

**Central West End SouthEast  
Special Business District**

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c/o Park Central Development Corporation  
4512 Manchester Avenue, Suite 100  
Saint Louis, Missouri 63110-2100  
O: 314.535.5311  
cwesoutheastssbd.com

**BOARD OF COMMISSIONERS MONTHLY MEETING  
TO BE HELD**

**February 16<sup>th</sup>, 2021 at 5:00 p.m.  
at 4512 Manchester Ave #100  
St. Louis, MO 63110**

***Please Note: Due to COVID-19, physical access to the Board of Commissioners meeting will be closed and replaced by Zoom Conference.***

***Please sign in at <https://zoom.us/j/96306121890> (Meeting ID: 963 0612 1890) or call by phone at 1-312-626-6799.***

**NOTICE & PROPOSED AGENDA**

**TAKE NOTICE** that on February 16<sup>th</sup>, 2021 at 5:00 p.m. via Zoom Conference, the Central West End Southeast Special Business District (the "District") will hold its public Monthly Meeting to consider and act upon the matters on the following tentative agenda and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.

1. Call to Order
2. Chair's Report & Announcement of the Order of Business
3. Public Comments & Questions (5-minute limit per speaker)
4. Approve Previous Meeting Minutes
5. Pedestrian Lighting
  - a. Attorney Questions
6. Public Safety
  - a. Neighborhood Security Initiative, Jim Whyte
  - b. The City's Finest, Rob Betts
7. Neighborhood Improvement
  - a. City of St. Louis, Ron Coleman
    - i. Dog Waste Stations
8. Project Reports
  - a. Financial Reports
  - b. MOPERM Insurance
  - c. Trailnet Parklet
9. Other Business

**This meeting is open to the public;** provided, however, that a portion of the meeting may be closed to discuss legal, real estate and/or personnel matters as provided by Sections 610.021(1), (2) and/or (3), RSMo.

Representatives of the news media may obtain copies of this notice, and persons with disabilities wishing to attend can contact: Park Central Development, 4512 Manchester #100, St. Louis, 63110, (314) 535-5311.

**DATE POSTED: 2/12/2021  
Time: 5:00 PM**

**• Central West End Southeast Special Business District •**

4512 Manchester #100 Saint Louis, MO 63110 (314) 535-5311

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Central West End Southeast Board of Commissioners Meeting  
January 19th, 2020 at 5:00pm  
**At 4512 Manchester, St. Louis, MO 63110**

**Board Members in Attendance:** Jeff Miner, Doug Anderson, Marshall Michener, Rick Kissel

**Board members not in Attendance:** Yusef Scoggin

**Others in attendance:** Alayna Graham (Park Central Development), Ron Coleman (City of St. Louis), Jim Whyte (NSI), Jeff Hood (Washington University), Frank Eppert (ABNA), Gerry Connolly (member of the public)

1. **Call to order**
  - a. M. Michener called the meeting to order at 5:04 pm.
2. **Chair's Report & Announcement of the Order of Business:** M. Michener asked for introductions.
3. **Public Comments:** No public comment.
4. **Approval of November Meeting Minutes**
  - a. J. Miner motioned to approve the December 15<sup>th</sup>, 2020 meeting minutes. Seconded by D. Anderson. All in favor—Motion approved.
5. **Public Safety**
  - a. **NSI Update-** J. Whyte presented the crime report.
    - i. The NSI met with a 4101 Laclede representative for a site visit to determine camera placement.
    - ii. The police are switching from UCR reporting to NIBRS reporting. This just means that comparison from previous years will not work, but the NIBRS system will be much better overall.
    - iii. Camera footage helped catch someone firing their gun on New Year's Eve.
    - iv. Most crimes committed over the year were committed by juveniles.
    - v. Car thieves target cars that are left running.
  - b. **TCF Update-** R. Betts was unavailable for comment.
6. **Neighborhood Stabilization-** R. Coleman presented project updates.
  - a. **Median Planters-** There should be a price for the necessary improvements by next meeting.
  - b. **Trailnet Parklet on Laclede-** The Maintenance Agreement has been sent to the City. Everything should be in place by the next meeting.
  - c. **4308 Laclede-** This has been sold and part of the agreement is a required building permit.
  - d. **Dog waste-** A. Graham presented the website for dog waste stations and gave examples of maintenance for other districts. The Commissioners discussed possible locations and possible condo association sponsors.
7. **Project Reports:**

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- a. **Financial Reports-** A. Graham presented the Financial reports. There were no questions
  - b. **MOPERM Insurance-** A. Graham presented the information from the insurance company.
    - i. The Commissioners would like to review and discuss at the next meeting.
  - c. **ABNA Contract-** A. Graham presented the notes from the SBD attorney and ABNA.
    - i. After reviewing, the Commissioners decided to send the marked-up version to ABNA for review.
8. **Other:** None.
9. **Meeting Adjourned:** The meeting was adjourned at 6:06pm.

DRAFT

**CWE Southeast SBD**  
**Balance Sheet**  
As of January 31, 2021

	Jan 31, 21
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1072-1 · Bill.com Clearing	5,015.63
<b>40900 · Cash</b>	
10150 · Reliance Bank checking #2...	33,103.94
10155 · Reliance MMkt #8362	284,776.88
10160 · GSB - CWESE 8810	250,332.23
<b>Total 40900 · Cash</b>	568,213.05
<b>Total Checking/Savings</b>	573,228.68
<b>Total Current Assets</b>	573,228.68
<b>TOTAL ASSETS</b>	<b>573,228.68</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
20000 · Accounts Payable	22,630.00
<b>Total Accounts Payable</b>	22,630.00
<b>Total Current Liabilities</b>	22,630.00
<b>Total Liabilities</b>	22,630.00
<b>Equity</b>	
Opening Bal Equity	250,000.01
Retained Earnings	328,049.30
Net Income	-27,450.63
<b>Total Equity</b>	550,598.68
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>573,228.68</b>

**CWE Southeast SBD**  
**Profit & Loss Budget Performance**  
January 2021

	<u>Jan 21</u>	<u>Budget</u>	<u>Annual Budget</u>
<b>Income</b>			
41000 · Tax Revenue	0.00	0.00	560,000.00
42800 · Interest Income	175.66		
<b>Total Income</b>	<u>175.66</u>	<u>0.00</u>	<u>560,000.00</u>
<b>Gross Profit</b>	175.66	0.00	560,000.00
<b>Expense</b>			
<b>61000 · Administration</b>			
61050 · Annual Award	0.00	0.00	50.00
61100 · Administration (PCDC)	4,935.00	4,935.00	19,740.00
61200 · Bank Charge	11.30	3.37	40.00
61300 · Insurance, Liability & D&O	0.00	0.00	1,300.00
61400 · Legal Fees	0.00	166.74	2,000.00
61600 · Postage and Shipping Expense	0.00	8.37	100.00
61800 · Web Site	49.99	0.00	100.00
<b>Total 61000 · Administration</b>	<u>4,996.29</u>	<u>5,113.48</u>	<u>23,330.00</u>
<b>68000 · Public Safety</b>			
68200 · CWE Neighborhood Safety Ini.	14,600.00	10,927.50	43,710.00
68400 · National Night Out	0.00	0.00	1,000.00
68500 · Patrol	0.00	11,666.74	140,000.00
68600 · Security Camera	8,030.00	1,338.37	16,060.00
68700 · Security Signs	0.00	116.74	1,400.00
68800 · Program/Project TBD	0.00	7,083.37	85,000.00
<b>68900 · Lighting</b>			
68905 · Maintenance	0.00	1,250.00	15,000.00
68900 · Lighting - Other	0.00	0.00	234,000.00
<b>Total 68900 · Lighting</b>	<u>0.00</u>	<u>1,250.00</u>	<u>249,000.00</u>
<b>Total 68000 · Public Safety</b>	<u>22,630.00</u>	<u>32,382.72</u>	<u>536,170.00</u>
<b>Total Expense</b>	<u>27,626.29</u>	<u>37,496.20</u>	<u>559,500.00</u>
<b>Net Income</b>	<u><u>-27,450.63</u></u>	<u><u>-37,496.20</u></u>	<u><u>500.00</u></u>

# CWE Southeast SBD Transaction List by Vendor January 2021

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Memo</u>	<u>Amount</u>
<b>CWE Neighborhood Security Initiative..</b>				
Bill	01/12/2021	3245	Inv 3245 Camera Contribution	-8,030.00
Bill	01/12/2021	3232	Inv 3232 1st Qtr Contribution	-14,600.00
<b>GoDaddy</b>				
Check	01/12/2021	DD	Update Word Press	-49.99
<b>Park Central Development Corporation</b>				
Bill	01/13/2021	202801536	Reimburse for 1099 Efiling	-11.30
Bill	01/15/2021	2021-01-15	Recurring Bill PCD contract with CWE SE SBD for 2021-2023. Qtrly pmt of \$4,935	-4,935.00
<b>Total bills paid in January 2021</b>				<b>-27,626.29</b>

<http://www.abnacorp.com>

4140 4140 Lindell Blvd  
St St. Louis, MO 63108  
Phone: (314)-454-0222  
Fax: (314)-454-1235  
<http://www.abnacorp.com>

**December 16, 2020**

Ms. Alayna Graham  
Central West End Southeast Special Business  
District c/o Park Central Development Corporation  
4512 Manchester Avenue, Suite  
100 St. Louis, MO 63110

**SUBJECT: Pedestrian Street Lighting Design  
Laclede Avenue between Boyle and Taylor**

### **PROFESSIONAL SERVICE AGREEMENT**

This Agreement is entered into by ABNA Engineering, Inc. (hereinafter, "ABNA") and Central West End Southeast Special Business District (hereinafter, "SBD" or "Client").

ABNA ~~has been engaged to~~shall provide ~~certain~~the professional services. ~~Pursuant to these services, SBD desires ABNA to perform certain services and ABNA desires to perform such services for as set forth in this Agreement, including without limitation,~~ the Preparation of Plans, Specifications, and Construction Cost Estimates for Pedestrian Street Lighting on Laclede Avenue between Boyle and Taylor, all as more particularly described herein. Therefore, in consideration of the mutual promises, covenants, and representations contained herein the parties agree as follows:

### **SCOPE OF SERVICES**

ABNA shall work ~~as an extension of~~with SBD's staff to design and coordinate the construction of this project with the St. Louis Board of Public Service (hereinafter "BPS"). ~~It is understood that once~~Once design is complete ~~that and approved in writing by SBD,~~ ABNA will ~~turn over~~submit the Plans, Specifications, and Construction Cost Estimate to BPS for ~~them~~ABNA to bid and manage the construction of this project. (pursuant to a separate agreement).

More specifically, ABNA will:

1. Meet with SBD to review to the project goals, construction budget and schedule
2. Perform a site investigation to take measurements and photographs
3. Contact the City Lighting Department to coordinate improvements and power source location
4. Perform a topographic survey as necessary to establish existing conditions and the location of existing utilities
5. Acquire location of street right-of-way from City records
6. Prepare Preliminary Plans to show the location of existing and proposed lighting
7. Submit plans to all utility companies having facilities within the project limits if required
8. Submit plans to BPS and meet with City staff as necessary to discuss revisions
9. Prepare Construction Documents incorporating comments from BPS
10. Be available during bidding to answer bidder's questions
11. Be available during construction to review contractor submittals and answer contractor's Requests for Information (RFI)
12. Make periodic site visits to observe the Contractor's progress and quality of work if requested by BPS

### **PERIOD OF PERFORMANCE**

ABNA anticipates work will start 5-business days after receipt of notice to proceed. ABNA shall deliver Preliminary Plans will be ready for submittal 20 days thereafter. Construction Documents will be ready for to SBD 20 days thereafter. ABNA will prepare draft Construction Documents and deliver such draft documents to SBD and BPS within 10 days after submission of the Preliminary Plans, so that the parties have an opportunity

to provide comments to and agree on the final form of Construction Documents for final submittal 20-days after receipt of Preliminary Plan ~~review comments and approval by SBD and BPS.~~

**COMPENSATION**

For all work described herein, SBD shall pay ABNA a Lump Sum amount of **\$36,133**. Invoices will be submitted monthly based on percent completed in the previous month. [Note to SBD: Are you comfortable with paying monthly based on a percentage completion calculation? Is it understood how such "completion" is determined? It would be helpful to clarify what this means and how it is to be calculated.]

**CHANGES**

The client may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase, or decrease, in ABNA's cost of, or time required for performance of any services under this contract, an equitable adjustment shall be made as agreed upon in advance by the parties, and the contract shall be modified in writing accordingly. No services for which an additional cost or fee will be charged by ABNA shall be furnished without the prior authorization of the client.

**PROJECT CONTACT**

SBD's contact shall be Ms. Alayna Graham and she can be reached at 314-535-5311 or email: Alayna@pcd-stl.org.

ABNA's contact shall be Mr. Franklin P. Eppert PE who will be our Project Manager and he can be reached at 314-454-0222 ext. 1148 or email fepperet@abnacorp.com.

**ACCEPTANCE BY CONTRACTING PARTIES**

Signing of this Agreement indicated understanding and acceptance of the attached terms and conditions herein. This executed agreement will serve as authorization to proceed. Please execute and return one fully executed copy to ABNA either by mail or electronically as a PDF file.

**ABNA Engineering, Inc.**

**Central West End Southeast Special Business District**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: **Abe Adewale PE**

Name: \_\_\_\_\_

Title: **Principal**

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## TERMS AND CONDITIONS

To assure an understanding of matters related to our mutual responsibilities, these terms and conditions for professional services are made a part of ~~this agreement for our services~~ the Professional Services Agreement between ABNA Engineering, Inc. (ABNA) and Central West End Southeast Special Business District (SBD or Client) dated \_\_\_\_\_, 202\_\_\_\_\_.

This agreement may be amended in writing providing both the Client and ABNA Engineering Inc. (ABNA) agree to such modifications. This contract constitutes the entire agreement between the parties and no oral agreements, statements or representations are a part of this agreement.

### COMPENSATION FOR SERVICES

The basis for compensation will be as identified in the agreement. All items not-covered in this agreement and requested by the Client will be performed at an agreed upon fee.

When "Lump Sum" Fee is utilized, it shall include all labor incurred by ABNA and shall not exceed the fixed payment amount without prior authorization of the Client.

All expenses and/or outside services will be billed ~~at direct cost~~ the responsibility of ABNA unless specifically otherwise provided in the Agreement.

### INVOICE AND PAYMENT

ABNA may submit monthly statements for services and expenses based upon the proportion of the actual work completed at the time of billing. Unless provided for otherwise, payments for services will be due within 30 days of receipt by Client of such invoice.

If the Client fails to make any payment due ABNA for services and expenses within the period specified, a service charge of ~~1 1/2%~~ per month will be added to the Client's account. This is an annual rate of ~~18%~~ 12%. If Client fails to fully and timely make any payment due to ABNA, ABNA may, without any liability or prior notice to Client, suspend all work under this contract until such payment is made, with interest as provided herein.

The Client shall pay the cost of the employees of ABNA engaged in connection with collection of any delinquent amounts at the rates specified in ABNA's current rate schedule for the time spent.

If legal or collection services are employed to collect any outstanding bills, any expenses and distribution, including reasonable attorneys' fees and court cost shall be paid by Client.

### LIMITATION OF LIABILITY

~~The Client agrees to limit ABNA's liability to the Client and to all construction Contractors and Subcontractors where applicable, on this work, for damages to them, due to ABNA's negligent acts, errors or omissions, such that the total aggregate liability of ABNA and to all those named shall not exceed the total project fee paid to ABNA.~~

~~Except with respect to a party's indemnification obligations hereunder or a party's gross negligence or willful misconduct, in no event shall either ABNA or Client be liable for any indirect, special or consequential loss or damage of any type whatsoever arising out of the performance of the work on this project including, but not limited to, loss of use, loss of income, or business interruption, whether caused by the negligence of ABNA such party, or otherwise, and Client shall fully indemnify and hold ABNA harmless from any such damages or liability.~~

~~By executing this agreement, the Client assumes full liability for any errors or negligence contained in any documentation or information they furnish.~~

### CERTIFICATE OF MERIT

~~In any action, whether it is in Tort, Contract, or Contractor, or otherwise in which the client, owner, contractor or any of their subcontractors, sub-subcontractors agents and employees seek damages for personal injuries, property damage, lost profits or expectancies, business interruptions, death or other monetary loss by reason of alleged professional malpractice, negligence or breach of contract by ABNA, the plaintiff's attorney or the Plaintiff, if the Plaintiff is proceeding pro se, shall, before filing suit in any competent Court or arbitration forum, submit to ABNA an Affidavit declaring that the affiant has consulted and reviewed the facts of the case with an independent architect or engineer who the affiant reasonably believes:~~

- ~~(i) is knowledgeable of the relative issues involved in the particular action;~~
- ~~(ii) practices or has practiced within the last ten years or teaches or has taught within the last ten years in the same area of engineering that is at issue in the particular action; and~~
- ~~(iii) is qualified by experience or demonstrated competence in the subject of the case; that the reviewing architect or engineer has determined in a written report, after a review of relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of such action; and that the affiant has concluded on the basis of the reviewing architect or engineer's review and consultation that there is a reasonable and meritorious cause of filing of such action.~~

~~A copy of the written report, clearly identifying the Plaintiff and the reasons for the reviewing architect or engineer's determination that a reasonable and meritorious cause for the filing of the action exists, must be attached to the Affidavit, but information which would identify the reviewing party may be deleted from the copy attached to the Affidavit.~~

~~If an Affidavit complying with this section is not submitted to ABNA before suit is filed, such suit shall be subject to dismissal by ABNA, without prejudice, with costs and attorney's fees related to the dismissal to be paid by the Plaintiff in favor of ABNA.~~

### REUSE OF DOCUMENTS

All documents including drawings and specifications furnished by ABNA pursuant to this Agreement are instruments of service and shall be the property of the Client. They are not intended or represented to be suitable for reuse by Client or others on extensions of this work, or on any other work. Any reuse without specific written consent or adaptation by ABNA will be at Client's sole risk, and without liability to ABNA. The Client shall indemnify and hold harmless ABNA from all claims, damages, losses and expenses including attorney's fees arising out of unauthorized reuse. Any such reuse will entitle ABNA to further compensation at rates to be agreed upon by Client and ABNA.

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

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 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. However, if ABNA's electronic files are delivered to the Client for Client's delivery without modification to Owner, the 60 day acceptance period for ABNA's files shall not begin until said files have been delivered to Owner. Any errors detected within the 60 day acceptance period will be corrected by the party delivering the electronic files. ABNA shall not be responsible to maintain documents stored in electronic media format after acceptance by Client.

If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

When transferring documents in electronic media format, neither ABNA nor Client make 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 ABNA or the Client, respectively, at the completion of This Part of the Project.

The Client and Owner may make and retain copies of Documents for information and reference in connection with the use and occupancy of This Part of the Project by Owner or Client's related design services. Such Documents are not intended or represented to be suitable for re-use by Client, Client's consultants, Owner,

or others on extensions of This Part of the Project or on any other project. Any such re-use or modification without written verification or adaptation by ABNA as appropriate for the specific purpose intended will be at the re-user's sole risk and without liability or legal exposure to ABNA or ANBA's consultants. The Client shall indemnify and hold harmless ABNA and ABNA's Consultants from all damages, losses and expenses, including attorneys' fee arising out of or resulting therefrom.

Any verification or adaptation of the Documents for extensions of This Part of the Project or for any other project will entitle ABNA to further compensation at rates to be agreed upon by the Client and ABNA.

### RIGHT OF ENTRY

~~With at least 48 hours advanced notice by ABNA, the Client will provide right of entry for our staff, subcontractors, and all necessary equipment to complete the work. ABNA will take all reasonable precautions to minimize damage to the property. It is understood by the Client that in the normal course of work some damage may occur, the correction of which is not part of this agreement, and hereby agrees to remediate any and all damage caused by ABNA's or such staff or subcontractors' entry onto the property, and ABNA hereby indemnifies Client for any and all losses, claims, damages, suits, actions, or expenses resulting from such entry onto the property.~~

### UTILITIES AND BURIED STRUCTURES

In the prosecution of our work, ABNA will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. ~~Client agrees to hold ABNA harmless for any damages to subterranean structures and utilities.~~

### GOVERNING LAWS

The validity or construction of this Agreement, as well as the rights and duties of the parties herein, shall be governed by the laws of the State of Missouri.

### DISPUTES

If litigation occurs in connection with this agreement, ~~and ABNA the party that~~ the party that prevails in such litigation ~~Client shall pay~~ shall be entitled to payment by the non-prevailing party for reimbursement of all costs incurred by ABNA the prevailing party, including staff time, court costs, attorney's fees and other expenses related to the litigation.

### STANDARD OF CARE

~~Services performed by ABNA will be conducted with the level of care and skill ordinarily exercised by members of the professions currently practicing under similar conditions. No other warranty, express or implied, is made.~~

### REPRESENTATIONS AND WARRANTIES

~~ABNA will employ its best efforts in the performance of this Agreement, and the employment of such efforts shall be consistent with the highest professional and technical standards and practices currently existing in the industry with respect to such services.~~

~~The services provided by ABNA under this Agreement will not infringe any United States or foreign patent, trademark, copyright, trade secret, or other proprietary right of a third party.~~

~~ABNA has the staff, skill and authority to perform the services and other obligations under this Agreement.~~

~~ABNA has obtained all licenses and permits required to observe and perform the terms, covenants, conditions and other provisions to be observed or performed by ABNA under this Agreement. ABNA has obtained all necessary third party consents and will timely make all payments to third parties that may be required to perform the services.~~

~~ABNA shall be solely responsible for all professional quality and technical accuracy and completeness of the services to be provided by ABNA under this Agreement.~~

~~The execution, delivery, and performance by ABNA of and under this Agreement will comply with all applicable federal, state and local laws, codes, ordinances, regulations, and rules, as well as all agreements and contractual obligations, and will not contravene any such law, code, ordinance, regulation or rule applicable to or binding on ABNA, or result in a breach of, or constitute a default under, or contravene any provisions of, any agreement or contractual obligation to which ABNA is a party or by which ABNA is bound, including, without limitation, any organizational document.~~

~~There are no pending or, to the best knowledge of ABNA, threatened claims, investigations, suits or proceedings against it or affecting it or its properties, that, if determined adversely, would adversely affect the ability of ABNA to perform its obligations under this Agreement.~~

### RENOVATION/REHABILITATION OF EXISTING STRUCTURES

Where the work involves remodeling and/or rehabilitation of an existing structure, Client agrees that certain assumptions must be made regarding existing conditions and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the structure. ~~Client agrees that, except for negligence on the part of ABNA, Client will hold harmless, indemnify and defend ABNA from and against any and all claims arising out of the professional services provided under this Agreement.~~

### ASBESTOS AND HAZARDOUS WASTES

Where the SCOPE OF SERVICES includes asbestos abatement and/or hazardous waste/remediation, Client agrees that the handling or removal of asbestos, asbestos products, and hazardous wastes involves certain health risks which require specific safety measures. ABNA will be responsible for safety and safety measures of ABNA employees only. The Client is responsible for his own negligence and safety measures for the protection of the Client's employees, contractors, subcontractors and the general public. ~~Client agrees that, except for claims and damages arising from negligent acts, errors or omissions of ABNA, Client will hold harmless, defend and indemnify ABNA from all claims, suits, expenses or damages arising from or alleged to arise from exposure to, contact with or inhalation of asbestos, asbestos fibers, or any other hazardous or toxic substances, wastes or materials as so designated by any federal, state or local governmental entity or agency.~~

When the SCOPE OF WORK does not include asbestos and/or hazardous wastes and if, during the performance of work, the presence of hazardous or toxic materials or substances, which are not being properly or safely handled or disposed of, is discovered or suspected by ABNA, ABNA shall be permitted to immediately cease all work on the project which requires contact with or exposure to such hazardous or toxic materials, until Client has made arrangements satisfactory to ABNA for the removal, disposal or handling of same.

Nothing in this agreement shall impose any responsibility or liability on ABNA for claims, lawsuits, expenses or damages arising from, or in any manner related to, the exposure to, or the handling, manufacture or disposal of asbestos, asbestos products, or any other hazardous waste or toxic substance of any kind, as so designated by federal, state or local governmental entities or agencies.

### CONSTRUCTION PHASE

~~ABNA shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work.~~

## INSURANCE

~~ABNA represents and warrants that its employees are protected by workers compensation insurance and that ABNA has such coverage under public liability and property damage insurance policies which it believes to be adequate shall, during the Term of this Agreement, maintain in force the below-discussed insurance coverage at its own cost and expense. Certificates for all such policies of insurance shall be provided to Client, upon request in writing. Within the limits and conditions of such insurance, ABNA agrees to indemnify and save the Client harmless from and against any loss, damage or liability asserted by third parties arising from any negligent acts by ABNA employees, except as otherwise limited by this contract. ABNA shall not, in any way, be responsible or liable for any loss, damage or liability beyond the amounts, limits and conditions of such insurance coverage. ABNA shall not be responsible for any loss, damage or liability arising from any negligent acts by Client, its agents, staff or other consultants.~~

~~Commercial General Liability ("CGL") insurance for property loss or damage and personal or bodily injury or death of any person with a combined single limit of \$1,000,000 per occurrence, and aggregate coverage of \$2,000,000.~~

~~Workers compensation ("WC") insurance for the payment of claims for bodily injuries, including death or disease sustained by employees in the amount of statutory limits under applicable law.~~

~~Automobile insurance for all motor vehicles used in connection with this Agreement with coverage limits not less than \$1,000,000 per accident.~~

~~To the extent the activities under this Agreement can be covered by professional liability insurance, then ABNA shall also maintain professional liability insurance covering all claims, damages, and liabilities for personal injury, death or damage to or loss of property arising from, connected with, or attributable to the acts or omissions of ABNA in the amount of \$2,000,000 per claim and in the aggregate.~~

~~All insurance policies required of ABNA under this Agreement: (a) must be primary and non-contributory, (b) must be issued by a reputable insurance company, and (c) must name Client as an additional insured party, except for the WC coverage.~~

## INDEMNIFICATION

~~To the fullest extent permitted by law, Client, each party to this Agreement (the "Indemnifying Party") shall indemnify and hold ABNA, the other party to this Agreement (the "Indemnified Party") harmless from and against any and all claims, damages, losses, suits, actions or expenses, including, but not limited to, attorney's fees, in connection with the project, provided that such claims, damages, suits, losses or expenses are attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (including loss of use resulting therefrom), to the extent caused in whole or in part by negligent errors, acts or omissions of Client, anyone acting directly or indirectly for Client, or anyone for whose acts Client may be liable, regardless of whether or not such claim, damage, suit, action, loss or expense is caused in part by ABNA caused by or arising out of: (a) the negligence or willful misconduct of the Indemnifying Party, its subcontractors, and/or any of their respective employees or agents in connection with this Agreement, (b) any actual alleged violation by the Indemnifying Party, its agents, employees or subcontractors, of any statute, ordinance, rule or regulation, or (c) any misrepresentation, breach of warranty, or breach or non-fulfillment of any obligation or agreement made by the Indemnifying Party under this Agreement. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.~~

~~It is agreed that General Contractor is solely responsible for jobsite safety, and that this intent shall be made evident in the Client's Agreement with General Contractor. The Client also agrees to list the General Contractor's general liability insurance policy as being primary, and ABNA shall be made as additional insured under the General Contractor's general liability insurance policy. ABNA shall also be named as an additional insured, with the Client in the contract with the General Contractor, from liability arising from acts of negligence or omissions by the General Contractor.~~

## TERMINATION

This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance to the terms hereof. Such termination shall be not be effective in that substantial failure has been remedied before expiration of the period in written notice. In the event of termination as a result of default by Client, Client will pay ABNA for services performed to the termination notice date plus reasonable termination expenses.

In the event of termination or suspension for more than three (3) months, prior to completion of all work covered by this agreement, ABNA may, in its sole discretion, complete such analysis and other work necessary to complete required files and may also complete a report on the services performed to the notice date of termination or suspension. The expenses of termination or suspension shall include all direct costs of completing such analyses, records and reports billable at ABNA's standard hourly rates. In the event any phase of the project is delayed for reasons beyond ABNA's control, unbilled work will be invoiced at the standard hourly rates for the actual number of hours expended.