

**Memorandum  
Public Works Department**



**To:** City Manager  
**Subject:** 6<sup>th</sup> Avenue Relief Sewer  
**Date:** September 15, 2011  
**Number:** 2011-271

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Attached is an Engineering Design Services Proposal from Symbiont Science, Engineering and Construction (Symbiont) for design services on the 6<sup>th</sup> Avenue Relief Sewer 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 \$370,800.

**Recommendation**

The Public Works Department recommends that the City Council approve the amendment to Symbiont's contract at an additional cost not to exceed \$370,800 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

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**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  
6<sup>th</sup> Avenue Relief Sewer  
City of Rock Island, Illinois  
Symbiont Proposal No. 32494**

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 6<sup>th</sup> Avenue Relief Sewer 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 relief combined sewer on 6<sup>th</sup> Avenue from 6<sup>th</sup> Street to 24<sup>th</sup> Street was one of the projects included in the plan to reduce the amount of flow entering the north interceptor, thereby allowing for closure of CSO Outfalls 003, 004, and 005. The relief sewer will intercept the wastewater in the existing sewers flowing north on 21<sup>st</sup>, 22<sup>nd</sup>, and 24<sup>th</sup> Streets at 6<sup>th</sup> Avenue and redirect it to the west. The 6<sup>th</sup> Avenue roadway is in poor condition and thus the entire existing roadway and select sidewalks will be replaced along the route of the sewer.

According to the CSO LTCP, this project was originally scheduled to begin in 2015. We understand that the City has received a grant to pay for part of the project and needs to execute the project early to take advantage of the grant funds. The following defines the scope of work, schedule, and cost for Symbiont to design and assist the City with bidding the 6<sup>th</sup> Avenue Relief Sewer. Preliminary engineering for the sewer has not yet been performed and thus is included in this design effort.

## 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:	PRELIMINARY DESIGN SERVICES
PHASE 2:	FINAL DESIGN SERVICES
PHASE 3:	BIDDING SERVICES
PHASE 4:	IEPA SRF LOAN APPLICATION SUPPORT
PHASE 5:	ENGINEERING SERVICES DURING CONSTRUCTION

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

### **PHASE 1: PRELIMINARY DESIGN SERVICES**

The preliminary design phase of this project includes the services necessary to prepare for the final design of a relief sewer that complies with the City's CSO LTCP to provide combined sewer overflow relief. This phase consists of a survey, geotechnical investigation, finalizing the relief sewer size and alignment, and selecting the sewer pipe material, manhole connections, and manholes types. It is anticipated that City staff will participate in the preliminary design phase, as described below, to ensure that appropriate requirements and preferences are incorporated into the design. Tasks included in the preliminary design phase are further described below.

#### **Kick-Off Meeting**

At the start of the project Symbiont will conduct a kickoff meeting to introduce the project team and discuss the project elements and schedule. Preferences related to the design will be solicited from the City's operation and maintenance staff.

#### **Survey**

The 6<sup>th</sup> Avenue right-of-way (ROW) currently contains a 30- to 72-inch diameter storm sewer, a 30- to 60-inch diameter combined sewer, gas pipes, water mains, overhead electrical lines, and trees. Due to the limited remaining space available, installing the estimated 54- to 66-inch diameter relief sewer will likely require work close to the edge of the ROW. To ensure that the relief sewer 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 relief sewer. Among other things, the depth and ability to remove bedrock in the proposed sewer trench will be evaluated as part of the investigation.

#### **Alignment and Size Evaluation**

As indicated above, there are numerous existing utilities, several large trees, and supports for a pipe trestle within the 6<sup>th</sup> Avenue ROW. Symbiont will perform an analysis to determine the most appropriate location for the new sewer within the 6<sup>th</sup> Avenue ROW, taking into account the location and potential relocation of these facilities and the associated costs. The analysis will consider how the new sewer will connect to and divert flow from existing sewers. Symbiont will use the existing SWMM model as necessary to evaluate the alignment options and confirm the relief sewer size. Symbiont will explain the options evaluated and request the City's approval of the recommended route at the Preliminary Design Workshop.

**Pipe Material, Manhole Connections, and Manhole Type**

The preliminary design services will include a brief evaluation of the pipe materials and types of manhole connections available for the 6<sup>th</sup> Avenue Relief Sewer. The types of manholes that will be best suited for the project will also be determined. The options and recommendations will be compiled for discussion with and approval by the City at the Preliminary Design Workshop.

**Preliminary Roadway and Sidewalk Replacement Concepts**

There is currently a mix of different roadway surfaces along the sewer route, including concrete, asphalt, asphalt over brick, and brick. We understand that part of the route is located in a historic district where the brick street must be replaced in-kind. Symbiont will inventory the type of pavement and curbs to be used for the replacement of the 6<sup>th</sup> Avenue roadway, and the extent of sidewalk replacement, for discussion with and approval by the City at the Preliminary Design Workshop.

**Preliminary Design Workshop**

Symbiont will conduct a workshop with the City to review the results of the preliminary design effort. At the workshop, the preliminary plan and profile options for the relief sewer will be discussed and the City's approval of the recommended option will be requested. The City's approval will also be requested for the pipe material, manhole connections, and preliminary roadway and sidewalk replacement concepts. Preliminary plan and profile drawings showing the recommended options and a brief design memo will be sent to the City for review approximately one week before the workshop. Following the Preliminary Design Workshop, the City's comments will be incorporated into the design memo and final design documents.

**PHASE 2: FINAL DESIGN SERVICES**

For the final design phase of this project, Symbiont will use the outcomes 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 permit applications to construct the project and an engineer's construction cost estimate for the project, as detailed below.

**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 specifications as well as edit the City's standard 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 6<sup>th</sup> Avenue Relief Sewer final design will include the following:

A. Relief Sewer on 6<sup>th</sup> Avenue from 24<sup>th</sup> Street to 6<sup>th</sup> Street:

Symbiont proposes to design the new, approximately 54- to 66-inch, relief sewer utilizing open cut installation. We have assumed that the new relief sewer will be at approximately the same elevation as the existing combined sewer on 6<sup>th</sup> Avenue. The 1977 Combined

Sewer Separation plans (Contract No. 7) indicate that at least two blocks of the sewer will need to be installed in bedrock. We have assumed that the contractor will be able to install the sewer in the bedrock either with conventional construction equipment or blasting. The geotechnical investigation will identify which method will likely have to be used.

We anticipate that the relief sewer will need several custom manholes where it connects to existing sewers. All manholes will be shown in the drawings with either custom or standard details as appropriate.

B. Roadway Replacement on 6<sup>th</sup> Avenue from 24<sup>th</sup> Street to 6<sup>th</sup> Street:

The entire roadway along the length of the sewer will be replaced. The roadway replacement will include removal of the existing pavement, new pavement, new curb and gutter, pavement marking, signage, replacement of sidewalks in poor condition, driveway rehabilitation as needed to install sewer and roadway, and other site restoration. 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 relief sewer and roadway. The required relocations will depend on the relief sewer route selected during preliminary design. The utilities to be relocated or replaced might include water, gas, overhead power, storm sewer catch basins and inlets, and sewer laterals.

D. Erosion & Sediment Control:

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

Symbiont understands that the City is planning to resurface 24<sup>th</sup> Street starting in the late spring of 2012. The City has requested that the portions of the 6<sup>th</sup> Avenue Relief Sewer that are located in the roadway resurfacing area be installed under the resurfacing contract, to avoid having to disturb the resurfaced roadway when the relief sewer is constructed. To that end, Symbiont will provide separate construction documents for the 24<sup>th</sup> Street portion of the relief sewer for insertion into the resurfacing bid package.

Symbiont estimates that 51 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.

### **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 will be incorporated into the construction documents.

### **Engineer's Construction Cost Estimate**

Symbiont will prepare an opinion of probable cost of construction for the 6<sup>th</sup> Avenue Relief Sewer and associated roadway improvements 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 City Development Permit (for development in a floodplain), including applicable forms and attachments. The applications will be submitted to the City for review and submission. 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 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. 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.

## **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.

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 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

## EXCLUSIONS

The scope of services does not include the following:

1. Detailed structural design for shoring up the supports of the pipe trestle crossing 6<sup>th</sup> Avenue between 21<sup>st</sup> Street and 22<sup>nd</sup> Street during the installation of the relief sewer. The supports are located within the 6<sup>th</sup> Avenue ROW. Symbiont assumes that the relief sewer can be located in a way such that a detailed structural design to hold up the trestle supports will not be necessary.
2. Special design elements related to construction in a floodplain beyond obtaining a development permit and specifying watertight manhole covers. According to the April 5, 2010 Flood Insurance Rate Map, part of the project area is located in the 100-year floodplain. The City's ordinance indicates that "public sanitary sewer systems and water supply systems shall be located and constructed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters... [and] manholes or other above ground openings located below the flood protection elevation shall be watertight." Storm water from the project area within the floodplain goes to a separate storm sewer system.
3. Detail traffic control plan. 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.
4. 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.

## PROJECT TEAM

Symbiont has assembled a project team of highly qualified personnel to complete design of the 6<sup>th</sup> Avenue Relief Sewer. 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 recently completed wet weather treatment system project.

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.

Amy L. Post, P.E.  
 Project Manager and  
 Lead Civil Engineer

Ms. Post will serve as Project Manager and Lead Civil Engineer for this project coordinating all aspects of the design including the project budget and schedule. Ms. Post designed the new pumping and screening facilities and grading and drainage for the recent WWTS design, the Northside Interceptor Sewer Expansion, and was involved with numerous aspects of the CSO LTCP, including the City's collection system evaluation and modeling. She recently managed a relief storm and sanitary sewer modeling project for the City of Wauwatosa, WI.

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.

Jon A. Weil, P.S.  
 Civil Designer and  
 Senior Scientist

Mr. Weil will lead the roadway design for this project. Mr. Weil has over 25 years of experience performing civil design and inspection services including municipal infrastructure extensions and land development.

Jennifer A. Dressler, P.E.  
 Structural Engineer

Ms. Dressler will be the lead Structural Engineer for this project. Ms. Dressler has 15 years of experience in commercial and industrial facilities, and she has been involved extensively in design of water and wastewater facilities with higher humidity and corrosive environments.

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 City 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 for design of the proposed structures.

**SCHEDULE**

Symbiont is prepared to begin work immediately. Assuming an October 3, 2011 start date, we expect to have the Kickoff Meeting on or around October 13, 2011 and the Preliminary Design Workshop at the end of January or beginning of February 2012. We anticipate holding the 90% Design Workshop in mid-May 2012 with final construction documents, permit applications, and the engineer's cost estimate submitted to the City at the end of June 2012.

Symbiont will attempt to provide construction documents for the 24<sup>th</sup> Street portion of the relief sewer in time for the late spring bidding of the resurfacing work on 24<sup>th</sup> Street. Given the anticipated project schedule, however, the documents might not be done in time for the resurfacing bidding. Symbiont understands, based on a recent discussion with the City Engineer, that the relief sewer work can be added to the resurfacing contract after bidding via a contractor change order if necessary.

**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 6<sup>th</sup> Avenue Relief Sewer design scope of work defined above is \$370,800. This fee includes all design and administrative costs, and consists of the following components:

<b>Estimated Fee for 6<sup>th</sup> Avenue Relief Sewer</b>	
<b>Component</b>	<b>Fee</b>
Legal/Topographic Survey – Missman, Inc.	\$90,100
Geotechnical Services – Team Services	\$16,600
Design and Bidding Services – Symbiont	\$264,100
<b>TOTAL</b>	<b>\$370,800</b>

**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®

*Brian A. Till*  
for *[Signature]*

Brian A. Till, P.E.  
Project Manager

SYMBIONT®

*Patrick W. Carnahan*

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

Attachments

ACCEPTED BY:

CLIENT: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**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 upon 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.