

NOV 19 2012

**ORDINANCE NO. 2982**

*J. Ronald Clegg*  
City Clerk

**AN ORDINANCE TO ENTER INTO A CONTRACT AGREEMENT  
FOR PROFESSIONAL SERVICES WITH THOUVENOT, WADE &  
MOERCHEN, INC. (TWM, INC.) OF SWANSEA, ILLINOIS TO  
RENDER PRELIMINARY ENGINEERING SERVICES TO THE  
CITY OF COLUMBIA, ILLINOIS IN CONNECTION WITH THE  
VALMEYER ROAD BRIDGE REHABILITATION**

WHEREAS, the City Council of the City of Columbia, Illinois (City) has found and determined and does hereby declare that it is necessary and appropriate that the City employ Thouvenot, Wade & Moerchen, Inc. (TWM, Inc.) to provide professional services to the City for preliminary engineering associated with the Valmeyer Road Bridge Rehabilitation Project;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

**Section 1.** The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

**Section 2.** The City Council of the City does hereby authorize the employment of Thouvenot, Wade and Moerchen, Inc. to provide the professional services to the City with regard to the City's Valmeyer Road Bridge Rehabilitation Project. The Mayor is hereby authorized and directed to execute and deliver to Thouvenot, Wade & Moerchen, Inc. (TWM, Inc.), for and on behalf of the City, the "Contract Agreement for Professional Services" between the City of Columbia, Illinois and Thouvenot, Wade & Moerchen, Inc. (TWM, Inc.) for the lump sum not to exceed amount of Forty Two Thousand Four Hundred Dollars (\$42,400.00) in the form attached hereto, which is hereby approved as to form, in as many counterparts as the Mayor shall determine.

**Section 3.** This ordinance shall be in full force and effect from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Mathews, and the roll call vote was as follows:

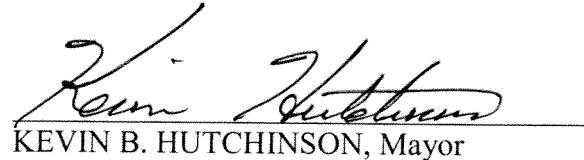
YEAS: Aldermen Ebersohl, Agne, Niemietz, Huch, Mathews and Reis.

NAYS: None.

ABSENT: Alderman Roessler.

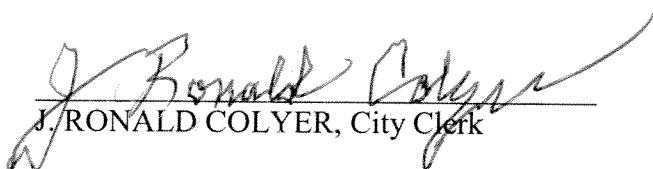
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 19<sup>th</sup> day of November, 2012.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk  
(SEAL)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF MONROE )

**CERTIFICATE OF TRUE COPY**

I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2982, entitled:

**“AN ORDINANCE TO EMPLOY THOUVENOT, WADE & MOERCHEN, INC. (TWM, INC.) OF SWANSEA, ILLINOIS TO RENDER PROFESSIONAL SERVICES TO THE CITY OF COLUMBIA, ILLINOIS IN CONNECTION WITH THE VALMEYER ROAD BRIDGE REHABILITATION.”**

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois City Council held on the 19<sup>th</sup> day of November, 2012.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 19<sup>th</sup> day of November, 2012.

*J. Ronald Colyer*  
J. RONALD COLYER, City Clerk

(SEAL)



## Contract Agreement for Professional Services

**Thouvenot, Wade & Moerchen, Inc. (TWM Inc.)** has developed this Plain Language Contract Agreement in hopes that its terms and conditions are clear and easily understood. Still, this agreement is a legal and binding contract between two parties, **TWM Inc.**, and you, **The City of Columbia**, 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, **The City of Columbia, IL – Valmeyer Road over Carr Creek Rehabilitation**, which we will refer to as simply the "project". As you have described it to us, this project involves performing a **hydraulic survey, hydraulic & scour calculations, checking adequacy of existing piles for scour & design of a replacement superstructure**.

### SCOPE OF SERVICES - BASIC SERVICES

We agree to provide the following specific professional services for **Total Lump Sum Fee of \$42,400.00**. For the purposes of this contract and project, you agree with us that these services, as listed, will be considered our **Basic Scope of Services**.

### BASIC SCOPE OF SERVICES

1. Coordinate with IDOT to determine necessary submittals for scour & hydraulics. Coordination during the plan review processes with IDOT.
2. Conduct a **Scour Hydraulic Survey** (See Attachment II – APPROXIMATE HYDRAULIC SURVEY CROSS SECTIONS).
3. Conduct a **Scour Hydraulic Analysis** and a scour analysis as required by section 7-2.02(e) of IDOT Bureau of Local Roads Manual.
4. **Check Existing Friction Piles at the Piers for Scour** as required by section 7-2.02(e) of IDOT Bureau of Local Roads Manual.
5. Prepare a Bridge Condition Report (**BCR**) and a Preliminary Bridge Design & Hydraulic Report (**PBDHR**) as required by section 10-2.03 of IDOT Bureau of Local Roads Manual. The PBDHR will require a completed IDOT form BLR 10210 with attachments including: a plan and profile sheet, hydraulic/hydrologic analysis/calculations, Asbestos Determination Certification (Form BLR 10220), a hydraulic certification statement (To be Provided by the Client) and a Type Size and Location Plan (TS&L).
6. Prepare calculations and construction plans for a Superstructure Replacement. Review shop drawings for PPC deck beams. Prepare project specific specifications, cost estimate & pay item worksheet.

### FEES - BASIC SCOPE OF SERVICES

We agree to provide the **Basic Scope of Services** listed for your payment of the following fees. Note: If the piles are determined to be inadequate at the end of scope item 4 a total bridge replacement will be required. Scope items 5 & 6 will be performed under a separate contract.

1. <b>Coordination:</b>	<b>For a Lump Sum Fee of \$ 1,300.00</b>
2. <b>Scour Hydraulic Survey:</b>	<b>For a Lump Sum Fee of \$ 11,400.00</b>
3. <b>Scour Hydraulic Analysis:</b>	<b>For a Lump Sum Fee of \$ 10,900.00</b>
4. <b>Check Existing Friction Piles at the Piers for Scour:</b>	<b>For a Lump Sum Fee of \$ 1,600.00</b>
5. <b>Prepare a BCR and a PBDHR.</b>	<b>For a Lump Sum Fee of \$ 5,000.00</b>
6. <b>Design Calculations &amp; Details for Superstructure Replacement, Review Shop Drawing, Prepare Specifications, Estimates &amp; Pay item Worksheet:</b>	<b>For a Lump Sum Fee of \$ 12,200.00</b>



## PROPOSED SCHEDULE

We will not begin to work on this project until you accept this Contract and return it to us with your signature. We estimate we will be able to complete the work for a superstructure replacement in order to meet the **June 14, 2013 IDOT Letting date**. However, we obviously do not control the schedule by which municipalities or regulatory agencies review or approve plans. Through this Contract you acknowledge that, as well as your understanding that municipalities and regulatory agencies may also require subsequent revision to the plans.

## BILLING AND PAYMENT

We will bill you, at the address listed for you in this contract, for the **Basic Scope of Services** we have provided as well as for any additional services you request. Payment is due when you receive our respective invoice. You agree to both process and pay our invoices promptly, and to follow the provisions of the Local Government Prompt Payment Act. ~~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 1 1/4 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 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.
2. An executed copy of the IDOT Hydraulic Certification Statement.

## 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.

## EXCLUDED ITEMS

The following services are excluded from this Contract and from our **Basic Scope of Services**. Specifically Excluded Services are:

1. Boundary or Right-of-way surveying.
2. Full Hydraulic Report required for IDNR/OWR purposes for an individual permit.
3. Roadway design elements.
4. Design & details for a complete structure replacement.
5. Assistance during bidding or construction.



#### 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. Geo-technical investigation, construction observation of excavation and foundation soils, or soils testing
2. Performing any environmental assessment.
3. Investigating or performing any archeological (Phase I, II, or III) study that might be required by any government agency.
4. Investigation for or discovery of any hazardous material.

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. 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:

1. 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.
2. 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.
3. 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.
4. 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: APPROXIMATE HYDRAULIC CROSS SECTIONS TO BE SURVEYED**

#### 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 19<sup>th</sup> day of **November, 2012**.

**City of Columbia, IL**

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

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**Kevin Hutchinson**  
**Mayor**

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**Sheila J. Kimlinger S.E. P.E.**  
**Manager of Transportation Department**

**Address for giving notices:**  
208 S. Rapp Ave.  
Columbia, IL 62236  
Tel. No. (618) 281 - 7144  
E-Mail: [ron@columbiaillinois.com](mailto:ron@columbiaillinois.com)

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

**JOB SITE 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, except to the extent allowed by law.

**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. We will provide only paper, not electronic, files.

**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 these 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 your 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 (1 1/2) 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 other 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, \$100,000. 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 – APPROXIMATE HYDRAULIC CROSS SECTIONS TO BE SURVEYED**

