# **AUGUST 2014**

AUGUST August 20 Monthly Business Meeting Syberg's on Dorsett

August 27 STAR Aerial Lift Training

Rental Supply, Inc.

**SEPTEMBER** 

September 6 ASA PAC Claybird Shoot Blackhawk Hunting Club

September 10 Contract Seminar Sandberg Phoenix & von Gontard

September 17 Monthly Business Meeting Soccer Park-Fenton

### **OCTOBER**

October 6 ASA Golf Tournament Whitmoor Country Club

October 14 Contract Seminar Sandberg Phoenix & von Gontard

October 15 Monthly Business Meeting Syberg's on Dorsett

**NOVEMBER** 

November 12 Contract Seminar Sandberg, Phoenix & von Gontard

November 19 Monthly Business Meeting Soccer Park-Fenton

visit <u>www.asamidwest.com</u> for a calendar of events. As we are in the midst of ASA membership renewals, it is appropriate for all of us to ask ourselves if our membership is giving us opportunities that are commensurate with the cost. I use the word opportunities purposely. If you have an opportunity yet do not capitalize on it, you must ask yourself why.

At the last monthly meeting I spoke of "my story" regarding ASA and what wonderful things my association with our organization has brought to my professional and personal life. I ended with a wish; that you all take the opportunities given to you and experience the benefits that are possible.

Through our organization, and the events and fellowship provided through it, I can promise you that you will realize value far greater than the costs.

Challenge yourself to ask what specifically you want to get out of it. Is it professional development? What's the next step? Is it more profitable work? Do you want to expand your reach and receive new business opportunities? Do you know how to use your resources to get it? Is it knowledge gained from interactions with your peers and those that have went through your struggles and succeeded?

Please consider challenging yourself, and those within your firm, to maximize what you get out of your involvement. Figure out exactly what you need, and ask your friends at ASA for advice on how to achieve the results you want.

A great place to start is with your board, who is here to serve you.

Reach out, and ask for help. We are all here to help you.

This is a fantastic time to recruit a friend or firm that you respect to join our association and go through the process together.

We have many, many unique and outstanding opportunities planned in the upcoming months. The August 20th meeting is a prime example. Those that attend will have a new level of understanding how the BJC project can impact their firm in a positive way. Those that attend will leave with an advantage over their competition. Those that attend will have had an opportunity to talk directly to the key players on this project represented by three of the largest construction firms in our region. Capitalize on the opportunity, its there for the taking.

It only gets better from here!

Sincerely, Robert Trask Parkway Construction Services President, ASA MWC Building. Community.



Syberg's on Dorsett 2430 Old Dorsett Road Maryland Heights, MO Directions: Exit HWY 270 at the Dorsett Exit. Go east on Dorsett, and a left onto Old Dorsett Road to Syberg's.

# Join a committee today.

*Membership* (Jennifer Tichacek/Jodi Waeltermann)

Programs (Tom Woodcock)

**Golf** (Jennifer Church)

Advocacy (Tim Thomas)

Awards Gala (Molly Spowal /Rick Swanson)

Construction Showcase & BBQ (Kevin Douglas/Rick Williams)

> **GC Expo** (Walter Bazan, Jr./Tim Thomas)

> > **Safety** (*Mike Sicking*)

Brand Development (Stephanie Woodcock)

**Contract Review** (Dick Stockenberg)

Most committees meet every 4 weeks, contact a committee chair today, to join a committee!!



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# AUGUST 2014 MONTHLY BUSINESS MEETING SYBERG'S ON DORSETT Wednesday, August 20, 2014

Please join us <u>Wednesday, August 20th</u> <u>at Syberg's on Dorsett at 5:30 p.m. for</u> <u>this special Speaker Series event.</u>

ASA welcomes the <u>ACW Alliance and BJC</u> <u>Central West End Campus Expansion</u> <u>Project</u> representatives to our speaker series. How can you be part of this \$billion dollar project? Join us at the ASA monthly membership meeting and learn all the important details.

Who needs to attend the meeting? Subcontractor owners, managers, business development, estimators, safety directors, suppliers, vendors & service providers to the St. Louis Construction Industry.

For this special event cost is \$42 per member & \$65 for non member attendees. Registration includes networking, program, hosted bar and dinner. <u>No complimentary guests due to</u> <u>special programming this month.</u>

## <u>Register online-www.asamidwest.com</u> <u>by Friday, August 15th. SPACE IS</u> <u>LIMITED SO REGISTER EARLY!</u>

The following companies will be reviewed at BPI:

Musick Construction Plocher UMSL (owner) United Construction Wright Construction

### **BPI Topic: Confined Space Safety.**

Questions? Call the ASA office 314.845.0855.

# Grease the Payment Process by Avoiding Killer Contract Clauses

ASA & its Chapter Attorneys Sandberg Phoenix & von Gontard

Present a Series of Breakfast Seminars (7:30-10:00 a.m.)

- Sept 10 Scope Letters, Bid Qualifications, Contract Documents.
- Oct 14 Payment Clauses, Retainage, Final Payment
- Nov 12 Lien Rights & Lien Waivers
- Dec 9 Change Orders & Back Charges
- Jan 13 Damages, Releases & Waivers of Rights. Termination, Arbitration, Labor Clauses.

All session will be held at the offices of Sandberg, Phoenix & von Gontard-600 Washington Ave, 13th Fl. St. Louis, MO 63101-FREE PARKING & Continental Breakfast included.

### \$40 per session/\$160 series ASA Member \$60 per session/\$240 series Non Member

Visit www.asamidwest.com to register today.

If you register for the series and can not make all the sessions, you may substitute an attendee from your company for that session.

# BEWARE OF TOP 10+ KILLER CONTRACT CLAUSES FOR SUBS

### Richard A. Stockenberg ASA Chapter Attorney rstockenberg@sandbergphoenix.com

Most general contractors' proprietary subcontract forms are terribly one-sided containing onerous risk shifting clauses that should be avoided. Below is a somewhat subjective list of 10+ clauses which should be avoided:

> 1. QUALIFY BID. Some RFPs say that by bidding the job, you will be deemed to have accepted the general contractor's subcontract agreement if awarded the job. Such a clause, however, may be rendered ineffective by including appropriate language in your bid saying that your bid is conditioned upon using Consensus Doc750 or a mutually agreeable subcontract form.

2. PAY IF PAID. Avoid the dreaded "Pay-if-Paid" clause. This clause attempts to shift the risk of owner non-payment from the general contractor, where it belongs, to the subcontractor. Such clauses can be neutralized by appropriate modification.

**3. LIEN WAIVERS.** Lien waiver forms, frequently incorporated into the subcontract agreement, should be worded in such a way that the subcontractor is waiving lien rights only "to the extent of the payment received." Many forms require the subcontractor to waive lien rights through a certain date which typically is months after the period covered by the payment. Lien waivers for progress payments should be tied to the amount received, not the date the waiver is signed.

4. **DELAY DAMAGES.** No damage for delay clauses should be modified so that if you are wrongfully delayed, your remedy is to recover monetary losses, not simply be allowed a time extension. Hold out for money and time, not just time.

5. CHANGE ORDERS. Change order clauses should provide one or more procedures for quantifying payment, e.g., lump sum, unit price, or time and material. You should not be forced to do extra work without there being an agreement on compensation.

6. **INDEMNIFICATION.** Broad form indemnification clauses should not require you to indemnify a general contractor (or anyone else) for their own mistakes. The duty to indemnify should be limited to indemnifying another person for damages that the other person sustains as a result of your negligence, not their own.

#### 7. INCORPORATION BY

**REFERENCE.** Some incorporation by reference clauses will require the subcontractor to be bound to the general contractor in the same way that the general contractor is bound to the owner. This clause should be made mutual by including a provision giving the subcontractor the same rights and remedies against the general contractor as the general contractor has against the owner..

8. STOP WORK. You should not be required to continue work if you are not being paid. Avoid clauses saying you must continue working without payment. Ideally, you should include a clause providing a procedure for giving notice to stop work if payments are not made according to the contract terms. Upon resumption of work, you should be entitled to recover costs for delay and remobilization.

**9. OVER WITHHOLDING.** Beware of waivers or releases requiring you to waive your right to collect amounts in dispute in order to collect undisputed amounts.

10. DISPUTE RESOLUTION. Dispute resolution clauses should be mutual and should not allow the general contractor to determine at a later date whether disputes will be resolved by arbitration or litigation. Also, watch out for clauses requiring you to litigate/arbitrate on the home turf of an out-of-town general contractor. Avoid clauses requiring arbitration to be administered by the American Arbitration Association – they are far too expensive, inefficient and sometimes arbitrary. There is nothing wrong with their arbitrators, just their administration.

10+ **CROSS CONTRACTUAL SETOFF.** The general contractor should not be allowed to withhold money from what is owed to you for job "A" because the general contractor claims you owe the general contractor money on job "B." Each job should stand on its own.

10+ **IMPACT COSTS.** Beware of language in change order forms where you waive cumulative impact costs and the right to a time extension in exchange for payment of a single change order...

10+ **LABOR.** Avoid clauses where you agree to be the guarantor of labor peace.

One of the best practices to reduce onerous contractual risk shifting clauses is to use a specially prepared subcontractor friendly addendum. It is available to members free of charge. These topics and others will be covered in an ASA five-part seminar series running between September and January. **asamidwest.com to register for the 5 part seminar series.** 

## **DUES RENEWAL**

# RENEW YOUR ASA MEMBERSHIP TODAY

Time is running out to renew your ASA membership \$845 dues for the 2014-15 year due date was July 1st.

# Questions regarding your membership status?

Contact Susan Winkelmann 314.845.0855 susan@asamidwest.com



FOR SALE Half Season St. Louis Blues Tickets

GREAT SEATS Section 103 (center ice) Row S Seats 14 & 15 (end of row) \$5,950

Contact Tom McDonnell 314.581.1681



## to the companies that attended the July Monthly Meeting:

Air Land & Sea Express Air Masters/Gateway Mech. AME Constructors American Steel Fabrication Aschinger Electric Bazan Painting Co Branham Electric Briner Electric C & R Mechanical Co. CeeKay Supply CMIT Solutions Corrigan Company Duct Systems Ductz of West St Louis Dynamic Controls

ELCO Chevrolet Cadillac Enterprise Bank & Trust Fabick Rents Ferguson Enterprises Firestone Foundation Supportworks by Woods Freeman Contracting Frost Supply George McDonnell & Sons Grant Contracting Hayden Wrecking ideas4promos Irwin Products J.D. Kutter Insurance Assoc

K & K Supply Lizmark Marketeer, Inc. McCarthy, Leonard & Kaemmerer Michele K Smith CPA Midwest Elevator Montgomery Bank Niehaus Construction Svcs Nu Way Pac-Van, Inc. Parkway Construction Svcs PS Rapp Sewer & Plumbing RM Supply RubinBrown LLP Sachs Electric Co. Safety International Sandberg, Phoenix & Von Gontard Schaeffer Electric Seal the Deal Sikich LLP St Louis CNR Stone Carlie T. J. Wies Contracting UHY LLP United Rentals Wise Safety & Environmental



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Visit asamidwest.com to register. susan@asamidwest.com or (314) 845-0855 for additional details.	11901
susan@asamidwest.com or (314) 845-0855 for additional details.	*000*

	Upcoming ASA Midwest Council Meetings & Events	
August 20	Monthly Membership Meeting Syberg's on Dorsett- <b>BJC CWE Expansion Project</b>	
August 27	STAR Lift Training Rental Supply, Inc.	
September 6	ASA PAC Claybird Shoot Blackhawk Hunting Club	
September 10	Contract Clause Seminar Sandberg, Phoenix & von Gontard	
September 17	Monthly Membership Meeting Soccer Park-Fenton	
October 6	ASA 27th Annual Golf Tournament Whitmoor Country Club	
October 14	Contract Clause Seminar Sandberg, Phoenix & von Gontard	
October 15	Monthly Membership Meeting Syberg's on Dorsett	
November 12	Contract Clause Seminar Sandberg, Phoenix & von Gontard	
November 19	Monthly Membership Meeting Soccer Park-Fenton	
December 9	Contract Clause Seminar Sandberg, Phoenix & von Gontard	
December 17	Casino Night Holiday Party Syberg's on Dorsett	
January 28	Meet the GC's Expo St Charles Convention Center	

# ASA MIDWEST PAC 12th ANNUAL CLAYBIRD TOURNAMENT



# Saturday, September 6th 2014 Registration 8:00 a.m./Tournament Start 9:00 a.m. Blackhawk Valley Hunting Club

\$100 Per Person/\$400 Four Person Team (does not include shells)

<u>Registration Includes:</u> 100 Sporting Clay Targets at 14 Stations Lunch Prizes/Door Prizes Gun Raffle Drinks Following Shoot

# All Proceeds to benefit the ASA Midwest PAC.

Sponsorships Available: Lunch Sponsorship \$1,000 (includes recognition, 4 team member registration, 4 man golf cart) Event Sponsorship \$750 (includes recognition and 4 team member registration) Station Sponsor \$100 (includes signage at station)

www.asamidwest.com to register or contact the ASA office for more information 314.845.0855 or susan@asamidwest.com



# ASA Midwest Council is on Facebook, Twitter & LinkedIn

The month of July was busy as it relates to politics in the State of Missouri. Big headlines the month of July were the record number of vetoes by the Governor this year as it related both to policy and budget items. Political campaigns heated up in July with the primary elections just around the corner.

The deadline for the Governor to sign the bills making up the state's fiscal year 2015 budget prior is June 30th. The state's fiscal year 2015 began on July 1. Due to drastically declining state revenues in 2014 and legislation passed in the final days of session that threaten to shrink the state's 2015 budget, the Governor made an unprecedented number of line item budget vetoes and withholds. When the Governor signed the budget the last week of June he cut the budget by almost \$800 million dollars. The Republican led legislature must now review the current state of Missouri's budget and decide whether they agree with the Governor's budget shortfall numbers or will try to override some of the Governor's line item vetoes during the State's veto session on September 10, 2014.

The Governor vetoed a record number of policy bills this year as well. The Governor had to decide by July 14 whether he would sign, veto or simply allow a bill to become law without his signature. The Governor vetoed 33 bills. Included in those bills were bills dealing with a 72 hour abortion waiting period, ten bills dealing with tax breaks, and a bill that would allow teachers to carry concealed weapons just to name a few. The General Assembly with a veto proof majority in the Senate and nearly a veto proof majority in the House must now decide what bills the Governor vetoed they will attempt to override. As with the budget line item vetoes, the General Assembly will make the decision what it will try to override in time for the September 10, 2014 veto session. Last year there were a record number of veto overrides, we are hearing this year could beat last year.

August 5 is the 2014 primary election. The primary will either decide who will be elected in certain seats or set the stage for the general election races in November. In addition, there are several important ballot measures to be decided. One of the ballot measures that has gained a lot of attention is Amendment 7. Amendment 7 asks voters to decide whether or not we should impose a <sup>3</sup>/<sub>4</sub> cent sales tax increase to fund Missouri's road and bridge projects. As you know and as has been widely reported, MoDOT is running short on money and if a funding source is not found, there will not be enough money to fund the many road and bridge projects that are necessary to safely sustain our state's infrastructure.

One primary race that is very contentious in the St. Louis area is the three-way primary to replace Senator Scott Rupp in Senate District 2 made up of part of St. Charles County. This three way Republican primary has pitted current incumbent State Representative Chuck Gatschenberger against two former state Representatives, Vickie Schnieder and Bob Onder. There is no Democrat running for this seat, so the winner of the primary on August 5 will be the new State Senator in District 2. I will give a full report in the next newsletter of the winners and losers in the August primary.

It was great seeing everyone at the last meeting. Please do not hesitate to contact me if you have any questions regarding the August primary, the general election in November or any other political question! Nikki Strong

# 2014 A BIG SUCCESS TICKETS FOR THE TROOPS



I want to personally thank everyone that donated to the ASA Tickets for the Troops campaign this year.

We can be very proud of the success of the campaign made possible by the collaboration of ASA, Masonry Contractors Association, SITE and a number of St. Louis general contractors. This is a great example of ASA's focus on Building. Community.

Tickets for the Troops started during Mike Fogarty Jr's presidency 6 years ago. I would have never imagined we would collect over \$107,000 in cardinal's tickets in 6 years.

Please visit asamidwest.com to see the great emails and pictures from our men and women in uniform that received tickets this year. This was only possible because of your generosity.

Thank you again,

Tom McDonnell George McDonnell & Sons



Each month you will receive an update on the committees within ASA, to keep you informed. on current happenings at the committee level. Below are this month's committee reports.

#### **MEMBERSHIP**

Dues Renewal season is upon us – so make sure to lock in your ASA membership for 2014-2015 and continue reaping the benefits of membership! We have some very exciting things scheduled for our members this year, so stay tuned for more details!

All the best,

Jennifer Tichacek, Membership Chairman

Ferguson Enterprises

#### **SAFETY**

The Safety Committee will be offering Aerial Lift Training & Scissor Lift Training August 27, 2014 Watch your email for details. ASA Star Member Companies may send two employees free of charge, as part of their STAR Dues! We are looking for more members. Please consider sending someone from your staff to join our committee. Remember Safety Pays! For additional info contact Mike Sicking, Safety International, 314-486-3141

#### **PROGRAMS**

Dues Renewal season is upon us – so make sure to lock The program committee is busy planning programming in your ASA membership for 2014-2015 and continue for the 2014-15 year, which began July 1, 2014.

If you have suggestions or comments regarding ASA Programming, feel free to contact Tom Woodcock, Seal the Deal.

#### **CONTRACT REVIEW**

The Contract Review Committee has completed its review of the subcontract of Keystone Construction Company.

Next up for review is the subcontract of Green Street Construction LLC. For copies of subcontracts that have been reviewed, contact Susan Winkelmann.

If you are successful in achieving any revisions suggested by the committee we ask that you report such changes to the committee.

A 5 part seminar series on Killer Contract Clauses is planned beginning in Sept 9th and running through January 13th. asamidwest.com to register. Dick Stockenberg, Sandberg, Phoenix & von Gontard P.C.



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# **ASA's Excellence in Ethics Award Application Process Can Help Your Firm Start an Ethics Program**

If your firm has implemented, or is developing, a corporate ethics code or training program, you may already Singh, Ph.D., an associate professor in International Busihave most of the materials you would need to apply for ness and the program leader of the Certificate in Corporate ASA's 2014 Excellence in Ethics Award. If your firm does Ethics & Compliance Management at Saint Louis Universinot yet have an ethics program, following the awards appli- ty, St. Louis, Mo. Dr. Singh also runs a consulting firm, cation process can help you start one! ASA's 2014 Excel- IntegTree, LLC, with his business partner, Thomas Bussen, lence in Ethics Award provides national recognition to sub- JD, MBA, providing ethics and compliance training and contractors that demonstrate the highest standards of integ- advisory services. For more information on ethics and comrity in the construction industry. Award winners are selected based on corporate ethics policies and procedures, construction industry practices, and general business practices.

The award is a great way to let your clients, employees, and others in your community know that your company is committed to professionalism and sound business practices — and including such a distinction in your bids can be a good way to help distinguish your firm from your competitors! ASA has developed a "Model Timeline for Preparing an Application for an ASA 2014 Excellence in Ethics Award," which assigns a completion date to each step in gathering or producing the needed documentation to complete the application, including: finalizing policies, scheduling ethics training, soliciting recommendation letters, arranging for payment of the application fee, and reviewing and submitting the application. Some examples of materials that must be included with your application are: an internal financial controls policy, a non-discrimination and/or anti-harassment policy, a process for timely and fair resolution of customer complaints, and a recommendation letter from a competitor, a customer, and a supplier.



**Building.** Community.

Awards applications will be evaluated by Nitish pliance services, email Dr. Singh. Dr. Singh also serves as co-chair for the Brand2Global: Global Branding & Digital Medial Annual Conference.

Read ASA's 2014 Excellence in Ethics Awards brochure to learn about the awards judging criteria and submission requirements. ASA also provides a resource guide to help firms prepare and submit applications. This guide contains model documents, such as sample recommendation letter requests and model policies on topics ranging from competition and conflicts of interest to internal procedures and whistle blowing. The application deadline is Dec. 12, 2014. ASA will present the 2014 Excellence in Ethics Awards at its annual convention, SUBExcel 2015, which will take place March 26-29, 2015, in Seattle, Wash. Learn more about the ASA Excellence in Ethics Awards on the ASA Web site under "Education & Events."



### What do you know about OSHA's **Whistle Blower Protection Act?**

## Michael Sicking, Safety International

whistle blower protection act. OSHA has recently employee: established an advisory committee to make • Initiating a proceeding under, or for the recommendations on ways to strengthen the act and enforcement of, any of these statutes, or causing such enforce the intent of the regulation. I think the name a proceeding to be initiated; certainly is very self-exclamatory, but what exactly • are they enforcing and in what circumstances. I will attempt to extricate some of the intent and relay that or in any other action to carry out the purposes of to you in this article. The background is this;

OSH The Act prohibits employers discriminating against their employees for exercising employee's internal complaints to his or her their rights under the OSH Act. These rights include employer, and it is the Department of Labor's filing an OSHA complaint, participating in an position, as set forth in regulations, that employees inspection or talking to an inspector, seeking access who express safety or quality assurance concerns to employer exposure and injury records, and raising internally to their employers are protected under all of a safety or health complaint with the employer. If the whistleblower statutes administered by OSHA. workers have been retaliated or discriminated against Any employee who believes that he or she has been for exercising their rights, they must file a complaint discriminated or retaliated against in violation of any with OSHA within 30 days of the alleged adverse of the statutes listed above may file a complaint with action.

If you as the employer want to stay out of trouble Act. with OSHA and also a possible civil litigation proceeding here is what you must avoid, whether There no doubt will be amendments to the policy that knowingly or unknowingly, ask yourself have I is already in place. It is your job as an employer to committed one of the following offenses?

- ✦ Blacklisting
- ✦ Demoting
- + Denying overtime or promotion
- ✦ Disciplining
- + Denial of benefits
- + Failure to hire or rehire
- ✤ Intimidation Firing or laying off
- ✦ Making threats
- + Reassignment affecting prospects for promotion
- ✦ Reducing pay or hours

There has been a lot of press recently in the OSHA There are certain activities protected by law that you and private industries circles lately about the OSHA as an employer must tolerate and not interfere with an

Testifying in any such proceeding;

Assisting or participating in any such proceeding these statutes; or complaining about a violation.

from Many of the statutes specifically protect an

OSHA. Complaints must be filed within 30 days after the occurrence of the alleged violation under the OSH

stay on top of these amendments to best protect the rights of your workers and the continued health of your business.

As always, if you have any questions please feel free to contact me at any time.

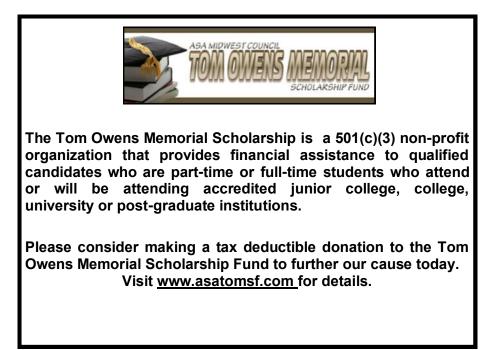
Stay Safe!

## Michael Sicking, Safety International, LLC

# INTERESTED IN SPONSORING AN UPCOMING MEETING? COST IS ONLY \$250 CONTACT SUSAN WINKELMANN FOR DETAILS!!

# Pirtek Fenton

Recruit a new member and earn a star for your ASA name badge.



>ponsorship Pater

Sponsorship opportunities are available in the ASA newsletter. Rates are very reasonable but are limited. Below are the rates. If interested, please call Susan at 314 845-0855.

- Website Rotating
- Website Static
- \$300/Year \$1,000/Year
- 1/4 Page Monthly
- 1/4 Page Quarterly \$125/Year
- 1/2 Page Monthly
- 1/2 Page Quarterly
- Business Card Monthly \$125/Year
- Business Card Quarterly \$70/Year
- Whole Page 1X
- Whole Page Quarterly
- Classified Ads
- \$300 Per Issue \$900/Year
- \$15 Per Issue

\$300/Year

\$500/Year

\$225/Year

# ASSOCIATION PARTNERSHIPS:

# Mason Contractors Assoc.(MCA)

Contact Pam Holway or David Gillick (314) 645-1966



www.masonrystlouis.com

American Society of Professional Estimators (ASPE) Contact Mindy Funk or Cyndi Walker (314) 596-7695 or (314) 781-1422 www.stlouis-aspe.org

## **ASA Meeting Sponsorship**

Highlight your company at an upcoming ASA Monthly Meeting

It is only \$250 to be a meeting sponsor.

# What do you get for \$250 ?

Full Color Sponsor featured on the 11x 17" placemat. Announcement at Meeting. Slide in Meeting Presentation. Recognition in Newsletter.

> Contact Susan Winkelmann susan@asamidwest.com

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