public. OWNER will take all actions and render all reports required of them in a timely manner. Should OWNER fail or refuse to take any required actions or render any required notices to appropriate public authorities in a timely manner, OWNER agrees that ENGINEER has the right to exercise ENGINEER's professional judgment in reporting to appropriate public officials or taking other necessary action. OWNER agrees to take no action against ENGINEER or attempt to hold ENGINEER liable in any way for carrying out what ENGINEER reasonably believes to be ENGINEER's public responsibility. OWNER also agrees that in this situation, ENGINEER has the right to immediately terminate this Agreement and cease providing services, without the notice ENGINEER would normally provide under the Termination or Suspension of Services sections of this Agreement.

In order to minimize frivolous lawsuits, OWNER will make no claim for professional negligence against ENGINEER, either directly or in a third party claim, unless OWNER has first provided ENGINEER with a written certification executed by an independent professional currently practicing in the same discipline as ENGINEER 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 ENGINEER not less than thirty (30) calendar days prior to the institution of any claim.

JOBSITE SAFETY. ENGINEER's employees will perform their work in a safe manner and in accordance with applicable rules and regulations. ENGINEER is responsible for the safety of ENGINEER's 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 OWNER and ENGINEER agree that the General Contractor is solely responsible for jobsite safety, and OWNER agrees that it is OWNER's responsibility to make that evident to OWNER's General Contractor. Neither ENGINEER's professional activities, nor the presence of ENGINEER's 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 ENGINEER nor any of ENGINEER's 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. OWNER also agrees that in order to further protect both parties, OWNER, ENGINEER, and any subconsultants ENGINEER employs, 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 ENGINEER.

CONFIDENTIALITY. If any data or information furnished to ENGINEER by OWNER is marked CONFIDENTIAL, or if OWNER directs ENGINEER to keep confidential any data generated by ENGINEER for this project, ENGINEER will not disclose that data or information to any person or entity, other than ENGINEER's own employees, any subconsultants working for ENGINEER 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 ENGINEER 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 ENGINEER's opinion is necessary for ENGINEER to defend itself from any suit or claim.

OWNER agrees that the technical methods, techniques and pricing information contained in any proposal submitted by ENGINEER pertaining to this project or contained in this Agreement 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 ENGINEER's express written consent.

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

OWNERSHIP OF INSTRUMENTS OF SERVICE. All reports, plans, specifications, computer files, field data, notes and other documents prepared by ENGINEER are instruments of the professional services ENGINEER provides. They are not products. This is an important distinction when considering the implications of "product liability" versus "professional liability". ENGINEER 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 ENGINEER, and the ownership of the copyright imbedded therein. If OWNER has paid ENGINEER in full for the services provided under this Agreement, ENGINEER will, at OWNER's request, supply OWNER with one Mylar set of final plans for the project, and grant a limited royalty-free license for OWNER 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 OWNER agrees that use or reuse for any purpose other than the Work covered under this Agreement, or any modification without ENGINEER's written permission, is at OWNER's sole risk. OWNER agree to indemnify and hold ENGINEER harmless from all claims, damages and expenses, including attorneys' fees, to release

EXHIBIT B - GENERAL TERMS AND CONDITIONS (CONTINUED)

ENGINEER from all claims and liability, to waive all claims against **ENGINEER**, and to pay to defend **ENGINEER**, if **OWNER** or anyone else acting on **OWNER**'s 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 **OWNER** 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 **ENGINEER**'s paper documents, electronic data are instruments of the professional services **ENGINEER** provide. They are not products. As such, **ENGINEER** normally does not provide clients with drawings or other data as electronic files.

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

UNAUTHORIZED CHANGES. In the event **OWNER** allows, authorizes, consents to or approves of anyone else making changes to any plans, specifications or other construction documents prepared by **ENGINEER**, and those changes are not approved in writing by **ENGINEER**, **OWNER** recognizes that said changes and the results thereof are not **ENGINEER**'s responsibility. **OWNER** therefore agrees, to the fullest extent permitted by law, to indemnify and hold **ENGINEER** harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) should **OWNER**, or any of **OWNER**'s agents or representatives other than **ENGINEER**, make unauthorized changes to drawings and data provided by **ENGINEER**.

SUPPLANTING DESIGN PROFESSIONAL. If, for any reason, **ENGINEER** does not complete all the services contemplated by this Agreement, **ENGINEER** cannot be certain of the accuracy, completeness or workability of any documents prepared by **ENGINEER**, especially if they are used, changed, or completed by **OWNER** or someone else. Since the accuracy of any such documents would no longer be in **ENGINEER**'s control, **ENGINEER** also can not be held responsible for assuring that accuracy. Accordingly, **OWNER** agrees, to the fullest extent permitted by law, to indemnify and hold **ENGINEER** 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 **ENGINEER**. Nothing in this paragraph indemnifies **ENGINEER** from **ENGINEER**'s own negligence or breach of **ENGINEER**'s obligations under this Agreement.

DEFECTS IN SERVICE. Should **OWNER** discover what **OWNER** suspects to be a defect in **ENGINEER**'s work or services, **OWNER** agrees to promptly report that suspicion to **ENGINEER** as soon as **OWNER** becomes aware of it, so that **ENGINEER** can investigate and take measures to correct any such defect and to minimize the consequences of it. **OWNER** further agrees to impose a similar notification requirement on all **OWNER**'s 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 **OWNER** or **OWNER**'s contractors or subcontractors to notify **ENGINEER** as required in this section, will limit **ENGINEER**'s cost of remedying any such defects to the sum that remedy would have cost had **ENGINEER** 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 Agreement does not allow betterment or unjust enrichment. Therefore, if due to an oversight by **ENGINEER**, any required item or component of the project is omitted from the project construction documents, **ENGINEER**'s responsibility is limited to the cost over and above what it would have cost **OWNER** 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 Agreement, **OWNER** or **ENGINEER** 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 **OWNER** or **ENGINEER**, or by **OWNER**'s or **ENGINEER**'s employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

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

CONTINGENCY. **OWNER** and **ENGINEER** agree that although their 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 **ENGINEER** intended. In addition, influences beyond **ENGINEER**'s 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 **OWNER** or **ENGINEER**

EXHIBIT B - GENERAL TERMS AND CONDITIONS (CONTINUED)

initially anticipates and deviate from any pre-bid estimate of those costs prepared by **ENGINEER**. **OWNER** therefore agrees 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. **OWNER** further agrees to make no claim by way of direct or third-party action against **ENGINEER** or **ENGINEER's** 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, **OWNER** agree that **OWNER** will not solicit to hire nor hire any of **ENGINEER's** employees, whether or not **OWNER** became aware of them through the performance of this Agreement. Furthermore, **OWNER** 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 **ENGINEER's** employees.

DISPUTE RESOLUTION. Should any disagreement or conflict arise between **OWNER** and **ENGINEER** in relation to this Agreement during or following the completion of the project, the parties both agree to work diligently to try to amicably resolve their differences. The parties both agree to first do so through informal discussion and agreement. Should those discussions not resolve the matter, **OWNER** and **ENGINEER** 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 parties will mutually select the certified mediator or certified mediation service. **OWNER** and **ENGINEER** 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 **ENGINEER** from proceeding with any legal action necessary to enforce the payment provisions of this Agreement, should **OWNER** fail to pay for services rendered by **ENGINEER**. In such cases, **ENGINEER** is 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 **OWNER** or **ENGINEER** against the other arising out of or in any way connected with the services to be performed under this Agreement, 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 **OWNER** or **ENGINEER** beyond those dates. In the event this Agreement is terminated early, the date of Agreement termination will be used in place of a substantial completion date.

THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement should be interpreted to create a contractual relationship with, or a cause of action in favor of, a third party against either **OWNER** or **ENGINEER**. **ENGINEER's** services under this Agreement are being performed solely for **OWNER's** benefit, and no other entity shall have any claim against **ENGINEER** because of this Agreement or the performance or nonperformance of services under this Agreement. **OWNER** agrees to include a provision in all of **OWNER's** 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 **ENGINEER** in accordance with the terms herein is a material breach of this Agreement. If payment for services **ENGINEER** provides to **OWNER** is not received by **ENGINEER** within thirty (30) calendar days of the invoice date, **OWNER** agrees that while **ENGINEER** is not obligated to do so, **ENGINEER** has 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 **OWNER** then makes will first be applied to the accrued interest and then to the unpaid principal. In addition **ENGINEER** may take additional actions, which may include:

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

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

GENERAL INDEMNIFICATIONS. **ENGINEER** agrees, to the fullest extent permitted by law, to indemnify and hold **OWNER** (as well as **OWNER's** 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 **ENGINEER's** negligent acts, errors or omissions under this Agreement, or those of anyone for whom **ENGINEER** is legally liable.

OWNER agree, to the fullest extent permitted by law, to indemnify, defend and hold **ENGINEER** (as well as **ENGINEER's** officers, directors, employees and their heirs and assigns, and any individuals and entities **ENGINEER** retain for performance of the services under this Agreement, including but not limited to **ENGINEER's** 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 **OWNER's** negligent acts, errors or omissions in connection with the Project, or those of **OWNER's** contractors, subcontractors or other consultants, or anyone for whom **OWNER** is legally liable.

EXHIBIT B - GENERAL TERMS AND CONDITIONS (CONTINUED)

OWNER is not obligated to indemnify **ENGINEER** in any manner whatsoever for **ENGINEER's** own negligence. **ENGINEER** is not obligated to indemnify **OWNER** in any manner whatsoever for **OWNER's** own negligence. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of both parties, 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 **OWNER** and **ENGINEER**, have been allocated in such a manner that **OWNER** agrees, to the fullest extent permitted by law, to limit **ENGINEER's** liability, and the liability of **ENGINEER's** subconsultants, to **OWNER**, 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 OWNER and agreed to by ENGINEER, the total aggregate liability for ENGINEER and ENGINEER's 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. **OWNER** also agrees that **OWNER** will not seek damages in excess of the contractually agreed limitations indirectly through suits with other parties who may join **ENGINEER** as a third party defendant.

Limitations on liability and indemnities in this Agreement are business understandings between **OWNER** and **ENGINEER** 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 **ENGINEER's** sole or gross negligence or **ENGINEER's** willful misconduct.

ENTIRE AGREEMENT. This Agreement contains the entire agreement between **OWNER** and **ENGINEER** 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 Agreement.