

**AMENDMENT TO AGREEMENT  
FOR  
ENGINEERING SERVICES**

WHEREAS:

HDR ENGINEERING, INC. ("HDR") entered into an Agreement on June 17<sup>th</sup>, 2019 to perform engineering services for the Gateway Boulevard (CR 106) Phase 2 Improvements ("Project");

HDR desires to amend this Agreement in order for HDR to perform services beyond those previously contemplated;

The City of Tea is willing to amend the agreement for HDR to perform the additional engineering services.

NOW, THEREFORE, HDR and the City of Tea do hereby agree:

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

- Exhibit A – Scope of Services
- Exhibit B – Labor Summary & Fee Schedule

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

HDR ENGINEERING, INC. ("HDR")

The CITY OF TEA ("CITY")

By: \_\_\_\_\_  
(print)

By: \_\_\_\_\_  
(print)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

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

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

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

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

## **Contract Amendment 03 – Exhibit A: Scope of Services**

The following outlines various revisions, additions, and descriptions to the scope of services to be completed for the continued planning, design, and bid preparations for the project.

### **Task Series 8 – Project Management (2020)**

The following activities are anticipated for this project through the end of 2020:

#### **Project Client Communication (City)**

Support continued communications with the City regarding regular project updates and associated documentation of project decisions.

#### **Project Coordination (Federal)**

Support continued communications between the Federal Highway Administration and the City of Tea regarding project delivery items including:

- Bi-weekly project updates
- Final Utility Certifications
- Project Bid Preparation and Advertisement

#### **Internal & External Coordination**

Provide resource management and allocation based on project schedules and activities.

Development of scope and solicitation of Materials and Geotechnical testing services from a 3<sup>rd</sup> party contractor. (the Fee for these field services will be a direct contract between the Materials Testing contractor and the City of Tea).

#### **Invoice Processing**

Provide budget and invoice management, including monthly status reports.

#### **Environmental Services**

- Continued (NEPA) Permitting Support
  - Categorical Exclusion (CatEx) Document Updates as directed by FHWA as a result of wetland impact changes requested by the US Army Corps of Engineers
- Assistance with Wetland Credit Acquisition as directed by the US Army Corps of Engineers
  - Anticipate the City will purchase wetland credits from the Tetonka Wetland Mitigation Bank.

#### **Real Estate Services (Acquisitions / Relocations)**

- Continued assistance with documentation and filing of project related relocations
- Continued assistance with documentation of project acquisitions
  - includes any outstanding condemnation support activities
  - includes coordination efforts with the Sky Haven Road District, Lincoln County, and the SDDOT for various ROW vacations and property transfers

### **Bid Advertisement, Bid Review, and Project Award Recommendation**

- Finalize project plans, specifications, and special provisions in accordance with FHWA direction.
- Post project bid documents online and share with local builders/contractors
  - Track pre-bid project inquiries
  - Maintain active plan holders list during project advertisement
  - Address project inquiries with project addenda
    - issuance of addenda(s), as applicable
- Bid Opening & Bid Review
  - Review all bids and evaluate all bid tabulations received
  - Share bid evaluation with FHWA for Project Financial approval
- Award Recommendation
  - Prepare letter of bid summary review and award recommendation to City Council and FHWA
  - Coordinate with FHWA on concurrence of award recommendation and issuance of Project award documents:
    - Notice of Award, Project Agreement, Performance Bond, Payment Bond, Power of Attorney, Notice to Proceed

### **Public Communications**

HDR will assist the City with developing a project update to share with the general public and property owners adjacent to the project

- Includes preparation of a project update presentation for the City's website

### **Project Kick-Off**

Following Completion of project Award documentation, HDR will assist with project Kick-off activities including:

- Preconstruction Meeting
- Initial project walk-through and assessment with the Contractor and various Private Utility owners on planned construction phasing
  - Includes photo and/or video recording of pre-construction conditions of the project area and adjacent roadways including
    - Various roads in the Kerslake Industrial Park
      - Katie Road, Kerslake Place, Gayle Avenue, and 100<sup>th</sup> Street
    - Cody Trail in the D&L Industrial Park
    - Gateway Lane
- Initial field survey to define work/easement limits
- Construction staking for various project items such as removals, project utility installations, and grade staking (as requested by the contractor)
- Review of shop drawings and various material and equipment submittals

The following Tasks 9-12 are anticipated to occur in 2021 through 2022. A Notice to Proceed (NTP) will not be granted for these efforts until January 2021.

### **Task Series 9 – CA Project Management (2021-2022)**

The following activities are anticipated for this project from January 2021 thru June 30, 2022:

#### **Project Client Communication (City)**

Support continued communications with the City regarding regular project updates and associated documentation of project decisions.

#### **Project Coordination (Federal)**

Project update reporting Support continued communications between the Federal Highway Administration and the City of Tea regarding project delivery items including:

- Bi-weekly project updates

#### **Internal & External Coordination**

Provide resource management and allocation based on project schedules and activities.

Development of scope and solicitation of Materials and Geotechnical testing services from a 3<sup>rd</sup> party contractor.

**NOTE:** the Fee for these field services will be a direct contract between the Materials Testing contractor and the City of Tea.

#### **Invoice Processing**

Provide budget and invoice management, including monthly status reports.

#### **Public Communications**

HDR will assist the City with developing quarterly project updates to share with the general public and property owners adjacent to the project

- Includes preparation for four (4) project update presentations for the City's website

#### **Real Estate Services**

- Miscellaneous support for any outstanding Real Estate and Right-of-Way activities that may carry over from 2020.

## Task Series 10 – Construction Survey (2021-2022)

### Private Utility Relocation Support

Provide field survey support to various private utilities within the project area to assist in relocation efforts as outlined in the Project's utility certification memo.

### Construction Staking

Provide construction staking and field location support for the following project items:

- Project Control
- Water Main
- Sanitary Sewer
- Storm Sewer
- Curb & Gutter, median, and roadway components
- Traffic Signals and Street Lights
- Permanent Signs

### ROW & Property Corner Re-Establishment

HDR will provide survey support to re-establish and set disturbed or displaced property corner pins and survey monuments in accordance with property and project records.

Additionally, HDR will set new property corners for acquired H-Lots as purchased for the project.

This work is anticipated to be performed after final grading and surface restoration activities are complete (anticipated in the late spring 2022)

### As-Built Survey

HDR will collect As-Built survey information for the following project items for final project documentation and City records:

- Water Main valves & hydrants
- Sanitary Sewer manholes and pipe inverts
- Storm Sewer Junction Boxes, Inlets, Outfall Structures, Culverts, and pipe inverts
- Street Lights & Street light Junction Boxes

## **Task Series 11 – Construction Administration & Inspection (2021-2022)**

HDR will perform the following work to support construction progress, document construction activities and practices, and facilitate project development between the City, FHWA, and the Contractor:

### **Construction Monitoring**

Monitor construction activities and practices to verify project items are installed in conformance with project documents and local standards.

- Includes daily planning meetings for HDR to coordinate with the Prime Contractor and applicable Sub-Contractors to determine daily activities.
- Observe and report weather conditions pertaining to construction delays
- Hours for this task are based on assuming the inspector will be on-site 9 hours per day for 5 days a week for 50 weeks plus additional office and administrative services a further described:

### **Weekly Progress Meetings**

Perform weekly project coordination meetings to track project progress and communicate project activities to the City, FHWA, Contractor, and the public (as applicable)

- It is anticipated that the Project Manager AND the Construction Manager Inspector will attend all weekly meetings (estimate based on 52 weekly meetings)

### **Design Plan Review, Clarification, and Revision**

HDR will provide project review, clarification, and plan revisions (if applicable) to support contractor presented alternatives to support delivery of a final construction product that meets the intent of the project's design.

### **Project Documentation**

Record project progress for monthly reporting, applicable permit conformances, invoice/pay application preparations, and change order tracking

- Includes SWPPP inspection reports
- Daily, weekly, and monthly construction activity reports

### **Private Utility Coordination**

HDR will maintain open communications with Private Utility Owners and their contractors to support private utility relocation efforts being performed in conjunction with project activities.

- HDR will NOT monitor or record any work for private utilities respective to individual utility's work unless it effects the City's project schedule

### **Public / Land Owner Communications**

HDR will assist with notifying adjacent property owners of project activities including items such as: interruptions to property access due to project phasing, planned effects on utility service shut-offs or irrigation systems, detour routing or temporary access installations

## Task Series 12 – Post Construction Services & Project Close-Out

The project close-out and post construction services will consist of lessons learned documentation, a project summary report, and delivery of As-built documents to the City.

### Project Summary Reports

At the completion of the project, HDR will initiate close-out procedures. The project summary report will include the following:

- Contractor Correspondence
- Owner Correspondence
- Change Orders
- Progress Reports
- Inspection & Test Reports
- Punch Lists
- Shop Drawings
- Final Quality Documentation
- Project Photos and/or Videos
- Contractor Labor and Equipment Summary
- Provide an acceptance letter to the Contractor dating when warranty inspections will be completed.

As-Built drawings will be provided to the City in PDF format and will be maintained in CAD format with the City's Engineer.



## Estimate of Staff Labor and Fee and Schedule

HDR has estimated the efforts to perform the project tasks as previously described to be **\$971,302.86** for this Amendment request.

**The following is a summary of the project contract fee(s) and amendments to-date:**

	Fee	Date
Original Contract	\$1,049,754.40	June 17, 2019
Amendment 01	\$3,825.00	December 3, 2019
Amendment 02	\$156,112.55	July 20, 2020
Amendment 03 (CA)	\$971,302.86	(current request)
<b>TOTAL</b>	<b>\$2,180,994.81</b>	

**NOTES:**

*Amendment 01 consisted only of a Level III Cultural Resource Survey performed by a subcontractor – Kogel Archaeological Services.*

*Amendment 02 consisted of additional Real Estate and Engineering Services to support final design, property condemnation, and continued Federal Agency coordination for project Agreements, Permitting, etc.*

Exhibit B includes a break-down of project tasks and associated hours, a list of direct expenses, and any applicable sub-contract agreements and associated fee allocations associated with this amendment request.





## Contract Amendment 03 – Exhibit B: Labor Summary & Fee Schedule

### Task List and Estimated Staff-Hours

The following table summarizes the tasks described in this amendment along with the associated staff hours projected to complete each task (including project expenses).

Project fee is based on HDR’s audited overhead rates plus 12% profit and FCCM (cost of money). Rates also include a 3% inflation for work planned in 2021 and 2022.

Task Series		Hours		Fee
8	Project Management (2020)	1326	\$	152,653.62
9	CA Project Management (2021-2022)	750	\$	104,986.66
10	Construction Survey (2021-2022)	1224	\$	123,130.01
11	Construction Administration Inspection (2021-2022)	4016	\$	505,470.17
12	Post Construction Services (2022)	268	\$	35,862.39
<b>Staff Hours and Fee Total:</b>		<b>7584</b>	<b>\$</b>	<b>922,102.86</b>

Direct Expenses			Fee
Printing & Copying		\$	400.00
Mailings		\$	800.00
Travel / Gas / Hotel / Meals		\$	6,000.00
Surveying & Staking Equipment		\$	42,000.00
<b>Direct Expense Total:</b>		<b>\$</b>	<b>49,200.00</b>

<b>Amendment Request Total:</b>		<b>\$</b>	<b>971,302.86</b>
---------------------------------	--	-----------	-------------------



## HDR Engineering

### 2020 Direct Expenses

#### Direct Expenses

Traffic Counting Equipment	\$120.00 per hour
Survey/GPS Equipment	\$50.00 per hour
Robotic Total Station	\$50.00 per hour
Side-by-Side Utility Vehicle	\$25.00 per hour
Handheld GPS	\$20.00 per hour
Mileage	\$0.75 per mile
Printing:	
B&W 8.5x11	\$0.041 each
Color 8.5x11	\$0.138 each
B&W 11x17	\$0.079 each
Color 11x17	\$0.273 each
Plots Bond	\$0.459 per sq. ft.

#### OTHER REIMBURSABLE EXPENSES

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. Unless negotiated otherwise in the contract, ENGINEER will add 10% to invoices received by ENGINEER from subconsultants and subcontractors to cover administrative expenses and vicarious liability. Hourly equipment charges apply to specific equipment used on the project.



### Task List and Estimated Staff-Hours

The following table includes a detailed estimate of staff hour allocations for project Tasks through the estimated duration of this Amendment contract (FY2020 through FY2022)

Staff	Title	FY2020							FY2021							FY2022							
		Task 08 Hours	Task 09 Hours	Task 10 Hours	Task 11 Hours	Task 12 Hours	Total Estimated Hours	FY2020 Total Estimated Fee	Task 08 Hours	Task 09 Hours	Task 10 Hours	Task 11 Hours	Task 12 Hours	Total Estimated Hours	FY2021 Total Estimated Fee	Task 08 Hours	Task 09 Hours	Task 10 Hours	Task 11 Hours	Task 12 Hours	Total Estimated Hours	FY2022 Total Estimated Fee	
Jason Kjenstad	Project Principal	10	0	0	0	0	10	\$ 2,647.61	0	21	0	0	0	21	\$ 5,727.27	0	5	0	0	8	13	\$ 3,651.94	
Ben Scholtz	Project Manager	236	0	0	0	0	236	\$ 32,045.62	0	266	0	570	0	836	\$ 116,929.65	0	66	0	142	80	288	\$ 41,497.99	
Pat Dressen	Construction Manager Inspector	106	0	0	0	0	106	\$ 14,109.92	0	103	0	1,162	0	1265	\$ 173,443.51	0	25	0	290	80	395	\$ 55,792.67	
Todd Mergen	Construction Manager Inspector	8	0	0	0	0	8	\$ 1,091.02	0	0	0	432	0	432	\$ 60,690.50	0	0	0	108	0	108	\$ 15,628.62	
Lance McQueen	Senior Transportation Engineer	92	0	0	0	0	92	\$ 13,258.89	0	26	0	109	0	135	\$ 20,041.18	0	6	0	27	20	53	\$ 8,105.22	
Cody Woessner	Transportation EIT	120	0	0	0	0	120	\$ 10,133.32	0	4	0	160	0	164	\$ 14,264.34	0	0	0	40	20	60	\$ 5,375.73	
Gunnar Ensz	Transportation EIT	80	0	0	0	0	80	\$ 6,525.86	0	4	135	176	0	315	\$ 26,466.97	0	0	33	44	20	97	\$ 8,395.88	
Eric Hanson	Senior Aviation Engineer	4	0	0	0	0	4	\$ 761.35	0	0	0	16	0	16	\$ 3,136.83	0	0	0	4	0	4	\$ 807.74	
Kevin Newman	Senior Water/Sewer Engineer	24	0	0	0	0	24	\$ 3,987.12	0	20	0	48	0	68	\$ 11,637.56	0	4	0	12	0	16	\$ 2,820.67	
Vani Jain	Water/Sewer EIT	18	0	0	0	0	18	\$ 1,418.67	0	0	0	16	0	16	\$ 1,298.87	0	0	0	4	0	4	\$ 334.51	
Brent Scarborough	Senior CADD / BIM Specialist	64	0	0	0	0	64	\$ 6,343.01	0	0	32	176	0	208	\$ 21,235.39	0	0	8	44	40	92	\$ 9,674.85	
Paris Marcy	Engineering Intern	8	0	0	0	0	8	\$ 405.33	0	7	64	208	0	279	\$ 14,560.07	0	1	16	52	0	69	\$ 3,709.64	
Brian Jensen	Senior Land Surveyor	40	0	0	0	0	40	\$ 4,731.14	0	0	180	0	0	180	\$ 21,933.58	0	0	44	0	0	44	\$ 5,522.55	
Dana Salonen	Land Surveyor	40	0	0	0	0	40	\$ 3,966.63	0	0	570	16	0	586	\$ 59,859.62	0	0	142	4	0	146	\$ 15,361.78	
Jill Rust	Senior Environmental Scientist	8	0	0	0	0	8	\$ 868.54	0	0	0	0	0	0	\$ -	0	0	0	0	0	0	\$ -	
Kendall VandeKamp	Environmental Scientist	48	0	0	0	0	48	\$ 4,384.35	0	0	0	0	0	0	\$ -	0	0	0	0	0	0	\$ -	
Lee Kaffar	ROW Real Estate Agent	154	0	0	0	0	154	\$ 21,132.20	0	62	0	16	0	78	\$ 11,026.07	0	0	0	0	0	0	\$ -	
Derek Westenberg	ROW Real Estate Agent	110	0	0	0	0	110	\$ 10,062.95	0	44	0	56	0	100	\$ 9,423.99	0	0	0	0	0	0	\$ -	
Cassidy Moon	ROW Coordinator	60	0	0	0	0	60	\$ 3,208.89	0	12	0	0	0	12	\$ 661.03	0	0	0	0	0	0	\$ -	
Troy Borchard	Senior Structural Engineer	30	0	0	0	0	30	\$ 5,277.77	0	24	0	32	0	56	\$ 10,148.19	0	0	0	0	0	0	\$ -	
Luke Rogers	Structural Engineer	30	0	0	0	0	30	\$ 3,022.26	0	0	0	32	0	32	\$ 3,321.03	0	0	0	0	0	0	\$ -	
TJ Yerdon	Water Resources Engineer	2	0	0	0	0	2	\$ 288.52	0	0	0	0	0	0	\$ -	0	0	0	0	0	0	\$ -	
Carla Schwebach	Senior Accountant	12	0	0	0	0	12	\$ 1,462.58	0	29	0	0	0	29	\$ 3,640.68	0	7	0	0	0	7	\$ 905.19	
Karen Westenberg	Admin Project Coordinator	16	0	0	0	0	16	\$ 1,085.84	0	7	0	16	0	23	\$ 1,608.16	0	1	0	4	0	5	\$ 360.16	
Christina Henze	Project Controller	6	0	0	0	0	6	\$ 434.21	0	5	0	0	0	5	\$ 372.82	0	1	0	0	0	1	\$ 76.82	
							<b>1326</b>	<b>\$ 152,653.62</b>						<b>4856</b>	<b>\$ 591,427.30</b>							<b>1402</b>	<b>\$ 178,021.94</b>

# 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. 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 profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital) 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.

### 3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

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.**

## 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

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.