

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF NORTH BRUNSWICK  
AUTHORIZING A CHANGE IN SCOPE TO THE 2023 PROFESSIONAL SERVICE  
AGREEMENT WITH T&M ASSOCIATES FOR ENVIRONMENTAL ENGINEERING  
SERVICES ASSOCIATED WITH HVAC REMEDIATION AND RESTORATION WORK  
FOR THE MUNICIPAL COMPLEX BUILDING-AMENDING RESOLUTION 282-9.23**

**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**, the storm caused severe damage to municipal facilities, infrastructure, vehicles and equipment, including the Municipal Complex which had extensive damage to the sections of the Police Department, exterior façade and basement where the mechanical room is located; and

**WHEREAS**, following the event professionals were engaged by the Insurance Company and excess carrier to review the Municipal Complex and provide a report on findings and issue an opinion to the carrier that is used as a basis for determination of coverage; and

**WHEREAS**, in the months following the initial reports, municipal officials for the Township challenged the findings and requested areas not addressed within the reports to be evaluated that also appeared to have sustained damage, which led to supplemental engagements by the insurance carrier to amend the findings; and

**WHEREAS**, in October and November of 2022, municipal officials working with legal counsel and the Risk Manager raised concerns with the findings to members of the Garden State Joint Insurance Fund and requested the carriers cover costs associated with an independent study of the additional areas of concern, that would be engaged by the Township; and

**WHEREAS**, in December of 2022, pursuant to Resolution 346-12.22, an agreement with BDO USA, LLP was authorized for claims administration services and for assistance with the reporting, documentation and submission requirements; and

**WHEREAS**, in September of 2021, following Hurricane Ida, Hillmann had been engaged by the contractor under the Insurance Carrier to provide an independent report on air quality conditions, moisture mapping of the interior walls and an assessment of HVAC duct work to be remediated; and

**WHEREAS**, in February of 2023, pursuant to Resolution 91-2.23, while an additional review of the Municipal Complex was being conducted by professionals, Hillmann was engaged by the Township to provide a more comprehensive investigation of the environmental conditions; and

**WHEREAS**, based on findings detailed within the report issued by Hillmann on June 16, 2023, additional testing was recommended for the first, second and third floor ductwork, specifically sections connecting to the two basement *air handler units* that were located flooded during the event; and

**WHEREAS**, in June of 2023, pursuant to Resolution 212-6.23, Hillmann was engaged to provide additional testing of the ductwork; and

**WHEREAS**, based on findings in the Hillman preliminary report issued August 10, 2023, additional work will be required to assess the extent of damage and make a recommendation as to the scope of restoration necessary for remediation; and

**WHEREAS**, in December of 2022, pursuant to Resolution 350-12.22, T&M Associates was engaged to provide mechanical engineering services associated with the restoration of the heating, ventilation and air condition system at the Municipal Complex and has experience with the ductwork system; and

**WHEREAS**, at the request of the Township, T&M Associates has provided a proposal dated September 7, 2023, to provide industrial hygiene support to the Certified Industrial Hygienist under Hillmann, assist with assessing the extent of damage and make a recommendation as to the scope of work necessary for restoration of the ductwork at the Municipal Complex; and

**WHEREAS**, compensation for said services shall be based upon the 2023 rate schedule under the current contract with T&M Associates, to be paid upon submission of monthly invoices, in an amended amount not-to-exceed ~~\$10,000.00 Resolution 282-9.23~~ \$20,000.00; and

**WHEREAS**, work associated with the proposal submitted by T&M Associates shall be presented to the excess carrier for a determination of coverage with Municipal Officials seeking approved as an eligible expense under the claim; and

**WHEREAS**, in January of 2023, pursuant to Resolution 11-1.23, T&M Associates, (11 Tindall Road, Middletown, NJ 07748) was authorized to provide Environmental Engineering Services for calendar year 2023, 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 18<sup>th</sup> day of September 2023, 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 for Environmental services to assess the extent of damage and make a recommendation as to the scope of work necessary for restoration of the ductwork at the Municipal Complex, in an amended amount not-to-exceed ~~\$10,000.00~~ \$20,000.00; 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, hereby certify that \$20,000.00 is available for this purpose in Capital Ordinance 22-23 account C-04-55-C22-230-902 contingent upon reimbursement under the insurance claim. Contract PRO23068.

\_\_\_\_\_  
Cavel Gallimore  
Chief Financial Officer

\_\_\_\_\_  
Justine Progebin  
Business Administrator

\_\_\_\_\_  
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				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MEHTA				
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 September 18, 2023.

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



NBRUOH-16025

September 7, 2023

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

**RE: NORTH BRUNSWICK MUNICIPAL BUILDING  
INDUSTRIAL HYGIENE SUPPORT**

Dear Ms. Progebin:

We are pleased to submit this Proposal for Professional Industrial Hygiene 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 impacted ductwork throughout the building. Hillman Consulting, LLC provided a report dated August 10, 2023 summarizing a visual assessment of accessible HVAC ductwork and mold surface samples.

Hillmann identified heavy to moderate dust/mold in four (4) locations on duct interior insulation on the ground level, and moderate dust loading/accumulation in most other portions of the inspected ductwork. Hillmann recommended removal of heavily impacted insulation and cleaning of the remaining sections.

In a project review call with the Township and T&M on August 25, 2023, the Township requested that T&M provide industrial hygiene support regarding the mold abatement and cleaning of the ductwork. We understand the goal is to have the abatement and cleaning appropriate to the location and level of impact to the insulation, managing costs, while ultimately providing an HVAC adequately clean to provide acceptable indoor air quality in the building.

#### **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. Upon authorization, T&M Associates will provide the following services.

#### **SCOPE OF SERVICES**

##### **I. DUCT ASSESSMENT, MOLD ABATEMENT AND CLEANING**

1. With Hillmann, based on their revised duct assessment currently in progress, determine the extent of insulation removal and cleaning needed throughout the ductwork.



2. Review the workplan provided by ServPro and/or the duct cleaning contractor regarding mold abatement, duct cleaning, and clearance protocols.
3. Check on progress with mold abatement and cleaning and verify work is performed according to plan.
4. With Hillmann, conduct a final inspection and clearance sampling.
5. Provide industrial hygiene support as needed throughout the project.

Mr. Tom Burgess, CSP, CIH will be the industrial hygiene contact for this project. Mr. Burgess is a Certified Industrial Hygienist (CIH) experienced with the assessment and abatement of mold,

#### **SCHEDULE OF FEES**

All professional services described in Scope of Services will be compensated on a time and material basis in accordance with the previously agreed upon Schedule of Hourly Billing Rates. For budgeting purposes, we suggest a placeholder fee of \$20,000 be allotted for this project. .

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 732-865-9604 or [jmieth@tandmassociates.com](mailto:jmieth@tandmassociates.com).

Very truly yours,

T&M ASSOCIATES

A handwritten signature in blue ink that reads "James Mieth".

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JAMES MIETH  
GROUP MANAGER, MEP

A handwritten signature in blue ink that reads "Timothy 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.