

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF NORTH BRUNSWICK  
AUTHORIZING A CHANGE IN SCOPE TO THE PROFESSIONAL SERVICE  
AGREEMENT WITH T&M ASSOCIATES FOR ENVIRONMENTAL AND MECHANICAL  
ENGINEERING SERVICES ASSOCIATED WITH REMEDIATION  
AND RESTORATION WORK  
FOR THE MUNICIPAL COMPLEX BUILDING**

**WHEREAS**, Hurricane Ida impacted New Jersey on Wednesday, September 1, 2021, bringing severe weather conditions including strong winds, reports of tornadoes, and heavy and sustained rainfall in some areas; and

**WHEREAS**, during the event, a significant amount of water penetrated the Municipal Complex, causing major damage to the building; and

**WHEREAS**, in September of 2021, the company Rapid Recovery was engaged under the Garden State Joint Insurance Fund to begin remediation efforts; and

**WHEREAS**, Rapid Recovery as the primary contractor engaged subcontractors to work on various restoration efforts, including *M&E Engineers, Inc.* for initial professional review of the plumbing and *Air Exchange* for the Heating, Ventilation, Air Conditioning (HVAC) work; and

**WHEREAS**, in December of 2021, subcontractor Air Exchange began to work on the replacement of the three boilers units that heat the building, which were not operational given concerns with the associated piping; and

**WHEREAS**, Rapid Recovery attempted to deliver heat to the building with space heaters and Public Works also brought in space heats to supplement areas of concern; and

**WHEREAS**, in addition to having an *architect*, in May of 2022 it was determined necessary to engage services of a *mechanical engineer* that familiar with the HVAC system under their prior engagement with Rapid Recovery to provide review, recommendation and oversight services; and

**WHEREAS**, in June of 2022, pursuant to Resolution 189-6.22, M&E Engineers, Inc. was engaged to provide professional engineering services for work associated with the remediation and restoration efforts to the HVAC system; and

**WHEREAS**, by August of 2022, a small space in the back first floor of the Police Department was isolated with a separate temporary heating, ventilation and air condition system and available for identified police use; and

**WHEREAS**, December 5, 2022, the current contractor and sub-contractor notified municipal officials that the anticipated delivery date cooling units would be mid-October of 2023 and was unable to provide a timeline for heating elements, in summary due to uncertainty with the condition of system components; and

**WHEREAS**, the infrastructure network for the municipality is located within the Municipal Complex and has been affected by the physical impacts of the climate variability, leaving the system vulnerable to failure points for over a year and is hitting a critical level going into a second winter season; and

**WHEREAS**, given the uncertainty and duration that current contractors/professionals have taken to restore climate control to the building, municipal officials began meeting with Engineering firm T&M Associates to review options for project assistance; and

**WHEREAS**, at the request of the Township, T&M Associates has provided a proposal for mechanical and related environmental engineering services associated with the restoration of the heating, ventilation and air condition system at the Municipal Complex; and

**WHEREAS**, compensation for said services shall be based upon the December 12, 2022 proposal submitted by T&M Associates, to be paid upon submission of monthly invoices, in an amount not-to-exceed \$40,000.00.

**WHEREAS**, in January of 2022, pursuant to Resolution 11-1.22, T&M Associates, (11 Tindall Road, Middletown, NJ 07748) was authorized to provide Environmental Engineering Services for calendar year 2022, as awarded under a fair and open contract process, pursuant to the provisions of N.J.S.A. 19:44A-20.1 et seq.

**NOW, THEREFORE, BE IT RESOLVED** on this 12<sup>th</sup> day of December 2022, that the Township Council of the Township of North Brunswick does hereby authorize the Mayor to execute and the Township Clerk to witness an amendment to the current agreement with T&M Associates to include for mechanical and related environmental engineering services associated with the restoration of the heating, ventilation and air condition system at the Municipal Complex, in an amount not-to-exceed \$40,000.00; and

**BE IT FURTHER RESOLVED** notice of this action shall be published in the Home News & Tribune as required by law within 10 (ten) days after its passage.

#### **CERTIFICATION**

I, Cavel Gallimore, Chief Financial Officer of the Township of North Brunswick, certify that funds in the following account are available under Contract PRO22063:

\$40,000.00 are available in the Capital Ordinance 22-23 account C-04-55-C22-230-902.

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Cavel Gallimore  
Chief Financial Officer

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Justine Progebin  
Business Administrator

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Ronald Gordon, Esq.  
Township Attorney  
Approved as to Legal Form

**RECORDED VOTE:**

<b>COUNCIL MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>NOTES</b>
HUTCHINSON				
MEHTA				
GUADAGNINO				
ANDREWS				
SOCIO				
DAVIS				
MAYOR WOMACK				

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on December 12, 2022.

\_\_\_\_\_  
 Lisa Russo  
 Township Clerk



NBRUOH-16025

December 12, 2022

Justine Progebin  
Business Administrator  
Township of North Brunswick  
710 Hermann Road  
North Brunswick, NJ 08902

**RE: NORTH BRUNSWICK MUNICIPAL BUILDING  
HVAC ASSESSMENT & INTERIOR RENOVATION**

Dear Ms. Progebin:

We are pleased to submit this Proposal for Professional Mechanical, Electrical, Plumbing, Fire Protection (MEP&FP) Engineering Services, as well as Environmental Services, for the North Brunswick Municipal Building HVAC Assessment & Interior Renovations project.

#### **BACKGROUND**

It is our understanding that there was damage to the North Brunswick Municipal Building during hurricane Ida that left the boiler, hot water heating system, and ductwork in disrepair. The insurance company provided two contractors that were tasked with troubleshooting the issues and providing recommendations for repair. These contractors have provided conflicting recommendations and the insurance adjuster is claiming that the piping damage is not related to Ida. The recommendations range from cleaning and flushing the system to complete piping replacement. The Township is unsure how to proceed and has requested that T&M Associates provide professional engineering services to troubleshoot the mechanical HVAC systems, as well as a follow-up preliminary indoor air assessment regarding air quality, mold, etc.

In addition to the current issues with the heating systems, the Township is interested in renovating portions of the municipal building. The Township has engaged USA Architects to prepare conceptual plans, and the project is now proceeding into schematic design, with the goal of preparing and proceeding with a "design build" project. The conceptual layout, as presented to the Township by USA Architects, includes a training gym, senior rec center, restrooms, showers, and locker rooms in the basement; senior center, community space, storage, toilet rooms, and offices on the first floor; financial, tax collector, and HR office renovations on the second floor; and senior rec area, multipurpose room, toilets, mayor's office, flexible office space, BA and assistant BA, purchasing, reception, and corridor renovations on the third floor.

#### **PROJECT APPROACH**

Since the issues with the HVAC systems need to be addressed immediately, the Township has requested an initial hourly time and material estimated fee from T&M Associates to begin troubleshooting this issue. This proposal will be followed by a more detailed proposal and fee to capture the renovation work, and any additional budget required to complete our assessment of the



HVAC systems and the indoor environmental conditions. Upon authorization, T&M Associates will provide the following services.

## SCOPE OF SERVICES

### I. PHASE 1 - HVAC ASSESSMENT

1. Participate in one (1) virtual kick-off meeting with the Township and Architect to review the project history and gather any relevant documents and information.
2. Attend site visit(s) to document the existing conditions of the mechanical systems as they relate to this investigation. We anticipate this will include an initial site visit to observe the existing conditions, and a follow-up site visit with a subcontractor to test the condition of the piping.
3. Preparation of a report documenting our findings and recommendations.
4. Preparation of plans showing the existing piping to be replaced, if required.
5. Preparation of a budgetary construction cost estimate for the repairs, if requested.
6. Attendance at one (1) virtual meeting with the Township and Architect to review our report, floor plans, and construction cost estimate.
7. Additional engineering services to assist in resolving this issue will be provided hourly, at the request of the Township. If these services exceed the current proposed fee, we will provide a subsequent proposal.

### II. PHASE 2 - INTERIOR RENOVATION SCHEMATIC DESIGN

1. **Project Management and Administration**
  - A. Setup of AutoCAD backgrounds from the Architect for use in preparing our design.
  - B. Attendance of two (2) virtual meetings with the Owner and Architect.
  - C. Preparation of required deliverables.
2. **Mechanical, Electrical, Plumbing, & Fire Protection**
  - A. Review of as-built MEP&FP drawings, if available.
  - B. Site visit(s) as required to document the existing conditions of the MEP&FP systems as they relate to this project.
  - C. Preparation of heating, cooling, ventilation, and exhaust calculations for the building.
  - D. Preparation of a mechanical zoning plan for review and approval by the Architect and Owner.
  - E. Preparation of schematic design plans depicting equipment and systems to be removed, and proposed location of new equipment.

*Please note that a subsequent proposal will be provided to capture the full scope of services for the municipal building renovation, once the full scope of work is better understood. This proposal will include preparation of construction documents, bidding assistance, permitting, construction administration, construction observation services and any follow-up environmental services to fully assess the interior of the building.*



### INFORMATION TO BE PROVIDED BY THE CLIENT/OWNER

1. Relevant as-built and record documents.
2. Access to the site as/when required.

### EXCLUSIONS

The estimated time and material fee indicated is based upon the following items being excluded from our Scope of Work. Note that should these services be requested, we will be pleased to provide them as additional services for either lump sum fees or on a time and material basis in accordance with the previously agreed upon Schedule of Hourly Billing Rates.

1. Services not specifically listed are not included.
2. Design (beyond schematic design), bidding, permitting, construction administration, and construction management services.
3. Site/Civil, Structural, Geotechnical, and Commissioning Engineering services, if required, are not included.
4. Value Engineering to redesign the project in an effort to reduce the construction cost is not included.
5. Acoustics analysis.
6. Hazardous Material Investigation/Mitigation Services.
7. Design of off-site improvements.
8. Documents will be prepared utilizing the latest version of AutoCAD. Incorporating our design in a Building Information Model (BIM) is not included.

### SCHEDULE OF FEES

All professional services described in Scope of Services will be compensated by the time and material estimated fee of **\$40,000**.

All professional services identified in the Scope of Services will be invoiced in accordance with the previously agreed upon Terms and Conditions of Professional Services. Should additional services be required by the Owner, outside the scope as identified above, T&M will provide a subsequent proposal.



We thank you for the opportunity to submit this proposal, and we look forward to working with you on this project. Should you have any questions or require additional information, please do not hesitate to contact me at 732.473-4755 or [edasti@tandmassociates.com](mailto:edasti@tandmassociates.com).

Very truly yours,

T&M ASSOCIATES

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M. ELAINE DASTI, PE  
VICE PRESIDENT  
COMPANY PRACTICE LEADER, MEP

A handwritten signature in blue ink, appearing to read 'T.C. Kinsella'.

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TIMOTHY C. KINSELLA, CPG  
VICE PRESIDENT

Enclosures: Standard Terms and Conditions for Professional Services

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The undersigned has read, understood, and hereby accepts this proposal.

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JUSTINE PROGEBIN, BUSINESS ADMINISTRATOR  
TOWNSHIP OF NORTH BRUNSWICK

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DATE



## STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

These Standard Terms & Conditions shall govern the performance of services pursuant to this Agreement.

As used herein, the term "Client" refers to the Client identified in T&M's Proposal / Scope of Services. The term "T&M" refers to T&M Associates. The Client and T&M may be referred to individually as a "Party" or collectively as the "Parties". The term "Agreement" refers to this contract between T&M and the Client consisting of (1) the T&M Proposal / Scope of Services, and (2) these Standard Terms and Conditions. The "Project" is identified in T&M's Proposal / Scope of Services.

### 1. SCOPE OF SERVICES.

- a. Descriptions of the services to be provided by T&M are set forth in the Proposal/Scope of Services (*the "Services"*). Services not set forth in the Scope of Services, or specifically itemized as additional services, are excluded from the scope of T&M's Services (*the "Additional Services"*) and T&M assumes no responsibility to perform such Additional Services. If any Additional Services become necessary during the course of the Project, T&M can perform such Additional Services in accordance with a written agreement between the Client and T&M for such Additional Services.
- b. T&M shall have no obligation to commence the Services as stipulated in this Agreement and / or any associated work authorization until both this Agreement and any applicable work authorization are fully executed and delivered to T&M.

### 2. COMPENSATION.

- a. **BILLING RATES.** Client shall compensate T&M at the billing rates identified in T&M's Proposal. Unless otherwise provided in the Proposal, compensation for Services shall be based on T&M's Schedule of Hourly Billing Rates and Schedule of Miscellaneous Charges in effect at the time Services are performed.
- b. **REIMBURSABLE EXPENSES.** Client shall pay T&M for reimbursable expenses according to the current Schedule of Miscellaneous Charges including, without limitation, application fees, printing and reproduction, courier and express delivery service, bulk / special mailings, facsimile transmissions and other costs of acquiring materials specifically for Client and related charges.
- c. **INVOICES.** T&M shall submit invoices monthly and payment in full is due and payable thirty (30) days from the date of T&M's invoice. Services shall be billed at a minimum increment of 0.25 hour. If Client fails to make any payment due T&M for services and expenses within thirty (30) days after receipt of invoice, the amounts due T&M will accrue interest at the rate of one percent (1.0%) per month until paid in full.
- d. **SUSPENSION OF SERVICES.** Once a payment is PAST DUE, the Client shall be deemed to be in breach of this Agreement and any other agreements between the Client and T&M. If a payment is PAST DUE, T&M may suspend performance of all Services provided to the Client until T&M has been paid all amounts due and T&M shall have no liability whatsoever to the Client for any costs, delays or damages resulting from T&M's suspension of services caused by the Client's breach of this Agreement.
- e. **TERMINATION.** Client or T&M may terminate this Agreement with ten (10) days prior written notice for convenience or cause. In the event of termination, T&M shall be paid for all services rendered and costs incurred up to the date of termination in accordance with the payment terms herein.
- f. **COLLECTION COSTS.** In the event legal action is necessary to enforce the payment provisions of this Agreement, T&M shall be entitled to recover from the Client the reasonable attorneys' fees, court costs and expenses incurred by T&M in connection therewith.
- g. **FEE DURATION & ANNUAL ADJUSTMENT.** The hourly rates charged for T&M employees are adjusted annually in January to reflect changes in the various elements that comprise such hourly rates with a corresponding adjustment in fee. All adjustments in rates will be in accordance with generally accepted practices consistent with T&M's procedures.

### 3. STANDARD OF CARE.

The standard of care for all professional services performed or furnished by T&M under this Agreement will be the care and skill ordinarily used by members of T&M's profession practicing under similar circumstances at the same time and in the same locality and based on facts and information available at the time services are provided. T&M makes no warranties, expressed or implied in connection with T&M's Services.



#### **4. OWNERSHIP AND USE OF DOCUMENTS.**

All reports, plans, specifications, computer files, field data, notes and other files and documents prepared by T&M pursuant to this Agreement (*the "Documents"*) are instruments of T&M's professional services and T&M shall retain an ownership and property interest therein. Provided full payment for Services rendered and costs incurred is made by the Client to T&M, T&M grants to the Client a license to use the Documents for the purpose of constructing, occupying and maintaining the Project. The Documents are not intended or represented to be suitable for reuse by the Client or others on extensions of this Project or on any other project. Any reuse, dissemination, or modification of the Documents without T&M's written approval shall be at Client's sole risk and without liability to T&M and the Client agrees to indemnify, defend and hold harmless T&M from all claims, damages and expenses, including attorneys' fees and costs, arising out of such reuse by the Client or by others acting through the Client.

#### **5. CONFIDENTIALITY.**

All information that the Client deems confidential shall be prominently branded "Confidential Information" prior to releasing said information to T&M. T&M will not intentionally divulge information regarding the Project that the Client designates as confidential, except (i) to the Client or parties designated by the Client; (ii) in response to a subpoena or other similar legal requirements; and / or (iii) in the event that withholding such information could create risk of significant harm to the public. Information that is in the public domain, that is provided to T & M by third parties is not considered confidential. Any information that is not clearly marked "Confidential Information" by the Client prior to disclosure to T&M shall not be deemed as confidential. Pursuant to T&M's company retention policy, both Parties shall retain copies of any and all Confidential Information, which shall remain confidential, for archival purposes. The Client authorizes T&M to identify the Client as a T&M client and use photographs or illustrations of the Project and non-confidential information in any sales or marketing literature.

#### **6. CONSTRUCTION COST ESTIMATES.**

The Client shall advise T&M in writing of any budgetary limitations for the overall cost of construction. T&M will endeavor to work within such limitations and will, if requested and included within the Proposal / Scope of Services, submit to the Client an opinion of probable construction cost. Opinions of probable construction cost will represent T&M's reasonable judgment as a design professional familiar with the construction industry but do not represent, warrant or guarantee that bids or negotiated prices will not vary or exceed budgets or opinions of probable cost or evaluations prepared or agreed to by T&M. The Client acknowledges that neither T&M nor the Client has control over the cost of labor, materials or methods by which contractors determine prices for construction, competitive bidding, markets, or negotiation conditions.

#### **7. RESPONSIBILITY DURING CONSTRUCTION.**

T&M's Services during the construction phase are intended to provide the Client a greater degree of confidence that the completed work of contractor(s) will conform in general to the approved plans and related documents. T&M will endeavor to observe the progress and quality of the executed work of contractor(s) and determine in general if such work is proceeding in accordance with the requirements of the Project. T&M shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. T&M shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractor(s) or for any failure of any contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to a contractor furnishing and performing the work. Accordingly, T&M neither guarantees the performance of any contractor nor assumes any responsibility for any contractor's failure to furnish and perform its work in accordance with the contract documents. T&M shall not be responsible for the acts or omissions of the Client, the Client's other consultants, contractors and their respective subs, agents or employees, or other persons for whom the Client is responsible.

#### **8. SITE CONDITIONS.**

T&M shall not be liable for damage or injury to any subterranean structures (*including, but not limited to, utilities, mains, pipes, tanks, and telephone cables*) or any existing subterranean conditions; or the consequences of such damage or injury, if (*with respect to this clause*) (i) such structures or conditions were unknown and were not identified or shown, or were incorrectly shown, in information or on plans furnished to or obtained by T&M in connection with the Services; (ii) concealed conditions are encountered in the performance of the Services; (iii) concealed or unknown conditions in an existing structure are at variance with the conditions indicated by the Proposal / Scope of Services or work authorization; or (iv) unknown physical conditions below the surface of the ground are encountered that differ materially from those ordinarily encountered and are generally recognized as inherent in work of the character provided under this Agreement.

The Client shall provide to T&M all plans, maps, drawing and other documents identifying the location of any subterranean structures on the Site. Prior to location of any drilling or excavation below the ground surface, T&M shall

obtain the concurrence of the Client as to the location for such drilling or excavation. Should: (i) subterranean structures or existing subterranean conditions be unknown and not identified or shown, or be incorrectly shown, in information or on plans furnished to or obtained by T&M in connection with the Services; (ii) concealed conditions be encountered in the performance of the Services; (iii) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Proposal / Scope of Services or work authorization; or (iv) unknown physical conditions below the ground differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided under this Agreement; then the amount of this Agreement and / or time for performance shall be equitably adjusted by change order upon claim by either Party made within twenty (20) days after the first observance of the conditions.

The Parties agree that reports prepared by or on behalf of T&M pertaining to site conditions, including, but are not limited to, environmental, geotechnical or geologic reports (*hereinafter collectively the "Site Condition Reports"*), are prepared for the exclusive use of the Client and its authorized agents, and that no other party may rely on the Site Condition Reports unless T&M agrees in advance to such reliance in writing. The Site Condition Reports are not intended for use by others, and the information contained therein is not applicable to other sites, projects or for any purpose, except the one originally contemplated in the Services. The Client acknowledges that the Site Condition Reports are based on conditions that exist at the time a study is performed and that the findings and conclusions of the Site Condition Reports may be affected by the passage of time, by man-made events such as construction on or adjacent to the site, or by natural events such as floods, earthquakes, slope instability or groundwater fluctuations, among others. The Parties agree that interpretations of subsurface conditions by T&M and / or its subcontractors may be based on limited field observations including, without limitation, from widely spaced sampling locations at the site of the Project. The Client acknowledges that site exploration by T&M and / or its subcontractors will only identify subsurface conditions at those points where subsurface tests are conducted or samples are taken. The Parties agree that T&M and / or its subcontractors may review field and laboratory data and then apply professional judgment to render an opinion about subsurface conditions at the site of the Project and that the actual subsurface conditions may differ, sometimes significantly, from those indicated by T&M and / or its subcontractors. The Client agrees that any report, conclusions or interpretations will not be construed as a warranty of the subsurface conditions by T&M and / or its subcontractors. The Parties further agree that no warranty or representation, express or implied, is included or intended in any reports, conclusions, or interpretations prepared by or on behalf of T&M pertaining to the site conditions.

## **9. UNANTICIPATED CONDITIONS.**

If during the performance of T&M's services, any unanticipated conditions are observed, which in T&M's judgment may affect the Proposal / Scope of Services, T&M will notify the Client. The Client agrees that the discovery of such unanticipated conditions constitutes a significant change in the Proposal / Scope of Services. Based on T&M's evaluation of unanticipated conditions, T&M is authorized to take any of the following action: (a) Complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; or (b) Stop Work pending written agreement with the Client to modify the Scope of Services and Fees as required by the previously unanticipated conditions; or (c) Terminate the Services effective on the date specified by T&M in writing. The Client shall waive any claim against T&M and agrees to indemnify, defend and hold T&M harmless from any claim of liability for injury or loss arising from the encountering of unanticipated conditions.

## **10. HAZARDOUS CONDITIONS.**

It is acknowledged by both parties that T&M's Scope of Services does not include any services related to asbestos or hazardous or toxic materials. T&M shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project site. In the event T&M or any other party encounters asbestos or hazardous or toxic materials at the site of the Project, or should it become known in any way that such materials may be present at the site of the Project or any adjacent areas that may affect the performance of T&M Services, T&M may, at its sole option and without liability for consequential or any other damages, suspend performance of Services on the project until the Client takes steps to identify, abate and/or remove the asbestos or hazardous or toxic materials, and to warrant that the site of the Project is in full compliance with applicable laws. If, in T&M's sole opinion, site conditions represent a threat to the public health or an environmental hazard, T&M will so advise the Client, so the Client may notify appropriate authorities. If the Client fails to act in a responsible manner, T&M may notify the appropriate authorities. The Client waives any claim against T&M and agrees to defend, indemnify and save T&M harmless from any claim or liability arising from the conditions or notifications of conditions at the site.

## **11. FORCE MAJEURE.**

T&M is not responsible for delays caused by factors beyond T&M's reasonable control, including, but not limited to,

delays due to strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client or owner of the Project to furnish timely information or to provide review comments promptly; or delays caused by faulty performance by the Client, consultants or contractors at any level.

## **12. CONSEQUENTIAL DAMAGES.**

In no event shall T&M be liable in contract, tort, strict liability or otherwise for any incidental, special, indirect, consequential, punitive or exemplary damages, including but not limited to loss caused by delay, commercial loss, or lost profits or revenues or opportunities resulting from any service furnished by T&M under this Agreement.

## **13. INSURANCE.**

- a. **LIMITS.** T&M shall maintain for the term of this project the following types of insurance and minimum limits: (i) Worker's Compensation and Employer's Liability insurance, per statutory limits; (ii) Comprehensive General Liability Insurance, a total of \$1,000,000 each occurrence and \$2,000,000 in aggregate; (iii) Comprehensive Automobile Liability insurance, a total of \$1,000,000 each occurrence and \$2,000,000 in aggregate; and (iv) Professional Errors and Omissions insurance with a per claim limit of not less than \$3,000,000. Certificates for policies of insurance will be provided to the PROJECT OWNER upon request.
- b. **WAIVER OF SUBROGATION.** Both Parties waive all rights against each other and their respective subconsultants, subcontractors, employees, and agents for any and all damages caused by fire or other causes of loss to the extent covered by insurance set forth herein, except such rights as they may to the proceeds of insurance. The waiver shall be effective as to a person or entity (a) even though that person or entity would otherwise have a duty of indemnification, contractual or other, (b) even though that person or entity did not pay the insurance premium directly or indirectly, or (c) whether or not the person or entity had an insurable interest in the damaged property.

## **14. INDEMNIFICATION.**

T&M agrees, subject to the provisions contained herein, to indemnify the Client, and the Client's officers, directors and employees, from and against any losses, damages and judgments arising from claims by third parties but only to the extent they are found to be caused solely by T&M's negligent acts, errors or omissions in the performance of professional services under this Agreement. T&M's obligation to indemnify and hold harmless the Client and its officers, directors, and employees does not include a duty to defend. This indemnification provision is subject to and limited by the provisions agreed to by the Client and T&M in the "Limitations of Liability" section of these Standard Terms and Conditions.

The Client agrees, subject to the provisions contained herein, to indemnify T&M, and T&M's officers, directors and employees, from and against any losses, damages and judgments caused by the Client's acts, errors or omissions and by any of Client's contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

## **15. LIMITATION OF LIABILITY.**

The Client and T&M agree that T&M's total liability for any and all losses, judgments, injuries, claims, expenses and damages arising out of, resulting from or in any way relating to this Agreement or T&M's Services, shall be limited to the total sum of \$50,000.00 or T&M's total fee for Services rendered on this Project, whichever is less. The Client hereby releases T&M from any liability above such amount. The Client waives such claims and causes including, but not limited to, negligence, professional errors or omissions, direct or indirect damages, delays, consequential damages, lost profits, strict liability, and breach of contract or breach of warranty.

## **16. GOVERNING LAW.**

The laws of the State within which the Project is located will govern the validity of this Agreement, its interpretation and performance.

## **17. INDEPENDENT CONTRACTOR.**

Unless otherwise provided in our proposal, T&M is and shall be an independent contractor in the performance of services under the Agreement, maintaining complete control of its employees and operations and neither T&M nor anyone employed by T&M shall be the agent, representative, employee or servant of the Client in the performance of services under this Agreement.

## **18. ASSIGNMENT.**

Neither T&M nor the Client shall assign or transfer their interest in the Agreement without the written consent of the other Party. However, nothing contained in this paragraph shall prevent T&M from employing such consultants or subconsultants as T&M may deem appropriate. The covenants and agreements contained herein shall apply to and be binding upon the Parties hereto and upon their respective assigns and successors.

## **19. WAIVER OF JURY TRIAL.**

The Client and T&M specifically waive their rights to a jury trial to resolve any and all claims, including, but not limited to, those sounding in contract, tort or statute, against the other arising out of or connected in any way to this Agreement and Project because the Parties hereto believe that the complex commercial and professional aspects of their dealings with one another make a jury determination neither desirable nor appropriate.

## **20. DISPUTE RESOLUTION.**

The Client and T&M agree that they shall submit any and all unsettled claims, counterclaims or other unresolved disputes to non-binding mediation, where each Party shall pay its own costs and fifty percent (50%) of the mediator's fees. This provision shall not apply to fee collection lawsuits. Any and all claims and / or causes of action between the Parties arising out of or relating to this Agreement may be brought by either Party within eight (8) years of substantial completion of the Project or termination of this Agreement, whichever is sooner.

## **21. SEVERABILITY.**

If any provision contained herein is held to be unenforceable by a court of law or equity, the Agreement shall be construed as if such provision did not exist and the unenforceability of such a provision shall not be held to render any other provision of the Agreement unenforceable.

## **22. SURVIVAL.**

The express representations, indemnification and limitations of liability contained in this Agreement will survive the completion of all services of T&M under this Agreement or the termination of this Agreement for any reason.

## **23. EXECUTION.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement. Execution and delivery of this Agreement may be evidenced by e-mail or facsimile transmission.

## **24. ENTIRE AGREEMENT.**

This Agreement (*consisting of (1) Proposal / Scope of Services and (2) Standard Terms & Conditions*) comprises the final and complete agreement between the Client and T&M. It supersedes all prior or contemporaneous communications or Agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each Party has read the document thoroughly, has had the opportunity to have questions explained by independent counsel and accepts the terms and conditions contained herein. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Client and T&M. In the event the Client provides any kind of work authorization whatsoever, verbal or written, for the commencement of T&M's Services or any Additional Services, or any portions thereof, prior to the Client's execution of this Agreement, these terms and conditions, including terms of payment herein, shall govern the Services performed by T&M pursuant to the Project and shall be binding upon the Parties. To the extent the Client provides its own agreement and that agreement is silent with respect to any term or condition expressed herein, these conditions shall prevail and shall be binding upon the Parties. In the event of a conflict between the Standard Terms and Conditions and the Proposal / Scope of Services, the Standard Terms and Conditions will control.