

**Memorandum
Public Works Department**



To: City Manager
Subject: Farmall Viaduct Storage Tank at 40th Street and 5th Avenue
Date: September 15, 2011
Number: 2011-270

Attached is an Engineering Design Services Proposal from Symbiont Science, Engineering and Construction (Symbiont) for design services on the Farmall Viaduct Storage Tank 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 and to prepare detailed plans and specifications. Symbiont has included services necessary for submittals for approval by all required regulatory agencies, as well as assistance with any grant applications and application for an IEPA SRF Loan.

Symbiont proposes to provide these engineering services at their standard hourly rates for an estimated cost of \$272,800.

Recommendation

The Public Works Department recommends that the City Council approve the amendment to Symbiont's contract at an additional cost not to exceed \$272,800 and that the City Manager be authorized to sign the amendment on behalf of the City of Rock Island.

Submitted by: Robert T. Hawes, P.E., Assistant City Manager/Public Works Director
Michael J. Kane, P.E., City Engineer

Approved by: John C. Phillips, City Manager



SYMBIONT

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Mr. Robert Hawes, P.E.
Assistant City Manager/Public Works Director
City of Rock Island
1309 Mill Street
Rock Island, IL 61201

September 14, 2011

**RE: Engineering Design Services Proposal for
Storage Tank at 40th Street and 5th Avenue (Farmall Viaduct)
City of Rock Island, Illinois
Symbiont Proposal No. 32541**

Dear Mr. Hawes:

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 Farmall Viaduct storage tank 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. A combined sewage storage tank at 40th Street and 5th Avenue (a.k.a. Farmall Viaduct) was one of the projects included in the plan to alleviate surface flooding in the Farmall Viaduct. The intersection of 40th Street and 5th Avenue has a low ground surface elevation, and the City has reported numerous instances of flooding at this intersection, which has resulted in closing of the Viaduct.

Sanitary and combined sewer modeling during the LTCP development indicated that the surface flooding can be attributed to surcharge conditions in the north interceptor. Modeling also confirmed that constructing storage volume at this intersection to relieve the north interceptor could alleviate the majority of the flooding events.

This project was originally scheduled in the CSO LTCP to begin in late 2014. However, as a result of recent interest in reopening the Farmall Viaduct for vehicular access, the City now desires to move into the detailed design phase for the storage volume at the Viaduct. The following defines the Scope of Work, Schedule and Cost for Symbiont to design and assist the City with bidding for the proposed storage tank and sewer improvements. Design of this system will follow the concepts developed from the advanced preliminary engineering report, dated May 21, 2007.

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 four project phases. These phases are:

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

This proposal covers Phases 1, 2, and 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: DETAILED DESIGN SERVICES

The engineering design phase of this project includes the services necessary to provide the City with a detailed design that complies with the City's CSO LTCP and meets the north side interceptor storage volume defined by modeling (further described below) to provide flooding relief. 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

During previous projects, City staff has completed field surveys and provided Symbiont with horizontal and vertical control data for various structures which will interface with the proposed improvements. Symbiont anticipates that additional survey data will be required to complete the detailed design. Symbiont will develop a detailed list of survey requirements and communicate this list to the City for survey and data collection. Symbiont will work with the City Engineer to have City staff perform the site survey and provide the required survey data to Symbiont in an AutoCAD 2010 format. Symbiont will not be subcontracting survey services and assumes that these services will be provided by City staff.

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 storage tank.

Collection System Evaluation

Prior to the beginning of detailed design, Symbiont will complete an evaluation of the collection system in and around the Farmall Viaduct. Symbiont understands that there are a number of catch basins and sewers in the area that are not well documented. It is believed that some of the sewers in the area may be connected to the Mississippi River as is observed by surface flooding during elevated river stage. The goal of the evaluation will be to better define the collection system around and within the Viaduct area and identify improvements necessary to alleviate surface flooding.

With the assistance of City personnel, Symbiont personnel will perform smoke testing and dye testing of the sewers in the area of the Farmall Viaduct as part of the collection system evaluation.

Collection system maps will be updated based on the results of the testing and evaluation. Symbiont has assumed two weeks of on-site evaluation effort for one technician and one week of summary report and map preparation. This proposal does not include sewer cleaning or televising. If any cleaning or televising work is required to complete the evaluation, Symbiont assumes these tasks will be completed by City personnel. In addition, Symbiont assumes that City staff will assist with access to the Farmall site and traffic control, when necessary. Symbiont staff will coordinate and lead the investigation work with the assistance of City personnel.

Following completion of the field investigation work, Symbiont will issue a memo summarizing the investigation work, conclusions, recommended improvements, and sewer map revisions.

Capacity Evaluation

Following the collection system evaluation but prior to beginning detailed design, Symbiont will update the existing SWMM model developed during the CSO LTCP, to confirm the required storage capacity to help reduce flooding. The current SWMM model and storage volume are based on the CSO LTCP design condition of the ten-year, two-hour rainfall event. If the City desires a greater level of flooding protection due to the future potential vehicular use of the Viaduct, the SWMM model will determine the required tank size and impact on surface flooding. Following completion of the modeling revisions, the tank size will be established after the City agrees to the level of flooding protection.

Prepare Construction Documents

Symbiont will prepare plans, specifications, and bidding documents for bidding and construction for the elements of the project defined below. 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.

The primary elements of the Storage Tank and Sewer improvements include the following:

- A. Approximately 1.3 Million Gallon (MG) Storage Tank (depending on modeling revisions and level of flooding protection selected by the City):

For the purposes of this proposal, we have assumed that the City will proceed with the storage tank volume and configuration proposed in the preliminary engineering tech memo to alleviate combined sewage related flooding, for the largest volume ten-year event – the 10-year, 2-hour event. Should the required storage volume increase due to an increased level of protection, the size and location of the storage tank will need to be reevaluated to fit within the constraints of the land available. The tank design is based on a precast concrete structure approximately 130'-0" wide by 146'-0" long by 10'-0" deep. The top of the tank will be approximately 9'-0" below grade and will allow for reinstallation of the parking lot above it. A static weir will divert excess wet weather flow to the storage tank when the collection system is at capacity.

The preliminary engineering tech memo summarized the equipment and details necessary to install flushing gates within the storage tank. Due to the added cost of this feature, the City decided during preliminary engineering not to pursue this system, and therefore, this proposal does not include a flushing gate system design.

B. Pumping Station:

A new pumping station will be incorporated into the tank for pumping wastewater back into the interceptor following the conclusion of a wet weather event. The pump station will include submersible pumps, lifting equipment, and controls.

C. Sewer Piping:

Sewer piping construction will include the piping and manholes necessary to install the new storage tank and sewer improvements identified in the preliminary engineering tech memo.

D. Electrical and Instrumentation & Control (I&C) Engineering:

A new electrical service will be required for the pump station and controls. Symbiont will work with the electrical utility to provide a new 480V service to the pump station. A new PLC-based control system will include instrumentation and control equipment to monitor the storage tank level and pump station operation and communicate with the Mill Street Wastewater Treatment Plant (WWTP) control system.

Radio communication will be used for controls communication between the storage tank location and the WWTP. Symbiont believes that direct communication between these two locations is possible, but to we have included a radio propagation study to confirm that a repeater system is not required.

Symbiont estimates approximately 45 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 2010.

Engineer's Construction Cost Estimate

Symbiont will prepare an opinion of probable cost of construction for the new storage tank and sewer improvements.

Design Progress Review Meetings with City Staff

Symbiont will conduct design progress review meetings with City staff to review various aspects of the 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. Two construction document review meetings will be scheduled at 50 percent and 90 percent levels of 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.

Documents for Agency Reviews

Symbiont will prepare applications for IEPA review including forms and contract documents (i.e., plans and specifications). 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. The City will coordinate and assemble Symbiont's deliverables into the bidding documents, reproduce and distribute the bidding documents and maintain the bidder's list.

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, including alternate equipment submittals.

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 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, the 2007 preliminary engineering report updated to reflect current conditions, 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 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.

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
- Operations and Maintenance Manuals
- Start Up and Training Services

PROJECT TEAM

Symbiont has assembled a project team of highly qualified personnel to complete design of the storage tank and sewer improvements. 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 were involved in the development of the CSO LTCP and the recently completed wet weather treatment system project. In addition, a number of the support engineers, technicians, and

CAD designers that will support the key staff were also involved in the CSO LTCP development and the wet weather treatment system projects.

Brian A. Till, P.E. Client Liaison	Mr. Till will serve as the Client Liaison 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.
Jonathan R. Butt, P.E. Project Manager & Process Engineer	Mr. Butt will serve as project manager for this project coordinating all aspects of the design including the project budget and schedule. Mr. Butt previously managed the design of Saukie and Franciscan store/treat basin improvements.
Patrick W. Carnahan, P.E. Quality Assurance / Quality Control	Mr. Carnahan, Symbiont's Municipal Group Manager, will serve as the Quality Assurance/Quality Control Officer on this project.
Mark N. Ludwigson, P.E. Site / Civil Engineer	Mr. Ludwigson, a Project Engineer with Symbiont, will serve as the lead civil engineer for this project. Mr. Ludwigson has served in this role for several projects for the City of Rock Island.
Jeremy T. Nitka, P.E. SWMM Modeling	Mr. Nitka has been involved in the City's SWMM hydraulic model development and refinement from the beginning of the CSO LTCP to present and will lead the model updates for the storage tank sizing.
Caramy R. Reisenauer Electrical Engineer	Ms. Reisenauer will lead the electrical and controls design for the storage tank. Ms. Reisenauer has completed the electrical design for numerous City projects including the WWTS, store/treat basins, and Southwest Treatment Plant VFD upgrades.

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. A geotechnical subconsultant yet to be identified will be retained to complete soil borings and a 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 is prepared to begin work within two weeks of Notice to Proceed. The collection system evaluation work will begin shortly after Notice to Proceed in order to complete the field work during favorable weather conditions. We anticipate a 50 percent design review meeting to occur

approximately 4 months following completion of the hydraulic model analysis provided the storage tank size does not significantly change. A 90 percent design review workshop will be scheduled to occur approximately 3 months after the 50 percent review workshop. Assuming a October 1, 2011, start date, design and bidding documents would be completed around July 1, 2012 for submittal to IEPA for permit review and approval.

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 estimated fee to complete the storage tank and sewer improvements scope of work defined above is \$272,800. This fee includes all design and administrative costs.

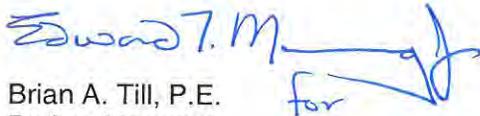
TERMS AND CONDITIONS

Symbiont Standard Terms and Conditions of Agreement (Form WI-1 3/04) 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®


for

Brian A. Till, P.E.
Project Manager

SYMBIONT®



Patrick W. Carnahan, P.E.
Municipal Group Manager

Attachments

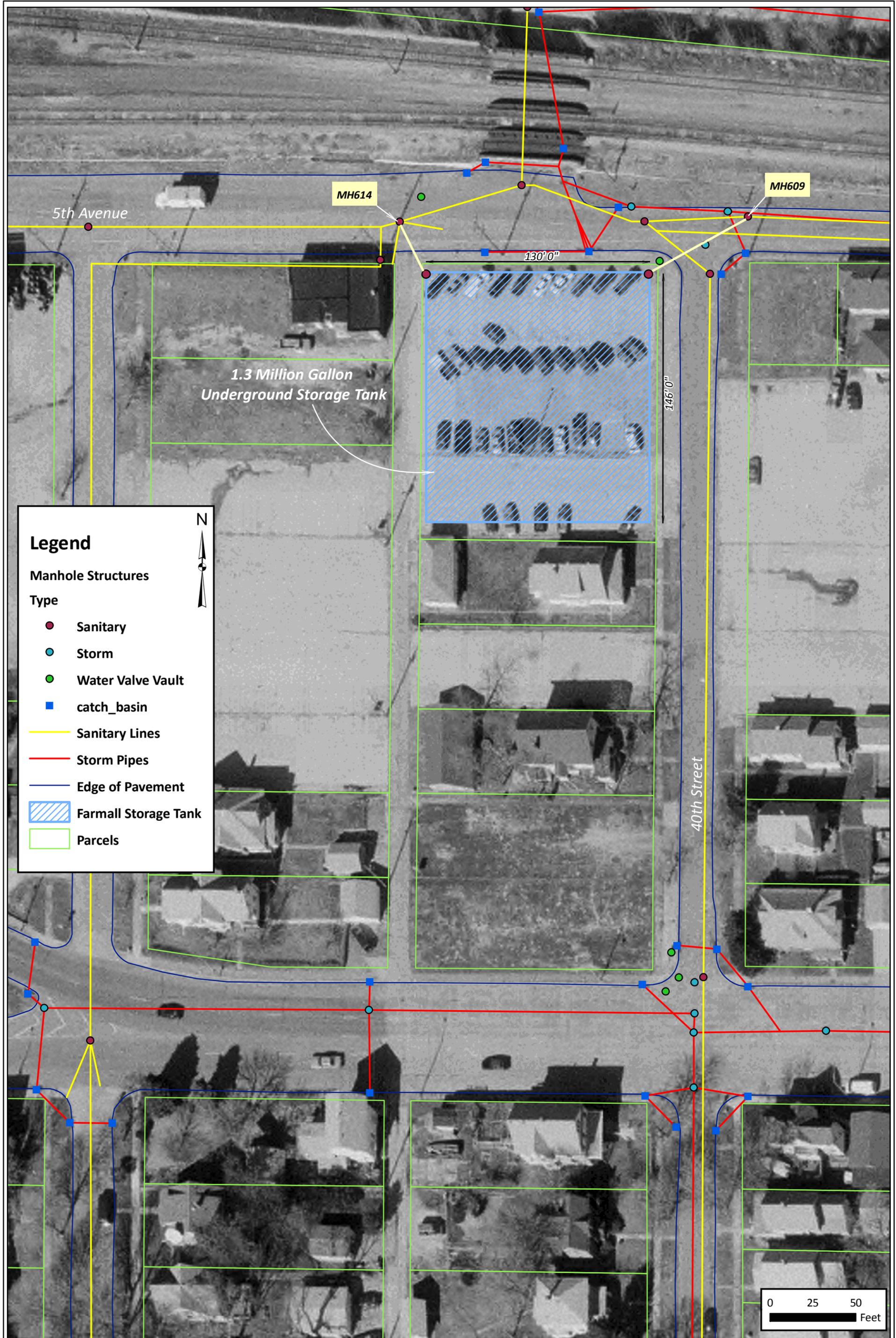
ACCEPTED BY:

CLIENT: _____

SIGNATURE: _____

TITLE: _____

DATE: _____



Legend

Manhole Structures

Type

- Sanitary
- Storm
- Water Valve Vault
- catch_basin

— Sanitary Lines

— Storm Pipes

— Edge of Pavement

▨ Farmall Storage Tank

▭ Parcels

N



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West Allis, Wisconsin 53214
(414) 291-8840
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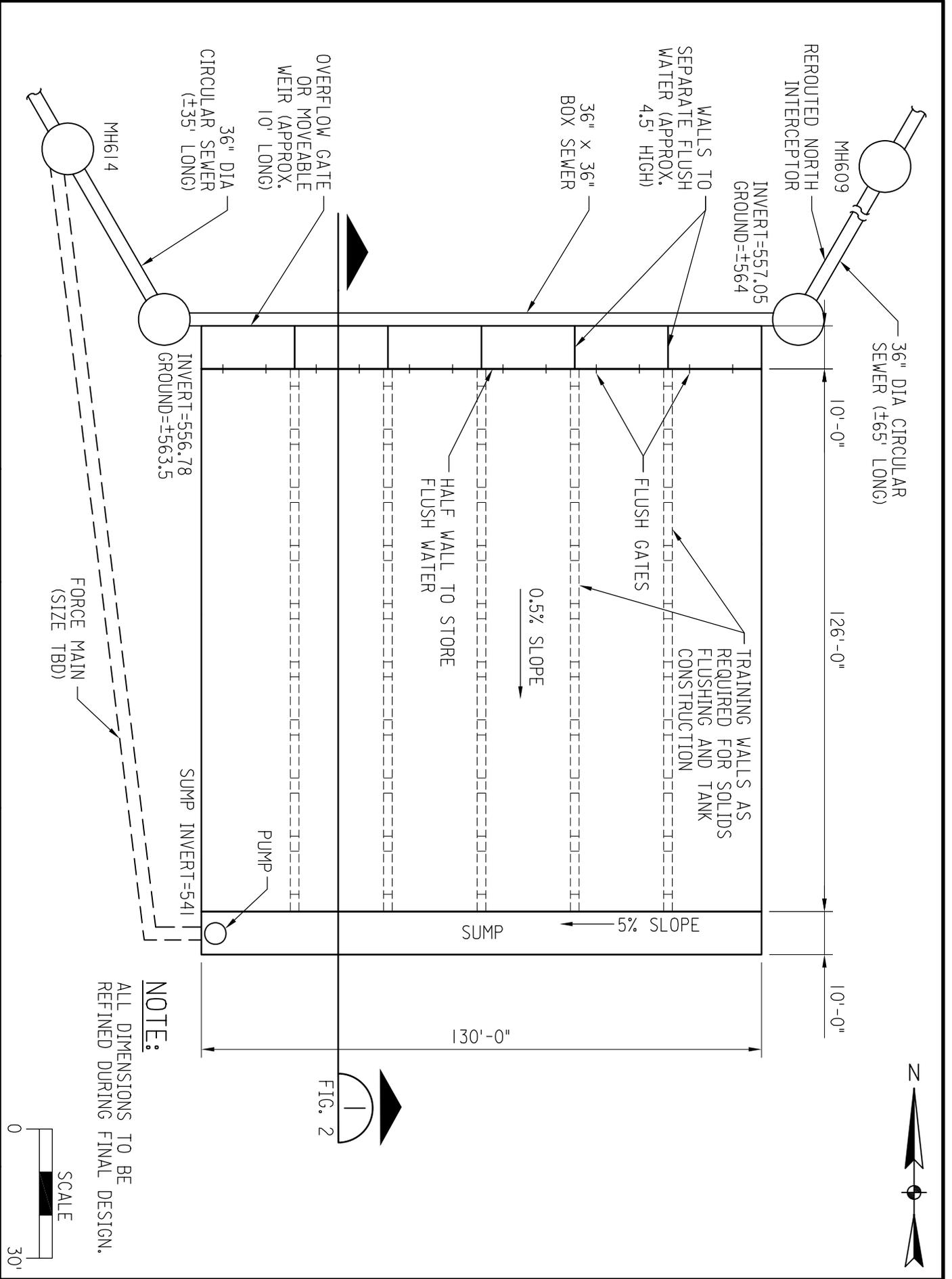
VERIFY SCALE
BAR IS ONE INCH ON ORIGINAL DRAWING.
IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.

DESIGN	APP
DR	PDP
CHK	
APVD	



FIGURE 1
PROPOSED 40th STREET & 5th AVENUE
STORAGE TANK PLAN VIEW

SHEET NO.	FIGURE 1
01	01-W071143
DATE	May 2007
PROJ	W071143 B6200





SYMBIONT
 6737 West Washington Street, Suite 3440
 West Allis, Wisconsin 53214
 (414) 291-8840
 FAX 291-8841

VERIFY SCALE	
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IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.	ALP
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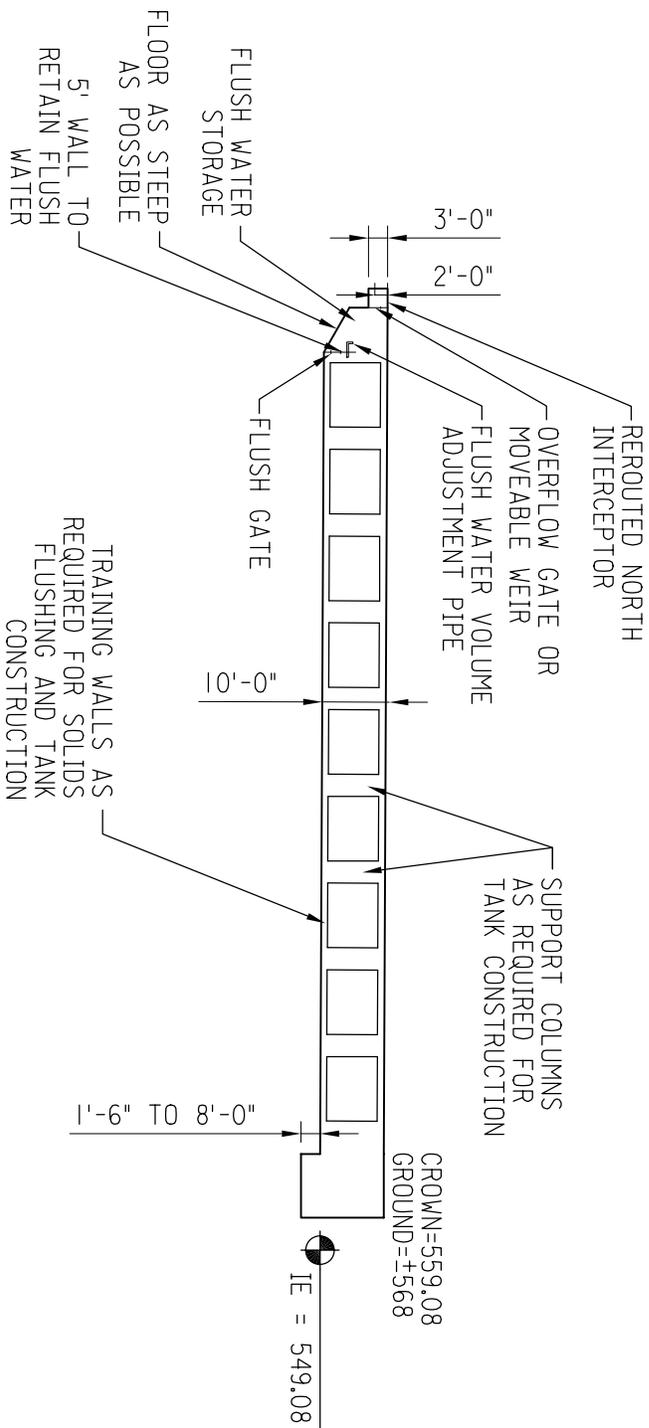


FIGURE 2
 PROPOSED 40th STREET & 5th AVENUE
 STORAGE TANK PROFILE

SHEET NO.	FIGURE 2
DATE	MAY 2007
PROJ NO.	W071143 BG200



SECTION
 SCALE: 1" = 30'
 FIG. 1



ATTACHMENT

**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 agrees to keep confidential and not to disclose to any person or entity; other than Symbiont's employees, agents, and subcontractors, who have a need to know to carry out the purpose of this Agreement; without the prior consent of the Client, all data and information not previously known to and generated by Symbiont, or furnished to Symbiont and marked Confidential by the Client, in the course of Symbiont's performance hereunder. This provision shall not apply to data which were previously known to Symbiont, or which Symbiont is required by law to disclose. These provisions shall also not apply to information in whatever form that comes into the public domain through no fault of Symbiont, nor shall they be interpreted to in any way restrict Symbiont from complying with an order to provide information or data when such order is issued by a court, administrative agency, or other authority with proper jurisdiction. Symbiont will notify the Client of such order and notify the Client, if possible, before the date of disclosure to provide the Client an opportunity to request an appropriate protective or confidentiality order to maintain the confidentiality of such information.

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

All claims, disputes, and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the parties, shall be decided upon the written notice of either party to the other, through mediation. Upon such notice, both parties will be obligated to engage in a mediation unless the parties mutually agree to a different method of dispute resolution. The costs of the proceedings shall be borne by the non-prevailing party. The mediation proceeding will be conducted in accordance with the then current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes, provided that (i) the mediation proceedings shall be held in Milwaukee, Wisconsin; (ii) if the parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, either party may inform the CPR of the nature of the dispute and request it to appoint a member of the CPR Panels of Neutrals to act as mediator; and (iii) in the event a settlement of any claim, dispute or other matter in question is not completed within sixty (60) days of the selection of a mediator, the mediation procedure shall terminate and 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.

Client and Symbiont agree that the prevailing party will be entitled to recover all reasonable costs incurred in the litigation including court costs, attorney fees and expenses and other claim related expenses. 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.

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 TDSFs. 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 notified Client that persons or companies furnishing labor or materials for construction on Client's land may have lien rights on Client's land and building if not paid. Those entitled to lien rights, in addition to Symbiont, are those who contract directly with the Client or those who give the Client notice within sixty (60) calendar days after they first furnish labor or materials for the construction. Accordingly, Client will probably receive notices from those who furnish labor or materials for the construction and should give a copy of each notice received to the mortgage lender, if any. Symbiont agrees to cooperate with the Client and the 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 sole and entire agreement of the parties with respect to the project. If additional documents represent the agreement of the parties, such documents must be itemized in Symbiont's proposal.

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.