



## Public Works Service Operations

**DATE:** February 13, 2024

**FROM:** Steven Salwei, Director Public Works Services

**ITEM:** Approve Change Order 2 to Task Order 2 Greenfield Investigation with HDR Engineering for Solid Waste

**REQUEST:**

Approve Change Order 2 to Task Order 2 to the 2018 Agreement with HDR Engineering for Solid Waste operations.

**BACKGROUND INFORMATION:**

Change Order 2 to Task Order 2 Greenfield Investigation to the 2018 Agreement with HDR Engineering, Inc. is for an extension of time to continue evaluating potential greenfield sites for future landfill relocation or expansion, preliminary environmental reviews and negotiations with landowners. The new time period will run through December 31, 2024.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Change Order 2 to Task Order 2 Greenfield Investigation to the 2018 Agreement with HDR Engineering, Inc. for time extension to December 31, 2024.

**STAFF CONTACT INFORMATION:**

Steven Salwei, Director Public Works Services, 701-355-1705, [ssalwei@bismarcknd.gov](mailto:ssalwei@bismarcknd.gov)

**ATTACHMENTS:**

1. \_TaskOrder2\_BismarckSolidWasteMSA\_Greenfield
2. \_CO2\_Task Order 2 LF Greenfield - HDR Eng Inc exp 12.31.2024
3. \_TaskOrder2\_BismarckSolidWaste\_Greenfield\_Manhours
4. \_Amendment - 2021\_SolidWaste\_MSA\_Extend\_HDR



# Engineering Scope of Services for the City of Bismarck, North Dakota Greenfield Site Investigation

December, 2023

This Task Order pertains to an Agreement by and between City of Bismarck, (“OWNER”), and HDR Engineering, Inc. (“ENGINEER”), dated February 16, 2021, (“the Agreement”) and amended on \_\_\_\_\_, 2024. Engineer shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

**TASK ORDER NUMBER: 2**  
**PROJECT NAME: Greenfield Site Investigation**

## Project Description

The purpose of this scope is to describe the objectives, activities, deliverables, key assumptions, and approach that the ENGINEER will utilize in carrying out the services requested by the OWNER for the identification and evaluation of a potential greenfield site for future use as a sanitary landfill.

The OWNER has requested assistance in conducting research, including background data collection, field investigations, regulatory data, and office based site analysis to identify and evaluate a proposed site is capable of meeting North Dakota Department of Environmental Quality (NDDEQ) rules prescribed in North Dakota Administrative Code Chapters 33.1-20-04.1-01 and 33.1-20-06.1, and to prepare a draft site selection letter report regarding municipal solid waste landfills in OWNER’s service area. The Scope of Services described in Part 2 has been established by Task Series, which are described in detail in Part 2. The key Tasks are as follows:

Task 100 – Project Management

Task 200 – Right of Way Services

Task 300 – Location Restriction and Site Characterization Investigation

Task 400 – Summary of Findings



## SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:

This Scope of Services consists of a detailed breakdown of each task series and includes additional items associated with various elements of each task. These tasks were prepared based upon our meeting with OWNER and our understanding of the goals and objectives. For each major deliverable, the OWNER will receive a draft and final copy of all documents. Final copies will be furnished in electronic format.

### **TASK 100 – PROJECT MANAGEMENT**

Throughout the execution of the various tasks described in this Scope of Services, the ENGINEER will support the task specific activities by coordination of tasks and team members, meetings, communication, reporting, and quality controls. This task series has been established in recognition that these activities transcend the individual tasks, are required for effective project execution, may require flexibility in timing, extent and response to project needs, and cannot always be precisely predicted or assigned to an individual activity.

#### **Objective:**

Conduct communications between OWNER and ENGINEER; plan, organize, and monitor project team activities; attend meetings; and prepare and update project schedules. Provide support and assistance to OWNER in communicating the key attributes of the project to regulatory personnel.

#### **ENGINEER's Activities:**

- Overall Project Coordination, including, resource management and allocation based on project schedules and activities, and production coordination.
- Meetings including meetings and communications with subconsultants and electronic communications, telephone conversations, meetings and conferences with NDDEQ (as requested) and others as directed by the OWNER. The general types of meetings and associated the ENGINEER's activities anticipated are listed below.
- Quality Audits, to confirm compliance with scope and the project quality objectives.
- Initiation and closeout of project.
- Preparation and submittal of monthly invoices and project updates.

#### **Meetings/Travel:**

- Two (2) meetings in Bismarck with the OWNER attended by the ENGINEER's Project Manager for general project progress and review.



### **Task Deliverables:**

- Project schedule and schedule updates upon significant changes to original project schedule.
- Overall project documentation
- Meeting notes for key meetings

### **Key Understandings and Assumptions:**

- HDR's Project Manager will be responsible for coordinating management and production activities.
- All communications with regulatory agencies will be through OWNER, unless otherwise directed by OWNER.
- All activities covered by this scope will be completed throughout the duration of the project.

## **TASK 200 – RIGHT OF WAY SERVICES**

Identify, contact, and initiate negotiations with individual owners of land parcels of interest for potential landfill siting, while maintaining confidentiality of the OWNER. Investigate land suitability for transaction, research and obtain vested title ownership of potential lands, and identify prior-existing restrictions or easements that would eliminate it from landfill consideration.

### **Objective:**

To identify and initiate potential buy-sell ability with willing sellers of land parcels that make up a contiguous area of approximately 640 acres within an approximate 10 mile distance of the City of Bismarck's corporate boundaries.

### **ENGINEER's Activities:**

Contact landowners in OWNER-defined general locations that form part of a 640 contiguous land area and ascertain the potential for a willing buyer-seller arrangement while maintaining confidentiality of the buyer.

Upon finding potential willing sellers, begin initial negotiations to determine terms of sale.

### **Meetings/Travel:**

- ROW personnel are assumed to be remotely located from Bismarck, North Dakota, but within reasonable driving distance. In-person meetings with the OWNER and negotiation meetings will require expenses for driving travel. For the purposes of fee estimating, up to 10 dedicated trips are included in this proposal.



### **Deliverables:**

- Surface Owner Reports containing vested ownership detail and recorded encumbrances. Deliverables will be prepared and submitted under Task 400.

### **Key Understanding and Assumptions**

- Contacts and negotiations will include up to 12 separate parcels. Additional parcels will necessitate additional fee.
- ROW personnel are assumed to be remotely located from Bismarck, North Dakota, but within reasonable driving distance. In-person meetings with the OWNER and negotiation meetings will require expenses for driving travel.

## **TASK 300 – LOCATION RESTRICTION AND SITE CHARACTERIZATION INVESTIGATION**

Gather existing publicly available data for identification of a potential greenfield site by conducting a desk-top analysis utilizing GIS data and other available data to evaluate a site's suitability as a sanitary landfill. Site visits will be made by ENGINEER to evaluate and confirm certain parameters resulting from the desk-top analysis.

### **Objective:**

To evaluate up to two potential greenfield sites for siting criteria based on those criteria set forth by NDDEQ rules prescribed in North Dakota Administrative Code Chapters 33.1-20-04.1-01 and 33.1-20-06.1.

### **ENGINEER's Activities:**

It is anticipated to evaluate in the field and through research and data collection the following criteria:

- No solid waste management facility may be located in areas which result in impacts to human health or environmental resources or in an area which is unsuitable because of reasons of topography, geology, hydrology, or soils.
- Minimize, control, or prevent the movement of waste or waste constituents with geologic conditions and engineered improvements. Sites should be underlain by materials with low permeability to provide a barrier to contaminant migration.

The following geographic areas or conditions must be excluded in the consideration of the sites:

- Where the waste is disposed within an aquifer;
- Within a public water supply designated wellhead protection area;
- Within a one hundred-year floodplain;



- Where geologic or manmade features, including underground mines, may result in differential settlement and failure of a structure or other improvement on the facility;
  - On the edge of or within channels, ravines, or steep topography whose slope is unstable due to erosion or mass movement;
  - Within woody draws; or
  - In areas designated as critical habitats for endangered or threatened species of plant, fish, or wildlife.
- The following geographic areas or conditions may not be approved unless a demonstration indicates there are no reasonable alternatives:
    - Over or immediately adjacent to principal glacial drift aquifers identified by the state engineer;
    - Closer than one thousand feet to a down gradient drinking water supply well;
    - Closer than two hundred feet horizontally from the ordinary high water elevation of any surface water or wetland;
    - Within final cuts of surface mines; or
    - Closer than one thousand feet to any state or national park.
- No municipal waste landfill may be located within ten thousand feet of any airport runway currently used by turbojet aircraft or five thousand feet of any runway currently used by only piston-type aircraft.
  - A minimum horizontal separation of twenty-five feet must be maintained between solid waste management units and any aboveground or underground pipeline or transmission line.
  - Location and water quality of lakes, rivers, streams, springs, or wetlands within one mile of the site boundary based on available data;
  - Domestic and livestock wells within one mile of the site boundary. Information collected may include the location, water quality, depth to water, well depth, screened intervals, yields, and the aquifers tapped;
  - Site location in relation to the one hundred-year floodplain;
  - Depth to the thicknesses of the uppermost aquifers; and
  - Hydrologic properties of the uppermost aquifers beneath the proposed site including existing water quality, flow directions, flow rates, porosity, coefficient of storage, hydraulic conductivity, and potentiometric surface or water table.



### **Meetings/Travel:**

- No meetings are associated with this subtask.

### **Deliverables:**

- No deliverables for this task. Deliverables will be prepared and submitted under Task 400.

### **Key Understanding and Assumptions**

- Task 300 will commence in earnest upon indications of willing sellers resulting from Task 200. Prior to that, cursory desktop investigations will be performed to assure a reasonable expectation of a satisfactory site that meets siting requirements.
- All existing information shall be acquired from readily available data from the City of Bismarck and other online resources. The primary method of investigation includes review of available mapping with limited on-site confirmation.
- No detailed site investigations (geotechnical, environmental, cultural, etc.) will be performed in this Task Order.
- The OWNER will obtain permission from land owners to conduct site visits.
- Project schedule is subject to change based on the amount of time required to acquire data from third parties.
- A budget of \$1,500 has been allocated for the acquisition of files, if necessary.

## **TASK 400 – SUMMARY OF FINDINGS**

### **Objective:**

Assessment of two potential landfill sites utilizing information gathered in Task 300.

### **ENGINEER's Activities:**

- Utilizing information gathered in Task 300, determine the level of field confirmation necessary to qualify desktop information. It is anticipated to conduct a two-day site reconnaissance at each of the two potential sites with up to two personnel.
- Prepare a draft technical memorandum summarizing the key findings in Task 300, property maps, identification of potential site challenges and permitting obstacles, and determine next steps with implementation schedule for OWNER review.



- Attend meeting with OWNER to discuss findings of the draft technical memorandum. Up to two personnel will attend meeting.
- Prepare a final technical memorandum addressing OWNER comments for OWNER's final use.

**Meetings/Travel:**

- One (1) meeting in Bismarck attended by the ENGINEER's Project Engineer and Project Manager to discuss draft technical memorandum.

**Deliverables:**

- Draft Technical Memorandum.
- Final Technical Memorandum.

**Key Understanding and Assumptions**

Geotechnical exploration of the sites is not included in this task order but may be necessary to evaluate the sites and underlying geology.

**OWNER'S RESPONSIBILITIES:**

The OWNER will provide the ENGINEER with readily available GIS data for up to two potential sites.

**PERIODS OF SERVICE:**

Upon receipt of written authorization to proceed, ENGINEER shall perform the services within the Project Schedule timeframe as outlined below:

Notice to Proceed	January 22, 2024
ROW Services	August 31, 2024
Location & Site Investigation	October 31, 2024
Draft Technical Memorandum	November 20, 2024
Incorporate City Comments	December 15, 2024
Final Technical Memorandum	December 31, 2024

The ENGINEER'S compensation is conditioned on the time to complete the services by December 31, 2024. Should the time to complete services be extended beyond this period, total compensation to Engineer may be appropriately adjusted.



## PAYMENTS TO ENGINEER:

Compensation for ENGINEER'S services under this Agreement shall be on the basis of Standard Hourly Rates, with a not to exceed limit of \$117,245.

Compensation terms are defined as follows:

Standard Hourly Rates shall mean an amount equal to the cumulative hours charged to the Project by each class of ENGINEER'S personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultants' charges, if any.

ENGINEER may alter the distribution of compensation between individual phases of the work noted above to be consistent with services actually rendered, but shall not exceed the total not to exceed compensation amount unless approved in writing by OWNER.

The total estimated compensation for ENGINEER'S services as noted above incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer'S Consultants' charges.

Reimbursable expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, computer usage, telephone, telex, shipping and express, and other incurred expense. ENGINEER will add five percent (5%) to invoices received by ENGINEER from subconsultants and subcontractors to cover supervision, administrative, and insurance expenses.

## OTHER:

None Identified.



This Task Order is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

City of Bismarck

“OWNER”

BY: \_\_\_\_\_

NAME: Michael Schmitz

TITLE: President of the Board of City  
Commissioners

ADDRESS: City of Bismarck  
PO Box 5503  
Bismarck, ND 58506-5503

HDR ENGINEERING, INC.

“ENGINEER”

BY:  \_\_\_\_\_

NAME: Dennis Reep

TITLE: Managing Principal

ADDRESS: 3231 Greensboro Drive, Ste  
200  
Bismarck, ND 58503-5413

# CONTRACT CHANGE ORDER FORM

**DEPARTMENT**

City Department	<b>Public Works - Service</b>		
Contractor	<b>HDR Engineering, Inc.</b>		
Contract Number	<b>2018-23</b>	Change Order Number	<b>2</b>
Project Number	<b>See below</b>	Change Order Date	<b>2.13.2024</b>
Project Description	<b>SWDUTIL.CONSULTING.GREENFIELDSITE</b>		
Original Contract Amount	<b>\$ 226,615.00</b>	Approved Contract Budget	
Previous Contract Amount	<b>\$ 226,615.00</b>		
Change Order Amount	<b>\$ -</b>		<b>#VALUE!</b>
Proposed Contract Amount	<b>\$ 226,615.00</b>		
Within Project Scope	<b>YES</b>	Within Project Funding	<b>YES</b>
Completion Date	<b>12.31.2023</b>	Change in Completion Date	<b>YES</b>
Revised Completion Date*	<b>12.31.2024</b>	<b>REV COMP DATE REQ'D</b>	<i>*If completion date changed on this Change Order</i>
Type of Change Order	<b>Non Design-related</b>		Work Order No(s). <span style="border: 1px solid gray; padding: 2px;"> </span>

Description:

**Solid Waste Disposal Utility, Solid Waste Engineering Consulting, 2018 Greenfield Site Investigation - Explore options for landfill expansion and preliminary environmental reviews and negotiate with landowners.**

Project Manager Signature (≤\$15,000) \_\_\_\_\_ **SIGN HERE**  
Send to Fiscal if change is ≤\$15,000, completion date ≤5 days, no scope change or no revised budget Date

Department Head Signature (≤\$25,000) \_\_\_\_\_  
Send to Fiscal if change is ≤\$25,000, completion date ≤15 days, no scope change or no revised budget Date

**ADMINISTRATION**

City Administrator Signature (≤\$50,000) \_\_\_\_\_  
Add to Commission Agenda Date

**COMMISSION APPROVAL**

Commission Approval Date \_\_\_\_\_ **#VALUE!**  
Attach Commission approval memo and send to Fiscal

**FISCAL**

Comments

*\*If not within project scope or funding, attach revised description and/or revised Project Budget for Board Approval*

**City of Bismarck  
Greenfield Site Investigation  
Level of Effort Estimate**

**Labor Hours by Category**

Labor Category	Reep	K. Sanders	Van Smith	R Anderson	Van Luick	Fricke	Greg Shafer	Richard Wilson	Sand/Whitworth	Schramm	Henze	Total Hours	Total \$
	Principal	PM/ENG III	ENG VI	Eng I/GIS	GIS	Env. Sci	Geotech VI	Hydro V	ROW II	Account	Proj Coord		
Project Billing Rate	\$235	\$145	\$205	\$120	\$110	\$180	\$200	\$180	\$155	\$95	\$95		
<b>Task 100 - Project Management and Meetings</b>													
Project Management/Mgt Reviews	2	24	4	2							8	40	\$5,770
PARR												0	\$0
Invoicing/progress updates		12								16		28	\$3,260
Client Communications		8										8	\$1,160
Four Meetings with City	4	8										12	\$2,100
Progress/Project Meetings	4	4		4					4			16	\$2,620
<b>SubTotal</b>	<b>10</b>	<b>56</b>	<b>4</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>16</b>	<b>8</b>	<b>104</b>	<b>\$ 14,910</b>
<b>Task 200 - Right of Way Services</b>													
Landowner Negotiations									120			120	\$18,600
Parcel Ownership/encumbrance research (SOR)									16			16	\$2,480
<b>Subtotal</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>136</b>	<b>0</b>	<b>0</b>	<b>136</b>	<b>\$ 21,080</b>
<b>Task 300 - Location &amp; Site Investigation (2 sites)</b>													
Kickoff Meeting	2	2	2	2								8	\$1,410
Airports		4		4								8	\$1,060
Floodplains		4		4								8	\$1,060
Unstable Areas		4		4			12					20	\$3,460
Wetlands		4		4		16						24	\$3,940
Fault Areas		4		4			8					16	\$2,660
Seismic Impact Zones		4		4			8					16	\$2,660
Horizontal Buffers		4	4	4								12	\$1,880
Groundwater		4		4				16				24	\$3,940
Waters of the US		4		4								8	\$1,060
Drinking Wells		4		4								8	\$1,060
Topography		4		4	32							40	\$4,580
Geology/Soils		4	4	4			12	16				40	\$7,160
Mines		4		4								8	\$1,060
Endangered or Threatened Species		4		4		12						20	\$3,220
Underground Utilities		4	12	4								20	\$3,520
ROW/Landowner Coordination												0	\$0
QC Review	4		16									20	\$4,220
<b>SubTotal</b>	<b>6</b>	<b>62</b>	<b>38</b>	<b>62</b>	<b>32</b>	<b>28</b>	<b>40</b>	<b>32</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>300</b>	<b>\$ 47,950</b>
<b>Task 400 - Summary of Findings</b>													
Field Confirmation		12		24		20						56	\$8,220
Identification of Challenges		4	3	2								9	\$1,435
Permitting Obstacles		2	4	8								14	\$2,070
Develop Maps		4	3	8	12							27	\$3,475
Next Steps & Schedule		4	2	4								10	\$1,470
Draft Tech Memo		16	6	8					4			34	\$5,130
QC	4											4	\$940
Meeting with City	2	2		2								14	\$2,240
Final Tech Memo	1	8	2	4	4				4			23	\$3,345
<b>Subtotal</b>	<b>7</b>	<b>52</b>	<b>20</b>	<b>60</b>	<b>16</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>191</b>	<b>\$ 28,325</b>
<b>Total</b>	<b>23</b>	<b>170</b>	<b>62</b>	<b>128</b>	<b>48</b>	<b>48</b>	<b>40</b>	<b>32</b>	<b>156</b>	<b>16</b>	<b>8</b>	<b>595</b>	<b>\$112,265.00</b>

Travel	Expenses			Expense Total	Subs ultants	Line Item Total
	Mapping/GIS	Printing				
				\$0		\$5,770
				\$0		\$0
				\$0		\$3,260
				\$0		\$1,160
				\$0		\$2,100
				\$100		\$2,720
<b>\$100</b>	<b>\$0</b>	<b>\$0</b>		<b>\$100</b>	<b>\$0</b>	<b>\$15,010</b>
				\$0		\$18,600
				\$0		\$2,480
<b>\$0</b>	<b>\$0</b>	<b>\$0</b>		<b>\$0</b>	<b>\$0</b>	<b>\$21,080</b>
	\$1,500			\$1,500		\$2,910
				\$0		\$1,060
				\$0		\$1,060
				\$0		\$3,460
				\$0		\$3,940
				\$0		\$2,660
				\$0		\$2,660
				\$0		\$1,880
				\$0		\$3,940
				\$0		\$1,060
				\$0		\$1,060
				\$0		\$4,580
				\$0		\$7,160
				\$0		\$1,060
				\$0		\$3,220
				\$0		\$3,520
				\$0		\$0
	\$2,930	\$200		\$3,130		\$3,130
				\$0		\$4,220
<b>\$2,930</b>	<b>\$1,500</b>	<b>\$200</b>		<b>\$4,630</b>	<b>\$0</b>	<b>\$52,580</b>
	\$250			\$250		\$8,470
				\$0		\$1,435
				\$0		\$2,070
				\$0		\$3,475
				\$0		\$1,470
				\$0		\$5,130
				\$0		\$940
				\$0		\$2,240
				\$0		\$3,345
<b>\$250</b>	<b>\$0</b>	<b>\$0</b>		<b>\$250</b>	<b>\$0</b>	<b>\$28,575</b>
<b>\$3,280.00</b>	<b>\$1,500.00</b>	<b>\$200.00</b>		<b>\$4,980.00</b>	<b>\$0.00</b>	<b>\$117,245.00</b>

**HDR Total Labor (Rates) \$ 112,265**  
**HDR Total Expenses \$ 4,980**  
**Subconsultants \$ -**  
**Total NTE Fee \$ 117,245**

AMENDMENT TO AGREEMENT  
FOR  
ENGINEERING SERVICES

WHEREAS:

HDR ENGINEERING, INC. ("HDR") entered into a Master Short Form Agreement for Professional Services on **February 16, 2021** to perform engineering services for various task orders for the solid waste collection and landfill operations for the City of Bismarck of ("Owner").

The Owner desires to amend this Agreement to extend the contract for two (2) additional years as allowed in Section IV. Period of Service.;

HDR is willing to amend the agreement.

NOW, THEREFORE, HDR and Owner do hereby agree:

The Agreement and the terms and conditions therein shall remain unchanged other than those sections and exhibits listed below;

The period of service will be extended two (2) years to a total agreement duration of five (5) years as allowed under Section IV. Period of Service. New contract end date shall be February 16, 2026.

Exhibit B, Terms and Conditions dated 5/2020 will be replaced with the attached Exhibit B, Terms and Conditions dated 5/2023.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year written below:

HDR ENGINEERING, INC. ("HDR")

City of Bismarck ("Owner")

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

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

Title: ND Managing Principal

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

Date: Feb 2, 2024

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

## HDR Engineering, Inc. Terms and Conditions for Professional Services

### 1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

### 2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. If flying an Unmanned Aerial System (UAS or drone), ENGINEER will procure and maintain aircraft unmanned aerial systems insurance of \$1,000,000 per occurrence. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for third party personal injury and property damage claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract. The employees of both parties are intended third party beneficiaries of this waiver of consequential damages.

### 3. OPINIONS OF PROBABLE COST

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

### 4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be

entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

### 5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

### 6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

### 7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

### 8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees,

arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **9. TERMINATION OF AGREEMENT**

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

#### **10. SEVERABILITY**

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

#### **11. INVOICES**

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments to ENGINEER within thirty (30) days of OWNER's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

#### **12. CHANGES**

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance

of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

#### **13. CONTROLLING AGREEMENT**

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

#### **14. EQUAL EMPLOYMENT AND NONDISCRIMINATION**

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

#### **15. HAZARDOUS MATERIALS**

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

#### **16. EXECUTION**

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and

OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

#### **17. ALLOCATION OF RISK**

**OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE LESSER OF \$1,000,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. ENGINEER'S AND SUBCONSULTANTS' EMPLOYEES ARE INTENDED THIRD PARTY BENEFICIARIES OF THIS ALLOCATION OF RISK.**

#### **18. LITIGATION SUPPORT**

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

#### **19. NO THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, no third party beneficiaries are intended under this Agreement. In the event a reliance letter or certification is required under the scope of services, the parties agree to use a form that is mutually acceptable to both parties.

#### **20. UTILITY LOCATION**

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.

#### **21. UNMANNED AERIAL SYSTEMS**

If operating UAS, ENGINEER will obtain all permits or exemptions required by law to operate any UAS included in the services. ENGINEER's operators have completed the training, certifications and licensure as required by the applicable jurisdiction in which the UAS will be operated. OWNER will obtain any necessary permissions for ENGINEER to operate over private property, and assist, as necessary, with all other necessary permissions for operations.

#### **22. OPERATIONAL TECHNOLOGY SYSTEMS**

OWNER agrees that the effectiveness of operational technology systems and features designed, recommended or assessed by ENGINEER (collectively "OT Systems") are dependent upon OWNER's continued operation and maintenance of the OT Systems

in accordance with all standards, best practices, laws, and regulations that govern the operation and maintenance of the OT Systems. OWNER shall be solely responsible for operating and maintaining the OT Systems in accordance with applicable laws, regulations, and industry standards (e.g. ISA, NIST, etc.) and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, OWNER recognizes and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by ENGINEER are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, ENGINEER does not guarantee that OWNER's OT Systems are impenetrable and OWNER agrees to waive any claims against ENGINEER resulting from any such incidents that relate to or affect OWNER's OT Systems.

#### **23. FORCE MAJEURE**

ENGINEER shall not be responsible for delays caused by factors beyond ENGINEER's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the OWNER to furnish timely information or approve or disapprove of ENGINEER's services or work product, or delays caused by faulty performance by the OWNER's or by contractors of any level or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing. When such delays beyond ENGINEER's reasonable control occur, the OWNER agrees that ENGINEER shall not be responsible for damages, nor shall ENGINEER be deemed in default of this Agreement, and the parties will negotiate an equitable adjustment to ENGINEER's schedule and/or compensation if impacted by the force majeure event or condition.

#### **24. EMPLOYEE IMMUNITY**

The parties to this Agreement acknowledge that an individual employee or agent may not be held individually liable for negligence with regard to services provided under this Agreement. To the maximum extent permitted by law, the parties intend i) that this limitation on the liability of employees and agents shall include directors, officers, employees, agents and representatives of each party and of any entity for whom a party is legally responsible, and ii) that any such employee or agent identified by name in this Agreement shall not be deemed a party. Specifically, in the event that all or a portion of the services is performed in the State of Florida, the following provision shall be applicable:

THE PARTIES ACKNOWLEDGE THAT PURSUANT TO APPLICABLE FLORIDA STATUTES AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE WITH REGARD TO SERVICES PROVIDED UNDER THIS AGREEMENT. To the maximum extent permitted by law, the Parties intend i) that this limitation on the liability of employees and agents shall include directors, officers, employees, agents and representatives of each Party and of any entity for whom a Party is legally responsible, and ii) that any such employee or agent identified by name in this Agreement shall not be deemed a Party. The Parties further acknowledge that the Florida statutes referred to above include but are not limited to: §558.0035(1)(a)-(e); §471.023(3) (an engineer is personally liable for negligence except as provided in § 558.0035); §472.021(3) (surveyor and mapper); §481.219(11) (architect and interior designer); §481.319(6) (landscape architect); and §492.111(4) (geologist).