

**Memorandum
Public Works Department**



To: City Manager
Subject: LTCP – Partial Sewer Separation of Combined Sewer Outfall 006 Basin
Date: April 5, 2016
Number: 2016-068

Attached is an Engineering Services Proposal from Symbiont for engineering design services for the Partial Sewer Separation of Combined Sewer Outfall 006 Project which is part of the Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP). Partial separation will include the installation of storm sewers, catch basins to reduce the amount of surface runoff entering the combined sewer system, thereby allowing for the closure of the CSO Outfall 006. In addition, new water mains and reconstruction of some of the roadways will also be part of this project. Attached is a diagram showing the location of the project.

Symbiont proposes to provide these engineering services at their standard hourly rates for an estimated cost of \$211,900.

Recommendation

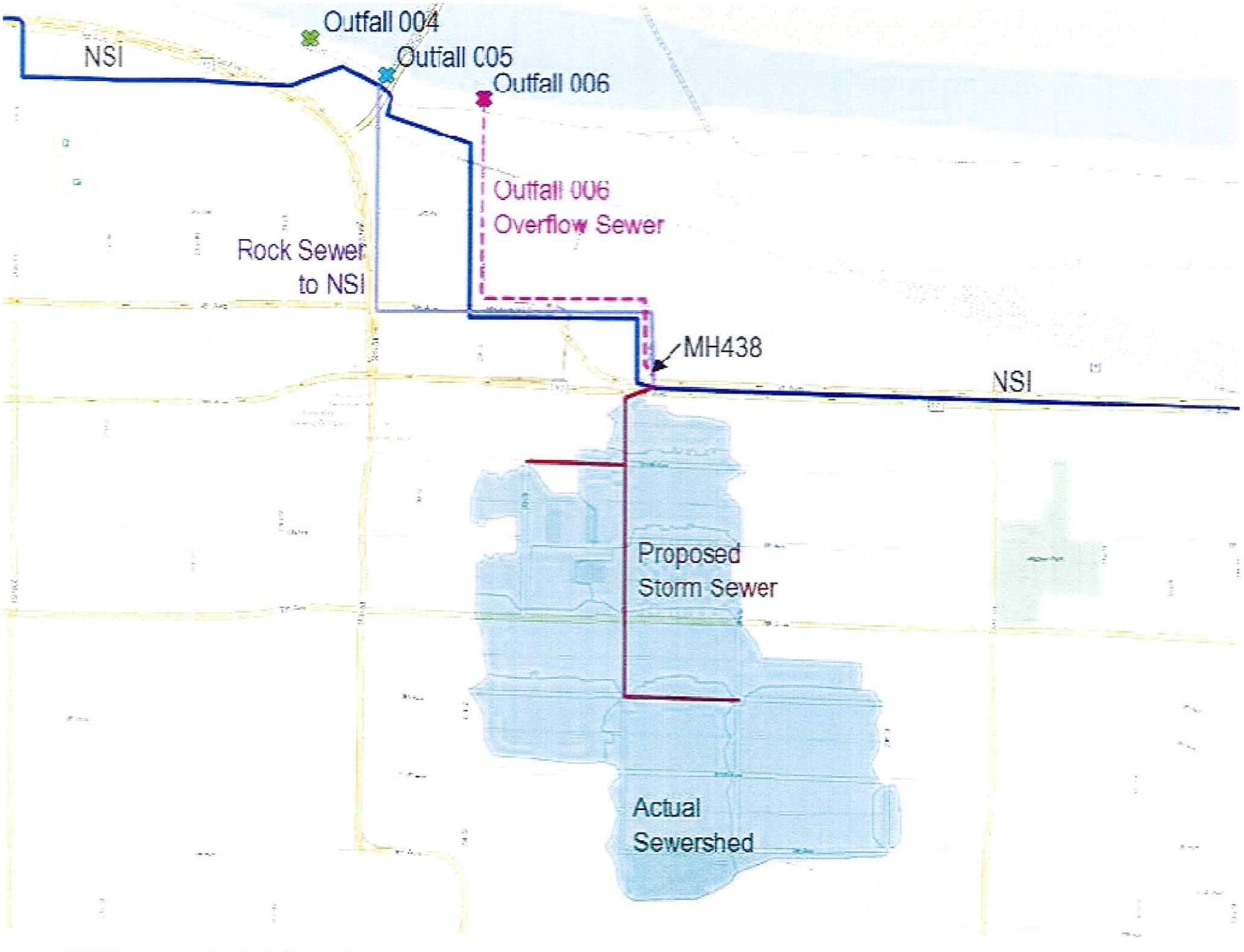
The Public Works Department recommends that the City Council approve the Engineering Services proposal from Symbiont in the amount of \$211,900 and authorize the City Manager to execute the contract documents.

Vendor:	Symbiont	
Payment Amount:	\$211,900	
Fund:	506	Wastewater Operation & Maintenance
Department:	619	Utilities Maintenance
Cost Center:	346	Wastewater Collection Maintenance
Object Code:	56501	Engineering Services
Project	2742	LTCP- CSO Outfall 006 Basin Partial Separation

Requisition Number: R006031

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

Approved by: Thomas Thomas, City Manager



NSI

Outfall 004

Outfall C05

Outfall 006

Rock Sewer
to NSI

Outfall 006
Overflow Sewer

MH438

NSI

Proposed
Storm Sewer

Actual
Sewershed



Mr. Michael J. Kane, P.E.
City Engineer
City of Rock Island
1309 Mill Street
Rock Island, IL 61201

April 6, 2016

**RE: Engineering Design Services Proposal for
Partial Separation of the CSO 006 Basin
City of Rock Island, Illinois
Symbiont Proposal No. 34302**

Dear Mr. Kane:

Symbiont Science, Engineering and Construction (Symbiont) is pleased to submit the following proposal to the City of Rock Island (City) Public Works Department for engineering design services for the Partial Separation of the CSO 006 Basin project.

PROJECT UNDERSTANDING AND APPROACH

In 2006, the City of Rock Island (City) completed a Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) as part of a settlement agreement with USEPA. Partial separation of the CSO 006 basin was one of the projects included in the plan. Partial separation will include the installation of storm sewers and catch basins to reduce the amount of surface runoff entering the combined sewer system, thereby allowing for the closure of CSO Outfall 006. Symbiont recently completed a preliminary engineering analysis of the proposed partial sewer separation project to refine the project scope of work. The design services described herein are based on the results of the preliminary engineering project.

The following defines the scope of work, schedule, and cost for Symbiont to design and assist the City with bidding the Partial Separation of CSO 006 Basin project.

SCOPE OF WORK

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

- PHASE 1: FINAL DESIGN SERVICES
- PHASE 2: BIDDING SERVICES
- PHASE 3: IEPA SRF LOAN APPLICATION SUPPORT
- PHASE 4: ENGINEERING SERVICES DURING CONSTRUCTION

This proposal covers Phases 1 through 3. Following completion of these phases, a separate agreement will be executed between the City and Symbiont for Phase 4, Engineering Services During Construction.

PHASE 1: FINAL DESIGN SERVICES

For the final design phase of this project, Symbiont will use the results of the preliminary design effort to develop a complete set of plans and specifications for bidding and constructing the project. Final design services will also include completion of IEPA and IDOT permit applications to construct the project and an engineer's construction cost estimate for the project, as detailed below.

Survey

The proposed project area contains existing combined sewers, gas pipes, water mains, overhead electrical lines, and trees. To ensure that the project scope of work does not infringe on private property, we propose to have Missman, Inc. perform a legal survey to define the extents of the ROW. At the same time, Missman, Inc. will perform a comprehensive topographic survey, including identifying the location of all utilities in the project area, for use in preparing plan and profile drawings.

Geotechnical Investigation

Symbiont will plan, coordinate, monitor, document, and manage a geotechnical investigation. The investigation will include soil borings and a geotechnical report for installation of the proposed storm sewers. Among other things, the depth and ability to remove bedrock in the proposed sewer trench will be evaluated as part of the investigation.

Prepare Construction Documents

Symbiont will prepare plans, specifications, and bidding documents for bidding and construction for the elements of the project defined below. We will utilize our standard detail specifications as well as edit the City's standard bid and technical specifications and drawing details to meet the needs of this project. Plans and specifications will describe siting, physical configuration, materials of construction, and equipment specifications. The primary elements of the final design will include the following:

A. Partial Sewer Separation:

Symbiont proposes to design the new storm sewers for partial sewer separation utilizing open cut installation. New storm sewers and catch basins will be designed as identified in the preliminary engineering technical memorandum dated March 25, 2016. Existing footing and foundation drains connected to the combined sewer system will remain connected.

B. Roadway and Sidewalk Replacement :

The entire roadway within the project area will be replaced. The roadway replacement will include removal of the existing pavement, new pavement, new curb and gutter, pavement marking, signage, replacement of all sidewalks, driveway rehabilitation as needed to install sewer and roadway, and other site restoration. Sidewalk curb ramps will be designed to meet the current ADA requirements. The roadway plan and profile, pavement marking and signage, typical roadway cross-sections, intersection details, and other pertinent details will be shown on the plans.

C. Utility Relocations and Replacements as Necessary:

Symbiont will design utility relocations and replacements as necessary to install the new storm sewers and roadway. The utilities to be relocated or replaced might include water, gas, overhead power, catch basins and inlets, and sewer laterals. Preliminary engineering identified approximately 1,400 lineal feet of water mains within the project area that will be upsized to 8".

D. Erosion & Sediment Control:

Symbiont will prepare an erosion and sediment control plan to meet local and state requirements.

Symbiont estimates that 62 drawings will be required to show the scope of work. The final documents will be stamped by a Professional Engineer registered in the State of Illinois. Plans will be prepared using AutoCAD Civil 3D and AutoCAD 2015.

Final Design Progress Review Meetings with City Staff

Symbiont will conduct final design progress review meetings with City staff to review various aspects of the final design throughout the course of its development. These meetings will provide the City's operation and maintenance staff the opportunity to express preferences and optimize features of the design. One review meeting will be held about halfway through the final design process and one 90% complete construction document review meeting will be scheduled when the design is almost complete. Symbiont will provide the City with draft construction documents for review in advance of this meeting. Review comments will be addressed with any necessary revisions incorporated into the construction documents.

Engineer's Construction Cost Estimate

Symbiont will prepare an opinion of probable cost of construction for the construction scope of work included in the final design documents when the documents are out for advertising.

Documents for Agency Permitting

Symbiont will prepare applications to obtain an IEPA Construction and Operating Permit, City Grading and Drainage Permit, and Illinois Department of Transportation (IDOT) permit for construction within State Highway 92, including applicable forms and attachments. The applications will be submitted to the City for review and submission. As part of the IDOT permit application, Symbiont plans on scheduling a meeting with IDOT shortly after receiving the notice to proceed to discuss the proposed project and to receive feedback from IDOT on the required construction techniques and traffic control procedures. As part IDOT submittal process, we have assumed 2 resubmittals in our estimated fee below.

Based on Symbiont's understanding of the scope of work, review and approval by other agencies, e.g., railroads, will not be required and is not included in the proposed scope of work.

PHASE 2: 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 at the project site 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.

PHASE 3: 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 previous CSO LTCP construction projects. 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.

Site Investigation – Symbiont will complete and document the necessary site investigations with the Illinois Department of Natural Resources and other agencies as required by IEPA. Such investigations will include an evaluation of the area based on historical significance, sensitive areas, and endangered species.

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 via 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.

Symbiont proposes to provide up to 100 hours of engineering and administrative support toward the SRF loan application process.

PHASE 4: 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

EXCLUSIONS

The scope of services does not include the following:

1. Special design elements related to construction in a floodplain. According to the April 5, 2010 Flood Insurance Rate Map, the project area is not located in a floodplain.
2. Detailed traffic control plan for the portion of the project area outside of Illinois State Highway 92. Symbiont will prepare a performance based traffic control specification that will require the contractor to develop and submit a detailed traffic control plan based on how he plans on executing the project. The City will be able to review and comment on the contractor's plan.
3. Storm water calculations for a Class 3 Grading & Drainage Permit. Because this project will disturb more than one acre of land, a Class 3 Grading and Drainage Permit will be required from the City. Class 3 permits typically require storm water calculations to demonstrate that the post-development runoff will not exceed the pre-development runoff. Since this project will result in no changes to the ground surface type, we assume that no storm water calculations will be required.
4. Preparation of zoning, permitting, vacation, exhibit, easement, or right-of-way plats or descriptions.
5. Title research or expert testimony.
6. Engineering services and/or coordination regarding Archaeological, Environmental or Historic issues, other than those mentioned above.

PROJECT TEAM

Symbiont has assembled a project team of highly qualified personnel to complete design of the Partial Separation of CSO 006 Basin project. Key staff and their specific area of expertise are presented below along with an explanation of the specific role they will play 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 previously completed CSO LTCP construction projects.

Brian A. Till, P.E. Project Manager	Mr. Till will serve as the Project Manager for this project coordinating all aspects of the design including the project budget and schedule. Mr. Till was involved in the development and submittal of all the documents prepared as part of the CSO LTCP and has been involved in all of the construction projects completed as part of the CSO LTCP.
Christien W. Huppert Lead Civil Engineer	Mr. Huppert will lead the civil design for this project including the new storm sewers, pavement replacement, and IDOT traffic control plan. Mr. Huppert has worked on a number of the CSO LTCP construction projects.
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.
Jonathan R. Butt, P.E. Process Engineer	Mr. Butt will handle the State Revolving Fund Loan Application & Support for this project as he has done for several other CSO LTCP projects.

In addition to the staff identified above, Symbiont 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. Missman, Inc. will be retained to complete a legal and topographic survey of the project area. Team Services will be retained to complete soil borings and a geotechnical report.

SCHEDULE

Symbiont is prepared to begin work immediately. To meet the schedule set forth in the CSO LTCP, design and bidding should be completed by November 1, 2016 to allow for SRF loan approval and construction in 2017. Assuming an early April 2016 start, we expect to have the survey work done around May 30, 2016. We anticipate holding an intermediate design workshop with the City around July 1, 2016 and a 90% design workshop in early September 2016. Final construction documents, permit applications, and the engineer's cost estimate will be submitted to the City at the end of October 2016.

COMPENSATION

Symbiont will perform the services set forth in the Scope of Work above on a time and expense basis. Labor will be billed at standard hourly rates for the personnel engaged in

the performance of the services. The proposed fee to complete the Partial Separation of the CSO 006 Basin design scope of work defined above is \$211,900. This fee includes all design and administrative costs, and consists of the following components:

Proposed Fee for Separation of Outfall 006 Basin	
Component	Fee
Legal/Topographic Survey – Missman, Inc.	\$40,000
Geotechnical Services – Team Services	\$10,000
Design and Bidding Services – Symbiont	\$161,900
TOTAL	\$211,900

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.

Symbiont appreciates the opportunity to provide the City with the above engineering services. The work scope, cost, and schedule can be further modified as necessary to better meet the needs of the City. Please call at your earliest convenience if you have any questions regarding this proposal.

Sincerely,

SYMBIONT®



Brian A. Till, P.E.
Project Manager

SYMBIONT®



Patrick W. Carnahan, P.E.
Vice President

Attachment

PROPOSAL 34302 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 contact 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.