

TERMS OF ACCEPTANCE: TRANSFER OF ELECTRONIC DATA FILES

OWNER/USER: Owner/User

ENGINEER: Welch, Comer & Associates, Inc.

SUBJECT: Transfer of Electronic Files

DATE: March 1, 2021

By opening or accessing in any manner the electronic files provided OWNER/USER thereby agrees to the following terms and conditions, and is hereby bound by such through the act of acceptance of electronic files. OWNER/USER further agrees that these same terms and conditions shall bind any future receipt of electronic files from ENGINEER.

Delivery of Electronic Files – Terms and Conditions

- A. In accepting and utilizing any drawings or other data on any form of electronic media generated and provided by ENGINEER, OWNER/USER does hereby covenant and agree that all such drawings and data are instruments of service of ENGINEER, who shall be deemed the author of the drawings and data, and shall retain all common law, statutory law and other rights, including copyrights.
- B. Copies of Documents that may be relied upon by OWNER/USER are limited to the printed copies (also known as hard copies) that are signed or sealed by ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER/USER are only for convenience of OWNER/USER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. When transferring documents in electronic media format, ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER.
- D. OWNER/USER may make and retain copies of Documents for information and reference in connection with use by OWNER/USER on the Project that was the subject of the Agreement between OWNER/USER and ENGINEER. Such Documents are not intended or represented to be suitable for use by OWNER/USER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER/USER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER/USER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.
- E. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- F. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER/USER and ENGINEER.
- G. OWNER/USER further agrees not to use these drawings and data, in whole or in part, for any purpose or project other than the Project which is the subject of the Agreement between OWNER/USER and ENGINEER. OWNER/USER agrees to waive all claims against ENGINEER resulting in any way from any unauthorized changes or reuse of the drawings and data for any other project by anyone other than ENGINEER.
- H. OWNER/USER agrees, to the fullest extent permitted by law, to indemnify and hold ENGINEER harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from any changes made by anyone other than ENGINEER or from any reuse of the drawings and data without the prior written consent of ENGINEER.
- I. Under no circumstances shall transfer of the drawings and other instruments of service on electronic media for use by OWNER/USER be deemed a sale by ENGINEER, and ENGINEER makes no warranties, either express or implied, of the merchantability and fitness for any particular purpose.
- J. All field data, field notes, calculations, survey control, estimates and other interim documents and data prepared by ENGINEER as instruments of service shall remain the property of ENGINEER.
- K. ENGINEER has scanned file(s) for virus. ENGINEER does not guarantee virus free, non-contaminated file(s). The receiver of the file(s) is fully responsible for interception and disabling viruses, if any, that may be advertently transmitted, and shall hold ENGINEER harmless from and against all associated claims.