

**BOARD ACTION/DISCUSSION ITEMS
FEBRUARY 2012 – APRIL 2012**

PRIORITY*	PROJECT/ISSUE	TYPE OF ACTION	TIMING**
<i>AS NEEDED</i>			
H	Update on wastewater treatment capacity evaluation/steering committee	Status Report	As needed
H	Acquisition/Growth Strategy Activities	Status Report	As needed
H	Jordan Creek Wastewater Plant – Conditional Use Hearing	Status Report	As needed
<i>WITHIN 45 DAYS</i>			
M	2012 Board of Directors Officer Elections	Approval	Feb (B)
M	Water/Sewer Rules & Regulations/ Financial Guidelines Amendments in accordance with new fees established in the 2012 Budget	Approval	Feb (B)
H	Park Pump Station- Fuel Tank Replacement Project & Professional Services Authorization Amendments-for Construction phase & Contract Award	Approval	Mar(B)
H	Wastewater Capacity Act 537 Planning Professional Services Authorizations	Approval	Mar (B)
<i>WITHIN 75 DAYS</i>			
H	Western Weisenberg WTP (re-bid) Project Authorization Construction, Contract Awards	Approval	Apr (B) or May (W)
H	LCA- Wastewater Treatment Plant – Digester Mixers Procurement. Project Authorization Amendment, Contract Award	Approval	Apr (B)
02/27/12	February Board Meeting		
03/12/12	March Workshop Meeting		
* H – High			** (W) – Workshop
M – Medium			(B) – Board
L – Low			(W/B) - Either

LEHIGH COUNTY AUTHORITY
WORKSHOP AGENDA
Monday, February 13, 2012 – 12:00 PM

INITIAL ITEMS *(Collectively 5 Minutes)*

1. **Identify items for February Board Meeting**

- *Review Board Discussion items, February 2012 – April 2012*

ACTION/DISCUSSION ITEMS

1. **2011 Performance Bonus Award** *(Approval)*

For 2011, we have met the three threshold bonus criteria for water bond coverage, water rate inflation and wastewater cost inflation. Accordingly, we have met seven of the ten bonus benchmark levels; please reference the attached memorandum for details (**tan**).

2. **Park Pump Station Improvements- Comminutor Replacement Construction Phase** *(Approval)*

The contract to install the new comminutor was bid on December 7, 2011, with Bid opening on January 5, 2012. Five bids were received ranging from \$18,883 to \$30,000. Reference attached supporting documentation (**purple**).

3. **Arcadia West Treatment Plant Upgrade- Professional Services Amendment** *(Approval)*

HRG, Inc (the Design Engineer) has requested an additional fee for modifying the contract documents in line with the guidance received from PA-DEP. Initially, HRG requested an additional fee of \$28,625; however, after a considerable amount of negotiation they have agreed to an adjusted price of \$14,300. Reference attached supporting documentation (**yellow**).

4. **Wastewater Treatment Plant Annual Report** *(Presentation)*

The 2011 Annual Report for the LCA Wastewater Treatment Plant will be presented. The Report will highlight the financials, plant operation, hauler program and maintenance activities.

INFORMATION ITEMS

1. **Lynn Township Sewer System Acquisition:**

At this juncture it appears that settlement will take place on or about February 29, 2012.

OTHER ITEMS

1. **2012 Board Elections – Nominating Committee**

The Chairman will need to appoint a Nominating Committee Chair for 2012 Board Officers to be elected at the February Board Meeting.

MEMORANDUM

Date: February 6, 2012

To: LCA Board of Directors
From: Doug Young, Aurel Arndt
CC: LCA Staff
Re: 2011 Bonus Benchmark Criteria

2011 Bonus Benchmark Program
Executive Summary

Under the Bonus Benchmarks program, the Authority has established four principal criteria needed to be reached before any performance bonus is awarded for exceeding the Reliability, Customer Satisfaction, Efficiency, Safety, and Capital Project bonus criteria levels. The attached graphic information shows our performance over a multi-year period. The following table illustrates the actual achievement results over the past seven years.

<u>Year</u>	<u># of Bonus Benchmarks Met</u>	<u>% Payout to Base Salary*</u>	<u>\$ Payout</u>
2011	7	1.32	\$29,853
2010	8	1.44%	\$32,083
2009	10	1.85%	\$41,062
2008	8	1.45%	\$30,804
2007	4	0.75%	\$15,636
2006	9	1.80%	\$33,006
2005	7	1.33%	\$23,937

**Represents base salary at year-end*



Lehigh County Authority

1053 Spruce Street * P.O. Box 3348 * Allentown, PA 18106-0348
(610)398-2503 * FAX (610)398-8413 * Email: service@lehighcountyauthority.org

MEMORANDUM

Date: February 7, 2012

To: Board of Directors & Management Staff
From: Lance M. Babbitt
Re: **Park Pump Station – Comminutor Replacement
Amendment #2**

MOTIONS /APPROVALS REQUESTED

No.	Motions/Approval Items	Brief Description	Amount
1	Capital Project Authorization (**) Amendment #2 Installation	Construction Phase	\$34,333.00
2	Professional Services(**)	RETTEW	\$4,450.00
3	Construction Contract (**)	Blooming Glen Contractors	\$18,883.00

(**) *Included in the Capital Project Authorization*

BACKGROUND

This is the second amendment to the Capital Project Authorization, to allow for the installation of the procured comminutor. Once the comminutor is on site, an installation window of three days will be determined. Special coordination will be necessary to avoid heavy rain events or thaws. The Contractor must demolish and remove the old system and install the new comminutor within the window specified.

Professional Services by RETTEW, our design engineer, have been proposed through the construction phase that will not exceed \$4,450. These services will include shop drawing reviews, assistance with questions and change orders during construction, spot inspections, start up coordination, final inspection and as built drawings.

The Comminutor Installation Project was advertized on December 7, 2011. Five proposals were received upon bid opening January 5, 2012. Blooming Glen Contractors had the low bid of \$18,883.00. A Bid Summary is attached.

SUMMARY OF BIDS OPENED
January 5, 2012 @ 1:00 P.M.

NAME OF BIDDER	BASE BID	Placement
REED Construction Data	NO BID	
Municipal Maintenance Co.	\$25,700.00	3
Eastern Environmental	NO BID	
Derstine Co.	\$19,000.00	2
Aqua Resources	\$26,000.00	
Pikeland Construction	NO BID	
Blooming Glen Contractors	\$18,883.00	1
Barry J. Hoffman	\$30,000.00	

The project is currently on schedule and should be completed by late March, 2012.



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PROFESSIONAL SERVICES AUTHORIZATION

Amendment #1

Professional: Rettew Associates
941 Marcon Blvd., Suite 801
Allentown, PA 18109

Date: February 7, 2012

Requested By: Lance M. Babbitt

Approvals
Department Head: _____
General Manager: _____

Description of Services (Work Scope, Steps, Check Points, etc.):

As per the attached proposals to provide the following services related to engineering Construction Services for the Park Pump Station Comminutor Replacement.

Amendment #1

- Review and approve shop drawings for the procurement of the Franklin Miller comminutor.
- Review and approve shop drawings from installation contractor
- Review applications for payment
- Respond to Request for Information
- Construction Observation
- Final Inspection
- Prepare Shop Drawings
- Miscellaneous expenses

Proposed for a total of \$4,450.00. This amends the existing authorization of \$5,084.00 to \$9,534.00.

Cost Estimate (not to be exceeded without further authorization): **\$ \$9,534.00**

Time Table and Completion Deadline: **Complete by June 30, 2012**

(For Authority Use Only)

Authorization Completion:

Approval: _____ **Actual Cost:** _____ **Date:** _____

CAPITAL PROJECT AUTHORIZATION

PROJECT NO.:	S-11-2	BUDGET FUND:	WASTEWATER CAPITAL - LL1
PROJECT TITLE:	Park Pump Station - Comminutor Replacement Amendment #2		PROJECT TYPE:
			<input checked="" type="checkbox"/> Construction
			<input type="checkbox"/> Engineering Study
			<input type="checkbox"/> Equipment Purchase
THIS APPROVAL	\$ 34,333		
Total Approval	\$ 110,323		

DESCRIPTION AND BENEFITS

This project will replace the aging hydraulic operated comminutor at the Park Pump Station. This Amendment is for installation of the procured comminutor.

DESIGN PHASE COST

Total \$ 10,100

PROCUREMENT PHASE

Total \$ 65,890

This Approval	
CONSTRUCTION PHASE	
Payroll	\$ 8,000
Professional Services	\$ 4,450
Contract	\$ 18,883
Miscellaneous	\$ 1,000
Contingency	\$ 2,000
Total This Approval	\$ 34,333

TOTAL PROJECT COST: \$ 110,323

REVIEW AND APPROVALS

Project Manager	Date	General Manager	Date
Capital Works Manager	Date	Chairman	Date



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MEMORANDUM

Date: February 6, 2012

To: Authority Board
From: Mike Barron, Frank Leist
Subject: Arcadia West WTP Upgrade.
Professional Services Authorization Amendment
No. 2 to Design Phase– Herbert, Rowland &
Grubic, Inc. (HRG)

MOTIONS /APPROVALS REQUESTED:

No.	Item	Amount
1.	<u>Professional Services Authorization - Design Phase:</u> Amendment No. 2, Herbert, Rowland & Grubic, Inc. (HRG)	\$14,300

We recommend that the Board approve the attached Amendment No. 2 to Design Phase Professional Services Authorization for HRG. This amendment will authorize HRG to complete the work necessary to receive a new round of construction bids, compliant with PennVEST guidelines. Assuming Board approval of this amendment we anticipate being in a position to award the construction contracts at the April 23, 2012 Board meeting.

Background

Previous documents developed by HRG instructed the bidders to provide a Base Bid for equipment from certain single-named manufacturers that were used as the basis of design. Bidders could provide add/deduct pricing for equipment from alternate manufacturers. Based on their prior experience with PennVEST projects, HRG believed that this method of bidding would qualify the project for PennVEST funding. The bids for construction of the 40,000 gpd wastewater treatment plant were received on March 17, 2011.

PADEP (who reviews documents for Penn VEST) determined that the bid documents did not meet PennVest requirements. If LCA awarded the contracts based on those bids would have forfeited a low-interest loan offer from PennVEST. Given the circumstances LCA then retained outside legal counsel who concluded that the HRG documents did in fact meet PennVEST requirements, unfortunately PennVEST did not agree. Ultimately, we concluded that the documents need to be revised and new bids received, in order to receive the funding. As such, in January, 2012 the Board rejected the bids received on March 17, 2011.

In early January, 2012, HRG requested an additional \$28,625 to revise the documents in line with PaDEP comments and re-bid the project. Our position was that there should be no additional compensation, since HRG was to develop project documents in compliance with PennVEST requirements. However, we believe that HRG could not have anticipated PaDEP's subjective decision on this project. After a considerable amount of negotiation HRG has agreed to share the costs equally with the Authority; reducing their fee to \$14,300, we feel that is a reasonable compromise, since the costs of using a new engineer to review and seal the design and continue the project would be considerably higher and result in a significant delay.



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PROFESSIONAL SERVICES AUTHORIZATION

Amendment #2

Professional: HERBERT, ROWLAND & GRUBIC, INC.
369 East Park Drive
Harrisburg, PA 17111

Date: February 3, 2012

Requested By: M. Barron

Approvals

Department Head: _____

General Manager: _____

Consulting Engineering Services

PROJECT: Arcadia West Wastewater Treatment Plant Upgrade

Description of Services (Work Scope, Steps, Check Points, etc.):

Perform the following tasks, per the attached letter proposal of February 03, 2012:

- After the necessary research, revise the bidding documents to name two acceptable manufacturers of the Sequential Batch Reactor, Disk Filter and the Precast Post-Tensioned Concrete Tanks;
- Include in the Project Manual a performance guarantee by the manufacturer of the Sequential Batch Reactor and Disk Filter to be submitted with a bid. The results of the pilot wastewater treatability test should also be included.
- Address the comments generated by Weisenberg Township's Building Code Review and obtain a Building Permit for the project;
- Submit draft bid documents to PaDEP for review.
- Solicit construction bids via the PennBID electronic bidding system
- Review the bids received and recommend award of the General Construction (Contract 1), Electrical Construction (Contract 2) and Mechanical and Plumbing Construction (Contract 3) Contracts to the Authority.

NOT-TO-EXCEED COST ESTIMATES	
Previous Authorization, Design and Bid Phase	\$ 50,350
This Amendment	\$14,300
New Authorization Limit	\$ 64,650

See attached letter proposal dated February03, 2012

Time Table and Completion Deadline: Anticipated Construction Contract Award Date is April 23, 2012

(For Authority Use Only)

Authorization Completion:

Approval: _____ **Actual Cost:** _____ **Date:** _____



369 East Park Drive
Harrisburg, PA 17111
(717) 564-1121
FAX (717) 564-1158
www.hrg-inc.com

VIA ELECTRONIC & STANDARD MAIL

February 3, 2012

Mr. Michael A. Barron, P.E.
Lehigh County Authority
1053 Spruce Street
P.O. Box 3348
Allentown, Pennsylvania 18106

Re: Agreement for Engineering Services
Arcadia West Industrial Park WWTP Upgrade
Completion of Project Design & Bidding Services

Dear Mr. Barron:

Herbert, Rowland & Grubic, Inc. (HRG) is pleased to submit the following proposal to provide Engineering Services for the referenced Project.

SCOPE OF SERVICES

In order to address comments received from PENNVEST, the Department of Environmental Protection (DEP), and building code officials, and to assist the Authority with the construction of a functional WWTP which will meet all State effluent limits and PENNVEST funding requirements, HRG has prepared the following scope of engineering services which we have identified as necessary to complete the design and rebidding of the project.

Task I – Evaluation of Suitable Treatment Equipment

In order to remove Aqua from the project's design and associated bidding documents and determine a suitable manufacturer to replace Aqua and maintain compliance with State effluent limits and satisfy the determination and direction given by PENNVEST and DEP, HRG proposes to complete the following:

- A. Prepare a written summary of key project design parameters including influent waste characteristics and State mandated effluent limits and distribute up to two (2) potential equipment manufacturers. Relative to existing influent parameters, our summary will be based on past information concerning the influent waste stream as received from the Authority and will not include any new wastewater characteristic analyses such as the collection and analysis of wastewater samples from the existing WWTP.
- B. Request, receive, and review equipment qualification packages from up to two (2) SBR and filtration system manufacturers to determine acceptability for the project. Information which

will be requested to be provided by each manufacturer as part of the equipment qualification packages will include the following:

1. Dimensional and weight information on components and assemblies.
2. Catalog information and cut sheets.
3. Manufacturer's specifications, including materials description and paint systems.
4. Performance data from existing installations.
5. Pump curves, as applicable.
6. Horsepower of all motors supplied, as applicable.
7. Outside utility requirements for each component, such as water, power, air, etc.
8. Functional description of any package instrumentation and control systems supplied.
9. List of parameters monitored, controlled, or alarmed.
10. Addresses and phone numbers of nearest service center and a listing of the manufacturers or manufacturer's representatives' services available at this location.
11. Addresses and phone numbers for the nearest parts warehouse capable of providing full parts replacement and/or repair service.
12. A list of the ten (10) most recent installations where similar equipment of comparable size and type by the manufacturer or manufacturer's representative is currently in service; including the location, contact name, size and type of equipment, year put into operation, telephone number, mailing address, and the name of the Engineer, Owner, installation contractor and performance data. If ten installations do not exist, the list shall include all that do exist, if any.
13. Budgetary equipment costs.

In addition to reviewing the equipment qualifications packages relative to the requirements of Items 1 through 13 above, HRG will evaluate each equipment package relative to all other requirements of the current bidding documents.

- C. Based on the equipment qualification packages received, determine all structural, electrical, mechanical and all other changes or modifications necessary to adapt the equipment or system to the arrangement shown on the current drawings and/or functions described in the Technical Specifications.

- D. Provide a written memorandum to the Authority summarizing HRG's review of the equipment qualification packages received and recommendation for inclusion in the project's design and bidding documents.

Task II – Revisions to Bidding Documents & Building Permit Application

Upon receipt of the Authority's concurrence to the equipment selection recommended by HRG under Task I above, HRG will revise the bidding documents, including technical specifications and drawings, as needed to incorporate the selected manufacturers and satisfy the determination and direction given by PENNVEST and DEP. HRG will also revise the bidding documents as needed to address review comments received by the Authority.

- A. Revisions to the technical specifications will be performed to address the comments provided by PENNVEST in their determination and the comments provided by DEP from the 12/06/2011 meeting and will result in naming of two (2) equipment manufacturers for each product or item equipment followed by the words "Or equal".
- B. Revisions to drawings will include all structural, electrical, mechanical, and building modifications needed to accommodate the named equipment manufacturers.
- C. Disadvantaged Business Enterprise (DBE) solicitation requirements previously required for PENNVEST funded projects will be removed from the bidding documents. Please refer to the Specific Services Excluded section of this correspondence for further explanation concerning DBE solicitation requirements.
- D. Provide one (1) hard copy set of revised bidding documents to DEP for a cursory review prior to rebidding of the project. HRG will provide a written memorandum to DEP outlining major revisions made to the bidding documents to facilitate an expedited review by DEP.
- E. Provide one (1) hard copy set and one (1) electronic set of revised bidding documents to the Authority.
- F. Provide up to four (4) hard copy sets of revised bidding documents and accompanying building permit application to Weisenberg Township and Barry Isett & Associates for receipt of the building permit and respond to comments if necessary.
- G. Respond to one (1) comment letter (if necessary) relative to the DEP review process. Our response would include revisions to bidding documents as deemed appropriate by HRG.

Task III - Bidding (Rebid) Phase

The original bidding process for the project utilized the use of the PennBid electronic document and bid management program as requested by the Authority and our scope again intends to utilize PennBid for rebidding of the project. The following tasks will be completed during this Phase of the project:

- A. Prepare the Advertisement for Public Bidding and provide to the Authority for publication. We assume that the Authority will be responsible for publication of the advertisement and all associated fees.
- B. Assemble the bidding documents for upload onto the PennBid Program.
- C. Respond to Bidder's Questions and issue Addenda as necessary during the bidding process.
- D. Receive Bids from the PennBid Program.
- E. Review the Bids and prepare a certified Bid Tabulation sheet.
- F. Review Bidder's Qualifications and make a recommendation to the Authority relative to Notice of Intent to Award.

In order to expedite the receipt of construction bids, HRG proposes that the Advertisement for Bids be published concurrent with the DEP review of the revised bidding documents and that documents be available approximately ten (10) days after the advertisement date during which time we hope to have received any DEP comments on the revised documents. Please refer to the Schedule section of this correspondence for a detailed project schedule.

SPECIFIC SERVICES EXCLUDED

The following services are specifically excluded from this scope. These services, if desired by the Authority or as needed for the project, could be provided by HRG under a separate agreement between the Authority and HRG.

1. Collection and analysis of influent wastewater characteristics for selection of equipment manufacturers.
2. Preparation of detailed operations and maintenance (O&M) cost projections for items such as chemical consumption, electrical energy demand or other utility usage for equipment evaluated under Task I of this correspondence.
3. Services typically associated with DBE solicitation for PENNVEST funded projects will not be required for this project and are excluded from our scope. Both HRG and the Authority have been informed by DEP staff that the DBE solicitation requirements are no longer applicable for this project.
4. HRG's attendance at and documentation of a Pre-Bid Conference.
Herbert, Rowland & Grubic, Inc.

5. Construction Phase Services.
6. Resident Project Representation Services.
7. Operations Phase Services. Services typically provided by HRG during the Operations Phase include the preparation of Record Drawings, assistance with refining or adjusting equipment or WWTP systems, assistance in developing procedures for the control of the operation and maintenance of the WWTP and training of the Authority's Staff on the operation of major WWTP equipment.
8. Our scope does not include services relative to the administration of the PENNVEST loan.

SCHEDULE

Understanding that the schedule for construction of this project is of great concern to the Authority we anticipate that the work will be completed and project milestones reached in accordance within the following timeline, pending your timely authorization of the work:

Project Milestone:	Completion Date:
Evaluation of SBR and Filtration equipment manufacturers/submit memorandum of recommendations to Authority	March 9, 2012
Revisions to bidding documents	March 23, 2012
Submit revised bidding documents to Authority	March 28, 2012
Submit revised building permit application	March 28, 2012
Submit revised bidding documents to DEP	March 28, 2012
Advertise project for Bid	March 28, 2012
Documents uploaded onto PennBid and available for download by Bidders	April 11, 2012
Bid opening	April 23, 2012
Bid review/recommendation relative to Notice of Intent to Award	April 23, 2012

COMPENSATION

We propose to complete the scope of work described within this correspondence on a Time and Materials basis for a Lump Sum Fee of \$14,300 including reimbursable expenses.

All Work will be performed in accordance with the General Provisions for Consulting and Design which are attached to this correspondence.

AUTHORIZATION

It is our sincere desire to continue to provide professional engineering services to the Authority through the completion of this Project.

Mr. Michael A. Barron, P.E.
Lehigh County Authority
February 3, 2012
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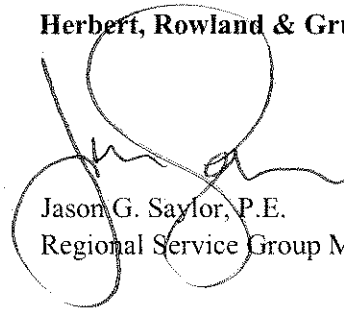
We appreciate the opportunity to have provided the Authority with professional services thus far and we believe it is in the best interests of both the Authority and HRG to reach an agreement on our continuing to provide those services to address the issues noted for successful completion of this Project.

To indicate your acceptance of these terms, and authorize the work to begin, please sign the authorization statement below, return one copy to our office, and keep the others for your files.

If you have any questions concerning this letter, please feel free to contact me to discuss them in greater detail.

Very truly yours,

Herbert, Rowland & Grubic, Inc.



Jason G. Saylor, P.E.
Regional Service Group Manager

JGS/vjm

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Enclosures

c: Edward A. Ellinger, P.E., HRG
File (w/Encl.)

ACCEPTED BY:

LEHIGH COUNTY AUTHORITY

TITLE

DATE

Proprietary Notice

This letter contains proprietary information regarding Herbert, Rowland & Grubic, Inc. and is a work product containing business sensitive materials. This letter was prepared in response to your request for your specific project and no portion of this letter may be shared with any other party.

Herbert, Rowland & Grubic, Inc.

GENERAL PROVISIONS FOR CONSULTING AND DESIGN

ENGINEER:
HERBERT, ROWLAND & GRUBIC, INC.
ENGINEERING & RELATED SERVICES

CLIENT: LEHIGH COUNTY AUTHORITY

PROPOSAL/AGREEMENT DATED: February 3, 2012

PROJECT: Arcadia West Industrial Park WWTP Upgrade - Completion of Project Design & Bidding Services

These General Provisions set forth herein are included by reference in the Agreement for the performance of engineering services which are described in the Agreement. The Agreement shall take precedence over these General Provisions to the extent that there are any inconsistencies or contradictory statement.

1. **GENERAL:** Herbert, Rowland & Grubic, Inc. (herein after referred to as HRG) shall provide for CLIENT professional engineering services in any or all phases of the Project to which the Agreement applies. These services will include serving as Client's Professional Engineering Representative for the Project, providing professional engineering consultation and advice and furnishing customary civil, environmental, transportation and related engineering and surveying services as required. HRG's professional services will be performed in accordance with generally accepted principles of engineering practice. It is understood that HRG shall not be held liable for work performed by other parties, for the accuracy of data supplied by other parties upon which HRG may rely, or for testing or inspection work performed by other parties.

2. **TIMING OF PROPOSAL:** HRG agrees that the Proposal/Agreement shall remain open and may be accepted by the CLIENT for thirty (30) days from the above date. Acceptance of the Agreement after the end of the 30-day period shall be valid only if HRG elects, in writing, to reaffirm the Proposal/Agreement and waive its right to reevaluate and resubmit the Proposal/Agreement.

3. **CONDUCT OF THE WORK:** All concept, preliminary and final plans will be submitted to CLIENT or its authorized representative for approval concurrent with proceeding to attempt to secure approvals by local, county, state and all other governmental authorities having jurisdiction over the Project. In the event CLIENT does not respond to such submission within five (5) days, it shall be considered to have been given its approval.

Survey work is weather dependent, and HRG cannot always guarantee the time or date a survey crew will be available. HRG recognizes the importance of survey scheduling and will make a good faith effort to meeting clients' needs.

4. **RIGHT OF ENTRY:** CLIENT agrees to provide rights of entry and all permits and permissions necessary for the completion of HRG's service under the Agreement at no cost to HRG.

5. **USE OF DOCUMENTS:** All document are instruments of service with respect to this Project, and HRG shall retain an ownership (including exclusive copyright) and property interest therein (including the right of reuse at the discretion of HRG) whether or not the Project is completed. CLIENT may make and retain copies of Documents for information and reference in connection with use on the Project by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by HRG, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to HRG or to HRG's Consultants. CLIENT shall indemnify and hold harmless HRG and HRG's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any verification of adaptation of the Documents for extensions of the Project or for any other project will entitle HRG to further compensation at rates to be agreed upon by CLIENT and HRG.

Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by HRG. Files in electronic media format of text, data, graphics, or of other types that are furnished by HRG to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. HRG shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

When transferring documents in electronic media format, HRG makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by HRG at the beginning of this Project, nor does HRG confer or transfer any software license or right to use with

the conveyance of data files.

6. **COPYRIGHT:** HRG is the exclusive owner and has the exclusive copyright to documents prepared for this Project and will grant a license to use said documents for the Project to the CLIENT upon the CLIENT's payment in full of all invoices rendered by HRG. CLIENT may not in turn transfer said license except as provided in Paragraph 9 of these General Provisions. The failure of HRG to obtain copyright registration shall not affect or impair HRG's ownership of these documents.

7. **INDEMNIFICATION:** CLIENT will indemnify and hold harmless HRG, its officers, directors, shareholders, or agents, employees, consultants and subcontractors from and against any and all liabilities, damages, or expenses in connection with any personal injury or property damage arising out of or in any way connected with the negligence, recklessness, or intentional acts or omissions by CLIENT, its officers, directors, agents, contractors and employees. CLIENT further agrees to indemnify and hold harmless HRG for any and all fees and expenses incurred in enforcing or defending HRG's right under this Agreement or the performance of its duties under this Agreement.

HRG may settle any claim for which it has a right of indemnification against CLIENT without CLIENT's consent. Notwithstanding that settlement documents shall state that HRG does not admit liability and that it is a disputed claim, HRG shall not be required to prove its liability or the reasonableness of the settlement to obtain indemnification from CLIENT.

8. **INSURANCE:** HRG and its agents, employees and consultants are covered by Worker's Compensation insurance and have limited coverage under public liability and property damage insurance policies. Certificates of insurance will be provided upon request. HRG shall not be responsible for any loss, damage, or liability beyond the amounts, limits and conditions of such insurance. Additional coverage may be obtained at the CLIENT's expense. Failure to exercise this option waives any claims of liability beyond such limits. If the CLIENT obtains a builder's risk policy for the construction phase of this Project, HRG shall be a named insured.

9. **ASSIGNS:** CLIENT and HRG each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations of this Agreement. Neither CLIENT nor HRG shall assign or transfer any rights under or interest in this Agreement without the prior written consent of the other, except to the extent that the effect of this limitation may be restricted by law.

10. **SUBCONSULTANTS:** HRG has the right to employ or retain such independent consultants, associates and subcontractors as it may deem appropriate to assist it in the performance of the services required.

11. **SAFETY RESPONSIBILITY:** HRG is not responsible for any safety precautions or programs of the CLIENT or any contractors working on the Project except for the safety of HRG's own employees.

12. **CONTROLLING LAW:** The Letter Agreement is to be governed by the laws of the Commonwealth of Pennsylvania which is the principal place of business of HRG.

13. **HAZARDOUS SUBSTANCES:** CLIENT represents and warrants to HRG that it has and will comply with all obligations imposed by applicable law upon the generation, storage or disposal of hazardous substances and/or waste and that it will promptly notify HRG of any notices concerning such matters. CLIENT agrees to hold harmless, identify and defend HRG from and against any and all damages and liabilities and expenses arising out of or in any way connected with the presence, discharge, exposure, release, or escape of hazardous substances, or wastes of any kind, excepting only such liability as may arise out of the sole negligence of HRG in the performance of services under this Agreement.

14. **PAYMENTS:** Invoices will be submitted by HRG on a monthly basis as the work proceeds. Payments will be due and payable in full on receipt of an invoice by CLIENT without retainage, and will not be contingent upon receipt of funds from third parties. If fees are not paid in full within 30 days of the date of the invoice, HRG reserves the right to pursue all remedies, including withdrawing certifications, stopping work on three (3) days' prior written notice, and retaining all documents without recourse. If at any time an invoice remains unpaid for a period in excess of 30 days, interest of the rate of 1-1/2% per month will be charged on past-due accounts. CLIENT agrees to indemnify and hold harmless HRG from and against any and all reasonable fees, expenses and costs incurred by HRG including, but not limited to, court costs, arbitrators and attorneys' fees and other claim related expenses incurred in the collection process.

All invoicing will be substantiated by HRG cost record sheets and work order system, all of which shall be made available to CLIENT upon request and during regular working hours for inspection and audit. Time spent in additional detailing of invoices is considered extra effort on the Project and will be invoiced as additional work along with any related cost of making copies and reproductions. Any increase in HRG's cost after the effective date of the Agreement resulting from state or federal legislation shall be reimbursed by the CLIENT.

Timely payment of invoices is a condition of this Agreement. Failure to make payments in full within the time limits stated above will be considered substantial noncompliance with the terms of this Agreement and will be cause for termination of the Agreement if HRG so chooses.

Unless otherwise agreed in writing, all fees and costs payable to HRG pursuant to this Agreement are payable at HRG's principal place of business in Dauphin County, Pennsylvania. It is hereby agreed that all suits will be litigated in Federal or State Court in Dauphin County, Pennsylvania or any other location at the sole discretion of HRG. Acceptance of payment by HRG elsewhere shall not constitute a waiver of this requirement.

In addition to its other remedies, HRG reserves the right to withhold submission (to CLIENT or any third party municipality or agency) of any plans or other documents and withhold performance of any other term of this Agreement upon default by CLIENT of any of CLIENT's obligation under this Agreement.

15. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated by either party upon three (3) days' written notice in the event of a substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. CLIENT agrees to be liable and pay HRG for all labor done, work performed, materials furnished, and all expenses incurred for all work and additional work up to and including the day work is terminated, in accordance with the notice required under this section.

A substantial failure to perform shall also include, but not be limited to, the CLIENT'S inability to provide credit references and/or a credit history acceptable to HRG prior or following the execution of this Agreement. Notwithstanding the above, failure of HRG to request said credit references shall not relieve client of its obligation to perform under the terms of this Agreement.

16. **THIRD PARTY BENEFICIARIES:** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the CLIENT and HRG, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and HRG and not for the benefit of any other party.

17. **LIMITATION OF LIABILITY:** HRG shall endeavor to perform the services under this Agreement with the care and skill ordinarily used by members of HRG's profession practicing under similar conditions at the same time and in the same locality. There are no other warranties, express or implied, including, without limitations, no warranties of merchantability or fitness for particular purpose, made by HRG in this Agreement or in any reports, opinions, drawings, specifications or other documents furnished by HRG under this Agreement, or otherwise. HRG shall not be liable for the results of services performed with professional care and skill. To the fullest extent permitted by law, HRG's total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, HRG's negligence, errors, omissions, strict liability, intentional acts, breach of contract or breach of warranty shall not exceed the total compensation received by HRG under this Agreement, or the amount paid on behalf of HRG by their insurers in settlement or satisfaction of CLIENT's claims under the terms and conditions of HRG's professional insurance policy or policies applicable thereto, whichever is greater.

18. **DESIGN WITHOUT CONSTRUCTION PHASE SERVICES:** It is understood and agreed that HRG's Basic Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the CLIENT. The CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation and administration and waives any claims against HRG that may be in any way connected thereto.

In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold HRG harmless from any loss, claim or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of HRG.

If the CLIENT requests in writing that HRG provide any specific construction phase services, HRG will submit additional General Provisions for Construction Services and HRG shall be compensated for these Additional Services.

19. **RECORD DRAWINGS:** Record Drawings will not be prepared for this project unless the CLIENT specifically requests and agrees to compensate HRG for the extra work.

HRG will then prepare a set of reproducible record prints of Drawings showing those changes made during the construction process based upon the marked-up prints, drawings, and other data furnished by the Contractor(s) to HRG and which HRG considers significant. It is noted that HRG was not present nor involved in the construction project and has no information pertaining to the validity or completeness of the marked-up prints provided by the Contractor(s). Because these Record Drawings are based on unverified information provided by other parties which will be assumed reliable, HRG cannot and does not warrant the accuracy.

20. **CONTRACTOR/MANUFACTURER SUPPLIED DESIGNS:** The Work may require the furnishing and supplying of design services for such products as pre-manufactured buildings, tanks, special structures and systems, etc. CLIENT shall not hold HRG responsible for any such design which is furnished by others.

21. **OTHER WORK:** If the CLIENT requests HRG to provide engineering services on other Projects before a written Agreement is consummated for the other Project, the terms and conditions of this Agreement shall apply in full.

22. **AUTHORITY TO SIGN:** The individual signing this Agreement warrants that he has authority to sign as, or on behalf of, CLIENT for whom or for whose benefit HRG's services are rendered. If such individual does not have such authority, he understands and agrees that he is personally responsible for this Agreement to HRG in addition to any liability which CLIENT may have.

23. **MARKETING/ADVERTISING:** CLIENT hereby authorizes and grants to HRG the right to display a company sign at the project site during the construction phase of the project. CLIENT also grants HRG the right to use project related photographs, renderings, artist's depictions, project related articles and the like for marketing and advertisement purposes of the firm without further authorization from or compensation to the CLIENT. HRG will be responsible for securing any applicable permits and/or approvals associated with the installation of said project signs and for all direct costs associated with internal marketing and advertising activities.

24. **ENTIRE AGREEMENT:** These General Provisions, any drawings, plans, plats, and/or exhibits attached hereto, and the Proposal or Agreement to which these items are attached, set forth the entire understanding and agreement between the parties with respect to the subject matter contained therein and shall be binding upon and inure (except as otherwise provided herein) to the benefit of the parties and their respective successors and assigns. This Agreement supersedes all prior documents, agreements, and understandings between the parties with respect to the transactions contemplated hereby.