

**Memorandum
Public Works Department**



To: City Manager
Subject: LTCP – Outfall 007 Relocation
Date: October 2, 2014
Number: 2014-207

Attached is an Engineering Design Services Proposal from Symbiont Science, Engineering and Construction (Symbiont) for engineering design and bidding services on the Outfall 007 Relocation Project. This project is part of the Long Term Control Project.

The scope of work to be covered by this proposal is to include preliminary engineering, preparation of detailed plans and specifications and bidding services. Symbiont has included services necessary for submittals for approval by all required regulatory agencies, as well as assistance with any grant or loan applications if needed.

Symbiont proposes to provide these engineering services at their standard hourly rates for an estimated cost of \$349,800.

Recommendation

The Public Works Department recommends that the City Council approve the Engineering Services proposal from Symbiont in the amount of \$349,800 and authorize the City Manager to execute the contract documents.

Vendor:	Symbiont	
Payment Amount:	\$349,800	
Fund:	506	Wastewater Operation & Maintenance
Department:	618	Utilities Service
Cost Center:	341	Wastewater Mill Street Plant
Object Code:	56501	Engineering Services
Project	2741	LTCP- Outfall 007 Relocation
Requisition #:	R004877	

Submitted by: Randall D. Tweet, Public Works Director
Michael J. Kane, P.E., City Engineer

Approved by: Thomas Thomas, City Manager



SYMBIONT

ENGINEERS • SCIENTISTS • CONSTRUCTORS

SYMBIONTONLINE.COM : 800.748.7423

6737 West Washington Street : Suite 3440 : Milwaukee, WI 53214

Mr. Mike Kane, P.E.
City Engineer
City of Rock Island
1309 Mill Street
Rock Island, IL 61201-3261

September 26, 2014

**RE: Design and Bidding Services Proposal
Outfall 007 Relocation
City of Rock Island CSO Long Term Control Plan
Symbiont Proposal No. 33538**

Dear Mr. Kane:

Symbiont is pleased to submit the enclosed proposal for engineering services for design and bidding services for the relocation of the City's existing Outfall 007 as identified in the City's Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP).

Our firm highly values our relationship with the City of Rock Island and looks forward to the opportunity to continue assisting the City with the implementation of the improvements outlined in the CSO LTCP.

Please contact us if you have any questions regarding our proposal. We again thank you for your consideration on this important project.

Sincerely,

SYMBIONT

Brian A. Till, P.E.
Project Manager

SYMBIONT

Patrick W. Carnahan, P.E.
Vice President

Enclosure

September 26, 2014

PREPARED FOR:

City of Rock Island

PREPARED BY:

Symbiont
6737 West Washington Street
Suite 3440
West Allis, Wisconsin 53214

**Proposal to Provide
Design and Bidding Services
Relocation of Outfall 007
City of Rock Island, Illinois**

Symbiont
Proposal No. 33538

**PROPOSAL TO PROVIDE
DESIGN AND BIDDING SERVICES
FOR THE RELOCATION OF OUTFALL 007
CITY OF ROCK ISLAND, ILLINOIS**

The City of Rock Island (City) completed a Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) in 2006 as part of a settlement agreement with USEPA. The relocation of Outfall 007 was included in the plan. The City now desires to move into the detailed design phase for the relocation project. The following defines the Scope of Work, Schedule and Cost for Symbiont Science, Engineering and Construction (Symbiont) to design and assist the City with bidding for the proposed relocation of Outfall 007. The relocation of Outfall 007 project will be designed following the concepts developed in the LTCP.

PROJECT UNDERSTANDING

The proposed project was identified in the City's CSO LTCP in order to eliminate the existing CSO outfall adjacent to Black Hawk State Park. Symbiont completed a preliminary engineering evaluation in 2009 to refine the relocated outfall's required hydraulic capacities, investigate screening and disinfection equipment options, and summarize future operation and maintenance requirements. A conceptual site layout was developed as part of the preliminary engineering effort and is shown in the attached figure.

The relocated outfall system will include the following major elements:

1. A new overflow structure on the existing south side interceptor sewer. Existing manhole MH4804 will be modified to include an overflow weir to convey excess combined sewage flow during wet weather events to the new outfall treatment system.
2. A new railroad crossing for the new outfall pipe from the overflow structure to the new outfall treatment system.
3. A new outfall treatment system including a mechanically-cleaned fine screen and disinfection equipment.
4. A treatment building to house the treatment equipment and associated utilities.
5. A contact basin if chlorine disinfection is utilized. The basin would not be required if alternate disinfection technologies are utilized such as ultraviolet light.
6. Piping to convey flow between the new structures including a new outfall pipe to the Rock River.
7. Permitting and regulatory approval.

SCOPE OF WORK

In consideration of the tasks and activities required to perform this project from design of selected improvements through startup, the scope of work is divided into five project phases. These phases are:

- PHASE 1: DESIGN SERVICES
- PHASE 2: PERMIT AND REGULATORY APPROVAL SUPPORT

- PHASE 3: BIDDING SERVICES
- PHASE 4: IEPA SRF LOAN APPLICATION SUPPORT
- PHASE 5: ENGINEERING SERVICES DURING CONSTRUCTION

This proposal covers Phases 1 and 4. Following completion of these phases, a separate agreement would be executed between the City and Symbiont for Phase 5, Engineering Services During Construction.

PHASE 1: DESIGN SERVICES

The engineering design phase of this project includes the services necessary to provide the City with a professionally engineered outfall system that complies with the City's CSO LTCP and discharge permit, and that responds to the needs of the City's WWTP operations and maintenance staff. It is anticipated that City staff will participate in the engineering design phase, as described below, to ensure that appropriate requirements and preferences are incorporated into the design. Tasks included in the design phase are outlined below.

Survey

Field surveys will be necessary for the completion of this project. Symbiont proposes to have Missman, Inc. perform a legal survey to define the extents of the Right-of-Way in and around the proposed project area. In addition, Missman will complete a topographic and utility survey of the proposed project area. The results of the survey will be used in preparing the project plan drawings.

Archaeological Survey

Symbiont along with our subconsultant, Fever River Research, will conduct a Phase I Archaeological Survey of the proposed project area in accordance with Illinois Historic Preservation Agency requirements. The proposed project area is known to have Native American historical and archaeological resources, and the Illinois Historic Preservation Agency requires a Phase I survey to identify these resources. It is likely that additional surveys and investigations will be required based on the results of the Phase I survey. Any additional surveys required will be added to Symbiont's scope through a contract amendment.

Property Acquisition Assistance

Symbiont along with our subconsultant, Missman Inc., will assist the City with the documents and information necessary to acquire the property identified for the new outfall system. This includes preparation of plats (right of way, permanent and temporary construction easements) and other legal descriptions to assist the City with property acquisition. In addition, Symbiont's design team will assist the City with negotiations with property owners and coordinate appraisal services. Symbiont has not included appraisal service costs in this proposal and assumes that the City will contract directly with an appraiser or will amend Symbiont's contract once the scope of appraisal services is defined. As part of the fee summary presented below, Symbiont has assumed negotiating will involve two property owners and that 3 plats and legal descriptions will be prepared.

Geotechnical Investigation

Symbiont will plan, coordinate, monitor, document, and manage a geotechnical investigation. The investigation will include the necessary borings for installation of the new outfall structure including the new treatment building, disinfection contact tank, and outfall pipe.

Detailed Engineering

The preliminary engineering effort identified multiple options for both mechanical screening and disinfection equipment for the outfall treatment system. The equipment selections need to be finalized early in the detailed design process in order to meet the project schedule dictated by the CSO LTCP. Symbiont will work with the City at the start of the detailed engineering to review the identified options, complete follow-up evaluations and testing, and finalize the preferred approach.

Symbiont will advance engineering of the relocation of the outfall to determine the civil, mechanical, structural, electrical, and process engineering details for a complete system. The detailed engineering will service as the basis for the bid documents. In addition, Symbiont will prepare a facility plan specific for this project for submittal to IEPA for their review and approval. Receiving their input early in the design process will aide in obtaining the construction permit in a timely fashion following design completion. The facility plan will also satisfy the requirements for Clean Water Fund loan financing should the City decide to pursue this funding source.

Prepare Construction Documents

Symbiont will prepare plans, specifications, and bidding documents for bidding and construction for the elements of the project defined above. Plans and specifications will describe siting, physical configuration, materials of construction and equipment specifications. Construction sequencing to implement the recommended improvements will be a critical factor in scheduling construction and will be addressed in the construction documents. Contract documents will be prepared for bidding as a single contract between the City and a general contractor.

Symbiont estimates that 50 to 55 drawings will be required to show the scope of work including instrumentation and controls, civil (demo, erosion control, yard piping, grading), architectural, structural, mechanical, and electrical.

The final documents will be stamped by a Professional Engineer registered in the State of Illinois. Plans will be prepared using AutoCAD 2014.

Engineer's Cost Estimate

Symbiont will prepare an opinion of probable construction cost for the relocated Outfall 007. The opinion of probable cost will allow the City and Symbiont to update the project budget if necessary.

Design Progress Review Meetings with City Staff

Symbiont will conduct several design progress review meetings with City staff to review various aspects of the design throughout the course of its development. Design workshop meetings will be held as the design advances to review design concepts, site and facility layouts, equipment selection and specifications, and planned process operations with City personnel. These meetings will provide the City's operation and maintenance staff the opportunity to express preferences and optimize features of the design. Symbiont anticipates that the workshops will focus on the following topics:

1. Kick-Off Meeting and Scope Review
2. Screening & Disinfection Unit Processes
3. Conveyance Improvements & RR Crossing
4. Treatment Building

In addition to the workshops listed above, construction document review meetings will be scheduled at approximately 50 percent and 90 percent completion. Symbiont will provide the City with "in process" construction documents for review in advance of the scheduled meetings. Review comments will be addressed with any necessary revisions incorporated into the construction documents.

PHASE 2: PERMIT AND REGULATORY APPROVAL

In preparation of this proposal, Symbiont has identified the following permits and regulatory agency approvals that will be required for the completion of this project:

1. Illinois Historic Preservation Agency Phase I Archaeological Survey
2. Illinois Environmental Protection Agency Wastewater Construction Permit
3. Nationwide Permit with US Army Corps of Engineers, IL DNR, & IL EPA
4. IL EPA NOI & SWPPP for storm water
5. City of Rock Island Grading and Drainage Permit
6. City of Rock Island Development Permit
7. Iowa Interstate Railroad Crossing Permit

Symbiont will prepare applications for regulatory review including forms and contract documents (i.e., plans and specifications) and will assist the City in responding to questions and providing additional information to achieve the above regulatory approvals for this project. Based on Symbiont's recent experience, it is difficult to estimate the level of effort required to achieve regulatory approval as the effort required often depends upon the requirements of the individual reviewer at each agency. Symbiont has assumed 300 hours of effort in completing the identified permit applications and associated follow up.

PHASE 3: BIDDING SERVICES

Advertise

Symbiont will assist the City in advertising for and obtaining bids for the construction contract. Symbiont will provide the City with one hard copy and one electronic file of the contract documents it has prepared. If the City elects to distribute bidding documents through the Quest CDN website, Symbiont will upload the bidding documents to the website.

Pre-bid Conference

Symbiont will assist the City in conducting a pre-bid conference including a site walk through to review project requirements with bidders, including information concerning bid preparation, schedule requirements, construction administration and technical information.

Clarifications/Addenda

Symbiont will respond to questions raised by bidders during the advertise period. Addenda will be prepared and issued as appropriate to clarify, correct, or change the bidding documents.

Evaluation of Bids

Symbiont will assist the City in evaluating bids, including alternate equipment submittals.

PHASE 4: LOAN APPLICATION SUPPORT

Symbiont will provide engineering and administrative services to assist the City of Rock Island with applying for a loan from the State of Illinois Revolving Fund. Such services will be similar to the support provided on the *Improvements Project to Outfalls 011 and 012* and the *Wet Weather Treatment System* project. A summary of the services includes:

Pre-application Support – Symbiont will prepare the necessary documentation for the City to submit the pre-application for a SRF loan. This support includes developing a facility plan specifically for this project that complies with IEPA requirements. This facility plan will include a project description, alternatives evaluation, project scope of work, cost estimates, financial information from the City, and estimated project schedule. This facility plan will be based on information from the City's CSO LTCP and from previous pre-applications for SRF loans. Symbiont will also complete and submit Illinois Department of Natural Resources EcoCAT forms for sensitive areas and endangered species determination.

Loan Application Support – Symbiont will prepare the necessary documentation for the City to submit an SRF loan application. This support includes follow up with IEPA after the loan has been submitted, providing revisions to IEPA with regard to bid schedule, and any addendums.

Loan Assistance – Symbiont will communicate with IEPA through telephone and e-mail on behalf of the City for the purpose of answering any questions and documenting any responses that maybe needed as part of the loan application process.

Based on Symbiont's recent effort to assist the City with SRF loans for the wet weather treatment system and 6th Avenue relief sewer projects, Symbiont proposes to provide up to 100 hours of engineering and administrative support toward the SRF loan application process.

PHASE 5: ENGINEERING SERVICES DURING CONSTRUCTION

As previously indicated, the City and Symbiont will enter into a separate agreement for Engineering Services During Construction (ESDC) following completion of the design and bidding phases. The ESDC phase will include the following elements:

- Visits to Site by Design Engineers
- Clarifications and Interpretations; Field Orders
- Shop Drawing Review
- Applications for Payment
- Contractors' Completion Documents
- Substantial Completion
- Final Notice of Acceptability of the Work
- Record Drawings
- Operations and Maintenance Manuals
- Start Up and Training Services

EXCLUSIONS

The scope of work summarized above does not include the following:

1. Based on preliminary discussions with IL Department of Natural resources during development of the CSO LTCP, it is likely that threatened or endangered mussels are in the Rock River within the project area. A mussel survey and potential relocation will likely be required prior to commencement of construction activities. If appropriate, these services can be added to Symbiont's scope at a later date.
2. Negotiations or delays resulting from failure to secure right-of-way entry for land and archaeological surveys.
3. Meetings and public hearings beyond those specified above.
4. Additional surveys, investigations, or archaeological relocations resulting from the Phase I Archaeological Survey specified above.
5. Property appraisal costs.
6. Expert testimony

PROJECT TEAM

Symbiont has assembled a highly qualified team of engineers to design the relocated outfall. Key staff and their specific roles on the project are presented below along with an explanation of the specific role they will perform on this project. Many of the project team leaders, as well as the support engineers, technicians, and CAD designers that will support the key staff, were involved in the development of the CSO LTCP and the recently completed wet weather treatment system project.

Brian A. Till, P.E. Project Manager	Mr. Till will serve as the Project Manager for this project. Mr. Till is the Project Manager for the current WWTS project and was involved in the development and submittal of all the documents prepared as part of the CSO LTCP.
Amy L. Post, P.E. Civil Engineer	Ms. Post will be the lead Civil Engineer for this project. Ms. Post designed and managed the City's new 6 th Avenue Relief Sewer, the Northside Interceptor Sewer Expansion, and was involved with numerous aspects of the CSO LTCP, including the City's collection system evaluation and modeling.
Jason R. Froehlich, P.E., S.E. Structural Engineer	Mr. Froehlich will be the lead Structural Engineer for this project. Mr. Froehlich has 13 years of experience in commercial and industrial facilities and has been involved extensively in design of water and wastewater facilities.
Caramy Reisenauer Electrical Engineer	Ms. Reisenauer will be the lead Electrical Engineer for this project. Ms. Reisenauer has designed the electrical systems for numerous wastewater facilities and has worked on several of the CSO LTCP projects including the recently constructed WWTS.
Patrick W. Carnahan, P.E. Quality Assurance / Quality Control	Mr. Carnahan, Symbiont's Operations Manager, will serve as the Quality Assurance/Quality Control Officer on this project.
Missman, Inc.	Missman, Inc. will provide surveying services and property acquisition document preparation and support.
Fever River Research	Symbiont will employ the services of Fever River Research to complete a Phase I Archaeological Survey of the proposed project area. Fever River Research specializes in these types of studies and recently completed similar studies in the project area.

In addition to the firms and staff identified above, the project team will work with City of Rock Island Staff throughout the design process to ensure that the final design meets the City's needs and expectations. A geotechnical subconsultant yet to be identified will be retained to complete soil borings and geotechnical report for design of the proposed structures. Symbiont anticipates using a geotechnical firm that is familiar with Rock Island and has previously completed work for the City.

SCHEDULE

Symbiont and its team are prepared to begin detailed design work within two weeks of Notice to Proceed. We recognize that time is of the essence and that all work must be completed in a timely manner in order to meet the compliance schedule included in the CSO LTCP. Symbiont will perform the scope of services outlined above in a timely manner consistent with the following general schedule.

In order to meet USEPA's compliance schedule, the facility plan will be submitted to IEPA as soon as possible so that any design changes that result from their review can be incorporated into the project prior to development of detailed drawings and specifications. Design review workshops to obtain City input must also be completed early in the project to ensure that the final design incorporates City preferences.

Provided IEPA's review and response of the facility plan are performed in a timely manner, we anticipate a 50% design review meeting to occur approximately 4 months after notice to proceed. A 90% design review workshop is scheduled to occur approximately 3 months after the 50% review workshop. Assuming an October 1, 2014, start date, design and bidding documents would be completed around May 31, 2015. To satisfy the CSO LTCP schedule submitted to USEPA, the outfall relocation construction must be completed by April 14, 2016.

COMPENSATION

Symbiont and its team will perform the services set forth in the Scope of Work above on a time and expense basis. Labor will be billed at each individual firm's standard hourly rates for the personnel engaged in the performance of the services

The estimated fee to complete the Outfall 007 relocation detailed design described herein is **\$349,800.**

Scope of Work Items	Fee
Design, Bidding, & Award (Phases 1 and 3)	\$263,200
Topographic Survey & Geotechnical Investigation (Phase 1)	\$23,900
Property Acquisition (Phase 1)	\$11,700
Permitting & Regulatory Approval including SRF Support & Archaeological Survey (Phases 2 and 4)	\$51,000

TERMS AND CONDITIONS

Symbiont Standard Terms and Conditions of Agreement (Form S-1 10-2013) are included with our proposal. Please indicate your acceptance of this proposal by having an authorized representative sign below and return one copy to Symbiont.

ACCEPTED BY:

CLIENT: _____

SIGNATURE: _____

TITLE: _____

DATE: _____



**SYMBIONT® SCIENCE, ENGINEERING AND CONSTRUCTION, INC.
TERMS AND CONDITIONS OF AGREEMENT**

These Terms and Conditions of Agreement form the Agreement under which services are to be performed by Symbiont Science, Engineering and Construction, Inc. (hereinafter referred to as Symbiont) upon acceptance of the attached Proposal by the Client. The Scope of Work, Project Cost and Project Schedule sections of the attached Proposal are incorporated by reference into these Terms and Conditions of Agreement and are part of the Agreement.

Article 1. Scope of Work

It is understood that the Scope of Work and the Project Schedule defined in the Proposal are based, in part, on the information provided by the Client. If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by the Client, or if the Client directs Symbiont to change the original scope of work established by the Proposal, a written amendment to this Agreement equitably adjusting the costs and/or performance time thereunder, shall be executed by the Client and Symbiont as soon as practicable in accordance with Article 28 below. In the event that the Client and Symbiont cannot agree upon the terms and conditions of such amendment, either party may terminate this Agreement immediately upon written notice to the other in accordance with Article 9, Termination.

Symbiont shall perform only the services specified in the Scope of Work portion of the Proposal or an amendment thereto as referenced above. Services provided by Symbiont shall be subject to the provisions of this Agreement, including these Terms and Conditions of Agreement, any supplemental conditions incorporated herein, and any written amendments as referenced above. Symbiont shall invoice its costs, and Client shall provide payment for all services provided in accordance with Article 2 below.

Article 2. Fees, Billing and Payment

Symbiont's fee estimate is effective for thirty (30) days from the date of the Proposal. Thereafter, Symbiont shall have the right to modify its fee estimate. The Client recognizes that Symbiont's fee estimate does not include potentially applicable sales and use taxes.

The Client recognizes that time is of the essence with respect to payment of Symbiont's invoices, and that timely payment is a material part of the consideration of this Agreement.

Invoices will be submitted by Symbiont no more frequently than monthly, and shall be due and payable within thirty (30) calendar days of the invoice date. If the Client objects to all or any portion of an invoice, the Client shall so notify Symbiont within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice, if any, not in dispute. In the event that Symbiont and the Client cannot resolve the dispute regarding invoiced amounts within thirty (30) days after receipt by Symbiont of the aforementioned notice, the dispute shall be submitted to dispute resolution pursuant to Article 11, below.

The Client shall pay an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by Symbiont more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payment of invoices is in no case subject to unilateral discounting or setoffs by the Client.

Application of the percentage rate indicated above as a consequence of the Client's late payments does not constitute any willingness on Symbiont's part to finance the Client's operation and no such willingness should be inferred.

If the Client fails to pay undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, Symbiont may at any time, without waiving any other claim against the Client or the right to pursue any other remedy against the Client and without thereby incurring any liability to the Client, suspend this Agreement, as provided for in Article 8, Suspension, or terminate this Agreement, as provided for in Article 9, Termination.

Article 3. Confidentiality

Symbiont and Client shall hold confidential all business or technical information obtained from the other or its affiliates under this Agreement for a period of five (5) years after obtaining such information, and during that period shall not disclose such information without the other's consent except to the extent required for (1) performance of services under this Agreement; (2) compliance with professional standards of conduct for preservation of the public safety, health and welfare; (3) compliance with any law, regulation, ordinance, subpoena, court order or governmental request; or (4) protection of the disclosing party against claims or liabilities arising from performance of services under this Agreement. In the event disclosure may be required for any of the foregoing reasons, the disclosing party will, except where immediate notification is required by law or regulation or is, in the judgment of Symbiont's counsel required to limit Symbiont's liability, notify the other party in advance of disclosure. The parties' obligations hereunder shall not apply to information in the public domain or information lawfully acquired on a non-confidential basis from others.



Article 4. Independent Contractor Relationship

The relationship between the Client and Symbiont created under this Agreement is that of principal and independent contractor. Symbiont shall serve as an independent consultant to the Client and shall be responsible for selecting the means and methods that services will be provided under this Agreement. It is specifically understood that, irrespective of any assignability provisions, Symbiont may retain subcontractors to perform services usually and customarily performed by subcontractors. Should Symbiont determine it appropriate or necessary to rely on a subcontractor where it is not customary to do so, Symbiont shall obtain prior written approval or subsequent written confirmation from the Client.

Article 5. Standard of Care

Symbiont will perform the Services in accordance with the standards of care and diligence normally practiced by consulting firms performing services of a similar nature in the same locale.

Article 6. Timeliness of Performance

Symbiont acknowledges that timely performance of its services is an important element of this Agreement. Symbiont will put forth its best effort to complete the work according to the schedule attached in the Proposal.

If Symbiont discerns that the schedule shall not be met for any reason, it shall so notify the Client as soon as practically possible so that a mutually agreed on revised schedule can be established.

Article 7. Force Majeure

Symbiont shall not be considered in default because of any delays in the completion of the work due to causes beyond the control and without the fault or negligence of Symbiont or its subcontractors, including but not restricted to, an act of God or of a public enemy, fire, flood, area-wide strike, freight embargo, unusually severe weather, governmental action, or supplier delay. In the event Symbiont has knowledge of any actual or potential delay, Symbiont shall notify Client in writing of such cases of delay and their probable extent and, upon such notification, Symbiont's performance obligations hereunder shall be suspended.

Article 8. Suspension

Upon fourteen (14) calendar days written notice to Symbiont, the Client may suspend Symbiont's work.

if payment of Symbiont's invoices is not maintained on a thirty (30) calendar-day current basis by the Client, Symbiont may, by fourteen (14) calendar days' written notice to the Client, suspend further work until payment is restored to a current basis.

Suspension for any reason exceeding forty-five (45) calendar days shall, at Symbiont's option, make this Agreement subject to renegotiation or termination, as provided for elsewhere in this Agreement. Any suspension shall extend the time schedule for performance in a manner that is satisfactory to both the Client and Symbiont, and Symbiont shall be compensated for services performed and charges incurred prior to the suspension date, regardless of the reason for the suspension.

Article 9. Termination

The Client or Symbiont may terminate this Agreement for reasons identified elsewhere in the Agreement. Either party may also terminate this Agreement upon written notice to the other party in the event that the other party becomes insolvent, files a petition in bankruptcy, is adjudicated bankrupt, has an assignee, referee, receiver or trustee appointed in any creditor action, has a petition in bankruptcy filed against it which is not vacated within thirty (30) days or suffers any action analogous thereto.

In the event such termination becomes necessary, the party effecting termination shall so notify the other party, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause therefore, the Client shall within thirty (30) calendar days of termination remunerate Symbiont for services rendered and costs reasonably incurred, in accordance with Symbiont's fee schedule. Costs shall include those incurred up to the time of termination.

Article 10. Notice to Parties

All notices required or permitted under this Agreement shall be in writing and shall be made to the parties' usual place of business.



Article 11. Dispute Resolution

Client and Symbiont shall provide written notice of a dispute within a reasonable time after the event giving rise to the dispute. Client and Symbiont agree to negotiate any dispute between them in good faith for a period of 30 days following such notice. Client and Symbiont may agree to submit any dispute to mediation, but such mediation shall not be required as a prerequisite to initiating a lawsuit to enforce this Agreement. Either party shall have the right to litigate the claim, dispute or other matter in question in any state or federal court located in Milwaukee County, Wisconsin. In connection therewith, each party agrees to submit to the jurisdiction of such court.

In the event that legal action is brought by either party against the other in the Courts (including action to enforce or interpret any aspect of this agreement), the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees, and other documents expenses, in addition to any other relief to which it may be entitled. Client and Symbiont agree to seek recourse only against each other as incorporated (or similar business entities) and not each other's officers, employees, directors or shareholders.

Neither party will be responsible to the other for special or consequential damages including but not limited to, loss of profits, loss of investment or business interruption.

Article 12. Choice of Law

This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin, without reference to conflicts of law principles. Each party hereto consents to the exclusive jurisdiction of the state and federal courts located in Milwaukee County, Wisconsin for any actions, suits or proceedings arising out of or relating to this Agreement.

Article 13. Limitation of Liability

The Client agrees that the limit of Symbiont's liability for its or its agents', employees' or other representatives' acts, errors, or omissions relating to or arising out of the Agreement, including without limitation, negligent acts, or omissions, shall not exceed the amount of Symbiont's insurance coverage as listed below in Article 14.

Article 14. Insurance

Symbiont shall maintain the following insurance coverage during the time it is performing services hereunder.

- A. Worker's Compensation:
of a form and in an amount as required by state law
- B. Employer's Liability:
\$1,000,000 each accident
\$1,000,000 disease, each employee
\$1,000,000 disease, policy limit
- C. Commercial General Liability (bodily injury and property damage — combined single limit):
\$1,000,000 annual aggregate
- D. Combined Errors and Omissions and Contractors Pollution Liability:
\$1,000,000 each incident
\$2,000,000 annual aggregate

Article 15. Indemnification

Symbiont agrees to indemnify and hold harmless Client, its directors, officers, stockholders, employees, agents, successors and assigns, from and against any and all claims, demands, causes of action, liability and costs which arise out of or result from any negligent act, omissions, or willful misconduct of Symbiont or Symbiont's employees, agents or subcontractors in the performance of services under this Agreement; provided, however, Symbiont will not be obligated to indemnify Client with respect to costs or damages to the extent such costs or damages are caused by or incurred as a result of negligence or intentional misconduct of Client or Client's agents or employees.

Client agrees to indemnify and hold harmless Symbiont, its directors, officers, stockholders, employees, agents, successors and assigns, from and against any and all claims, demands, causes of action, liability and costs which arise out of or result from any negligent act, omissions, or willful misconduct of Client or Client's employees or agents; provided, however, Client will not be obligated to indemnify Symbiont with respect to costs or damages to the extent such costs or damages are caused by or incurred as a result of negligence or intentional misconduct of Symbiont or Symbiont's agents, employees, or subcontractors.



Article 16. Review of Drawings of Contractors

In the course of performing services under this Agreement, Symbiont may be asked to review drawings and specifications from contractors engaged to perform work in connection with the project for which the Proposal is submitted. Any such review shall be limited to a review of the general conformance with the design concept of the project and the general compliance with information given in the contractor's documents and as may otherwise be noted by Symbiont on such drawings and specifications. Such review shall in no way limit the liability of the contractor or be deemed an indication that Symbiont has accepted or approved the drawings and specifications in any manner.

Article 17. Ownership and Use of Documents and Concepts

Client acknowledges that Symbiont reports, drawings, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other similar documents ("Records") are instruments of professional services, not products.

Symbiont will retain these Records for a period of three (3) years following completion of this project. During this time, Symbiont will reasonably make available these records to the Client. Symbiont may charge a reasonable fee in addition to its professional fees for storing, retrieving, or copying such records.

CADD files and any other electronic data submitted by Symbiont shall be reviewed by Client for comparison to the paper contract documents including plans, drawings and specifications. Client shall notify Symbiont within ten (10) business days of any defects it discovers in the files or any inconsistencies between the electronic files and the paper contract documents.

Symbiont shall not be responsible for any deviations, alterations, modifications or additions in the electronic data in comparison to the paper contract documents or any reuse of the electronic data by Client or any other party for this project, or any other project without the prior express written consent of Symbiont. Client shall defend, indemnify and hold completely harmless Symbiont against any claims, damages, or losses arising out of any deviations, alterations, modifications, or additions in the electronic data in comparison to the paper contract documents or any reuse of the electronic data without prior express written consent of Symbiont.

All documents, including the electronic files that are transferred by Symbiont to Client are Instruments of Service of Symbiont created for this project only, and are not intended to be deemed a sale of the files and data, and NO REPRESENTATION OR WARRANTY IS MADE, EITHER EXPRESS OR IMPLIED, CONCERNING THE MERCHANTABILITY OF THE FILES AND DATA OR THEIR FITNESS FOR A PARTICULAR PURPOSE.

Copies of documents that may be relied upon by Client are limited to only the printed copies (also known as hard copies) that contain original signatures and seals of the professional employee(s) of Symbiont. Files in electronic media format of text, data, graphic, or of other types that are furnished by Symbiont to Client are only for the convenience of Client and shall not be construed as containing original signatures and seals of the professional employee(s) of Symbiont. Any conclusion or information obtained or derived from such electronic files will be at the Client's sole risk.

Symbiont is not responsible for damages arising out of the use by the Client or the Client's agents of any Symbiont data or report for any purpose other than its original purpose as defined in the Proposal.

While Client agrees that any patentable or copyrightable concepts developed by Symbiont as a result of this Agreement shall remain the sole and exclusive property of Symbiont, Client shall retain a right, without the right to grant sublicenses under any patents or copyrights of Symbiont, to use any information or recommendations generated by Symbiont during the performance of this Agreement. Client shall have the right to assign such right to any party who buys from client the assets of Client relating to the information or recommendations generated by Symbiont under this Agreement. Nothing in this Article 17 shall restrict Symbiont from using any methods, techniques, or concepts developed by it under this Agreement for its benefit or the benefit of any third party.

Article 18. Buried Utilities

In those situations where Symbiont performs subsurface exploration, the Client, to the extent of its knowledge, will furnish to Symbiont information identifying the type and location of utilities and other man-made objects beneath the surface of the project site. Symbiont will take reasonable precautions to avoid damaging these utilities or objects. Prior to penetrating the site's surface, Symbiont will furnish Client a plan indicating the locations intended for penetration. Symbiont will not be responsible for damages arising out of contact with unidentified subsurface utilities or objects.

Article 19. Extent of Study

Client recognizes that actual environmental conditions may vary from conditions encountered at locations where Symbiont makes visual observations, obtains samples, or performs other explorations as part of its services under this Agreement. Symbiont's failure to discover potential environmental contamination or other environmental conditions through appropriate techniques does not guarantee the absence of environmental contamination or other environmental conditions at a site.



Article 20. Hazardous Substances

In the event that services performed under this Agreement involve hazardous substances, as defined in 40 CFR Part 302, including hazardous waste, whether or not such involvement was known or contemplated at the time this Agreement was made or when services performed by Symbiont commenced under this Agreement, the following additional terms and conditions shall apply to this Agreement.

Any and all samples collected or received by Symbiont or its subcontractors on behalf of the Client which contain hazardous substances including hazardous waste will be, after completion of testing and at Client's expense, either returned to the Client, or using a manifest signed by the Client as a generator, be transported to a location selected by the Client for final disposal. The Client shall pay all costs associated with the storage, transport, and disposal of all such samples. The Client agrees and recognizes that Symbiont is acting as a bailee and at no time assumes title to any such samples or substances.

Symbiont warrants that when making hazardous waste determinations on behalf of Client, Symbiont will use the standard of care and diligence normally practiced by consulting firms performing similar services in the same locale. Symbiont, if requested by Client, will gather bids from various hazardous waste transporters and/or treatment, storage or disposal facilities (TSDFs) that are appropriately licensed or permitted by state, federal and/or local authorities to accept the waste generated by the Client. Client acknowledges that although Symbiont may gather bids from various hazardous waste transporters or TSDFs, that Client has ultimately selected such transporter or TSDF. Client understands that Symbiont has not conducted regulatory compliance audits on such transporters or TSDFs nor does Symbiont make any other warranties or representations other than expressly written in this paragraph related to such transporters or TSDFs. Client acknowledges that Symbiont at no time assumes title to waste generated from Client's facility or site.

Client acknowledges that Symbiont has no responsibility as an operator, arranger, generator, treater, storer, transporter, or disposer of hazardous substances found or identified in conjunction with work performed hereunder.

Article 21. Third Party Rights

Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than Client and Symbiont. The services provided by Symbiont hereunder are for the Client only.

Article 22. Assignment

Neither party to this Agreement shall assign its duties and obligations hereunder without the prior consent of the other party except as provided in Article 4.

Article 23. Lien Notice

As required by the Wisconsin Construction Lien Law, Symbiont hereby notifies Client that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for construction on Client's land may have lien rights on Client's land and buildings if not paid. Those entitled to lien rights, in addition to Symbiont, are those who contract directly with Client or those who give Client notice within sixty (60) days after they first perform, furnish, or procure labor, services, materials, plans or specifications for construction. Accordingly, Client probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specification for construction, and should give a copy of each notice received to the mortgage lender, if any. Symbiont agrees to cooperate with Client and Client's lender, if any, to see that all potential lien claimants are duly paid.

If the project site is in a state other than Wisconsin, Symbiont and its subcontractors may also have lien rights on Client's land and building if not paid.

Article 24. Waiver

No waiver by Symbiont of any term or condition set forth herein or the breach by the Client of any such term or condition, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term, condition or breach or a waiver of any other term, condition or breach.

Article 25. Headings

The subject headings in this Agreement are for convenience only and are not determinative of the substance of the subject clause.

**Article 26. Entire Agreement**

The parties agree that this Agreement, together with proposals and attachments, represents the entire and integrated agreement between the Client and Symbiont and supersedes all prior communications, negotiations, representations, quotations, offers or agreements, either written or oral between the parties hereto, with respect to the subject matter hereof, and no agreement or understanding varying or extending this Agreement shall be binding upon either Party, other than by a written agreement signed by both the Client and Symbiont. If additional documents represent the agreement of the parties, such documents must be itemized in Symbiont's proposal. The parties agree that the provisions of these terms and conditions of this Agreement shall control over and govern as to any subsequent form or document signed by the Parties, such as Owner's Purchase Orders, Work Orders, etc. and that such documents may be issued by Owner to Symbiont as a matter of convenience to the Parties without altering any of the terms or provisions hereof.

Article 27. Severability

If any provision or part of a provision of this Agreement is declared to be invalid by any tribunal of competent jurisdiction, such part shall be deemed automatically adjusted, if possible, to conform to the requirements for validity, but if such adjustment is not possible, it shall be deemed deleted from this Agreement as though it had never been included herein. In either case, the balance of any such provision and of this Agreement shall remain in full force and effect.

Article 28. Contract Amendments

Any amendments to the Proposal or these Terms and Conditions of Agreement shall be executed by means of a written contract amendment, signed by the Client and Symbiont. Changes to the Agreement will not become effective until the contract amendment has been signed by both parties. The contract amendment will document the specific changes to the Agreement along with any resulting adjustment in cost and/or schedule.

Article 29. Execution of Agreement

These Terms and Conditions of Agreement are cross referenced in Symbiont's Proposal and are accepted when the Proposal is executed by the Client or when the Client authorizes Symbiont to proceed with the Scope of Work. Client's representative represents that he/she is duly authorized to enter into and sign this Agreement. The parties agree that Symbiont's Proposal may be executed by Client and delivered to Symbiont via facsimile or other electronic means, and such facsimile or other electronic copy will constitute an original.