

SHORT FORM AGREEMENT BETWEEN OWNER AND HDR ENGINEERING, INC. FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of this 16th day of April, 2015, between Bassett Creek Watershed Management Commission (BCWMC) (“OWNER”) a government unit responsible for managing and protecting water resources in the Cities of Crystal, Golden Valley, Medicine Lake, Minneapolis, Minnetonka, New Hope, Plymouth, Robbinsdale, St. Louis Park; and HDR ENGINEERING, INC., (“ENGINEER”) a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as Technology Consulting Services (“Project”);

WHEREAS, OWNER desires to engage ENGINEER to provide professional engineering, consulting and related services (“Services”) in connection with the Project; and

WHEREAS, ENGINEER desires to render these Services as described in SECTION I, Scope of Services.

NOW, THEREFORE, OWNER and ENGINEER in consideration of the mutual covenants contained herein, agree as follows:

SECTION I. SCOPE OF SERVICES

ENGINEER will provide Services for the Project, which consist of the Scope of Services as outlined on the attached Exhibit A.

SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The “HDR Engineering, Inc. Terms and Conditions for Professional Services,” which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

SECTION III. RESPONSIBILITIES OF OWNER

The OWNER shall provide the information set forth in paragraph 6 of the attached “HDR Engineering, Inc. Terms and Conditions for Professional Services.”

SECTION IV. COMPENSATION

Compensation for ENGINEER’S services under this Agreement shall be on a Time and Materials basis, with an estimated fee of \$10,420, plus technology charges, estimated to be \$560.00.

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER'S compensation as Reimbursable Expenses.

Compensation terms are defined as follows:

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 ten percent (10%) to invoices received by ENGINEER from subconsultants and subcontractors to cover administrative expenses and vicarious liability.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION

“OWNER”

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

HDR ENGINEERING, INC.

“ENGINEER”

BY:  _____

NAME: Craig Lenning, PE

TITLE: Senior Vice President,
Area Manager

ADDRESS: 701 Xenia Ave. S. #600
Minneapolis, MN 55416

EXHIBIT A

SCOPE OF SERVICES



April 6, 2015

Laura Jester, BCWMC Administrator
c/o 16145 Hillcrest Lane
Eden Prairie, MN 55346

RE: Request for Proposal for Technology Consulting Services

Dear Laura,

Thank you for contacting HDR to provide this proposal on website development. We are excited to have the opportunity to work with Bassett Creek Watershed Management Commission to create a website that is engaging, fresh, and easy to manage for BCWMC staff.

Based on the Request for Proposal, HDR will emphasize the following throughout the redesign process:

- Create a user-friendly website that is easy to navigate and find information
- Develop a site that adapts to all screen widths and devices
- Make editing and adding to the site intuitive for BCWMC staff
- Design a website with an updated look and feel that stays true to the goals and mission of BCWMC

Key benefits HDR provides to BCWMC for website development include the following:

- We understand the unique needs of a watershed organization such as BCWMC, while also bringing broad experience to the BCWMC website based on our experience in creating informational websites for two local watershed districts and a variety of government agencies, organizations, and utilities in the Midwest and across the country.
- HDR holds a comprehensive understanding of the technical and community outreach goals of BCWMC through our local web developer's close and continued interaction with water resources engineers and public outreach specialists.

We appreciate your consideration of our proposal and thank you for this opportunity! If you have any questions or clarifications, please don't hesitate to contact us using the information below.

Sincerely,

HDR Engineering, Inc.

Kelly Spitzley
Website Developer and Graphic Designer

Email: Kelly.Spitzley@hdrinc.com

Phone: 763-591-6611

Craig R. Lenning, PE
Senior Vice President | Area Manager

Email: Craig.Lenning@hdrinc.com

Phone: 763- 278-5985

hdrinc.com

701 Xenia Avenue South, Suite 600, Minneapolis, Minnesota 55416
T 763.591.5400 F 763.591.5413

SECTION 1: WEBSITE DEVELOPMENT

TASK 1: PROJECT MANAGEMENT

Project management tasks include the management of contracts and invoices, HDR project set-up, and monitoring quality.

TASK 1 DELIVERABLES:

- Project contract
- Quality assurance documentation
- Monthly invoices including an invoice summary

TASK 2: PLANNING AND SITE MOCK-UP

HDR will develop a preliminary website content schematic based upon BCWMC's existing website. In order for HDR to assist BCWMC in developing an initial website structure schematic, HDR will attend a two-hour in-person meeting to develop a draft content schematic based on BCWMC's existing website and any additional information provided by BCWMC during the meeting. This meeting will also result in a determination of specific website components required, such as event calendar, news feeds, interactive maps, etc.

HDR and BCWMC will also discuss style and branding expectations during the site planning meeting, including style preferences. Following the meeting, HDR will finalize the website content schematic and send to BCWMC for review. HDR will also send BCWMC site style examples to help concretely determine a style direction based on the aesthetic suggestions provided by BCWMC during the meeting. Once the schematic is reviewed and approved and a style direction is chosen, HDR will develop a fully styled mockup of the website based on BCWMC's branding and feedback provided by BCWMC on the style examples sent by HDR. BCWMC will review the design mockup and provide edits, which HDR will incorporate. The final schematic and mockup will be the basis for the development of the site. Any design elements used in the website will be included in the website mockup.

TASK 2 DELIVERABLES:

- Preliminary website content schematic (two rounds of review by BCWMC included)
- Final website content schematic
- Website style examples
- Draft website design mockup (two rounds of review by BCWMC included)
- Final website design mockup

TASK 2 ASSUMPTIONS:

- BCWMC will provide any additional content, files, or documents not currently included on the existing website
- BCWMC will outline specific website components required. Any additions or changes to the components outlined during this meeting may result in a contract amendment.
- BCWMC understands that the final website mockup will act as a blueprint for the redesigned website. Significant changes or additions made after the mockup is approved may result in a contract amendment.
- BCWMC will provide images, logo files, and branding standards.
- The site schematic and full style website mockup will be considered final after two rounds of review by BCWMC

TASK 3: STAGING SITE BUILD-OUT

HDR will use the structure schematic, mockup, and identified functionality as guides to build out a secure staging site. (BCWMC's existing site will remain live and unaffected during this phase.) HDR will initially populate the site with content throughout the build-out process using BCWMC's existing site and any additional information provided by BCWMC. HDR will be able to pull content, images, and documents directly from the existing website.

RECENT CONCRETES5 VERSION UPGRADE

As described in a phone conversation between Laura Jester and Kelly Spitzley on February 5, 2015 regarding the recent version upgrade for concrete5, there is a possibility that some specific add-ons may not be available yet at the time of the website build-out. This does not affect HDR's ability to create the BCWMC website, but it may result in some delay for specific functionality to be added.

HDR can integrate additional components as they become available in the new version. HDR will create the website to be extendable to allow for components to be added easily at any time. If a component is not available as a concrete5-specific add-on but is critical to the website launch, HDR can create interim functionality. For example, an interactive map could be created using CartoDB or Google Maps, but then could be added as a concrete5-specific add-on later as it becomes available.

HDR will provide BCWMC with access to the site once it is in a reviewable stage. BCWMC will review the staging site and provide HDR with edits, which HDR will incorporate. Once the edits are made, BCWMC will conduct a final review and provide HDR with final edits. Once BCWMC has approved the final staging site, HDR will work with BCWMC's existing website provider to redirect www.bassettcreekwmo.org to the new site. The changeover to the new site will take between 20 minutes and several hours, and may result in temporary downtime as the URL repoints towards the new site.

Based on the Request for Proposal, the following functionality will be included in the site:

- Screen width and device adaptability
- Interactive mapping component
- In-site search
- Ability for staff to add, update, or change site content
- Database connectivity

HDR also assumes that commonly requested functionality will be included:

- Event calendar
- News feed
- File management
- Google analytics account
- Page version control

Recommendation for Website Framework

HDR uses the concrete5 website framework to develop project, program, and organization websites. Concrete5 emphasizes ease of use, employing in-page editing and a drag-and-drop interface that is easy for non-website developers to use. Concrete5 also has a very easy workflow to add pages and content, or make changes to pages 'behind-the-scenes' so editors can see what their changes will look like before making them public, while always retaining versions so it is easy to roll back if needed. BCWMC staff will be able to log in to edit their new site from any computer or device.

To see how concrete5 works as a website editor, view this short video:

youtu.be/YYUt1MdJ6TM

This video gives an accurate representation of the look and feel of using the newest version of concrete5 to edit a website.

Recommended Web Hosting Service

HDR uses Bluehost to host all public-facing websites. Bluehost is one of the largest web hosting providers in the U.S., and offers affordable shared hosting with highly rated customer service, and a full suite of web server and database tools. Overall, HDR has had good success with Bluehost for client websites.

Recommendation for Responsive Versus Mobile Website

HDR recommends developing a responsive website versus designing and maintaining a separate mobile-optimized version of the site. Responsive website design is generally considered to be more flexible, easier to maintain, and more cost-effective. By creating responsive websites, only one version of the site needs to be maintained.

**TYPICAL COSTS FOR
LICENSED ARTWORK
UNDER HDR'S
ENTERPRISE LICENSE**

Thinkstock (Cost \$25 or \$70)

Dreamstime (Cost approx. \$25)

Shutterstock (Cost approx. \$100)

Veer (Cost approx. \$87-600)

iStock (increasingly expensive, priced up to \$400)

Out-Of-Scope Changes or Modifications

Out-of-scope tasks include any functionality not identified in this scope of work and budget, any changes to website content structure or style after Task 2 deliverables are finalized, any additional graphic design work beyond the website build-out, and any requests for HDR to add content to the site beyond the initial site build-out. Any changes or modifications to the site beyond the agreed-upon scope of work can be processed through scope and budget amendments, issued by HDR and signed by BCWMC.

Licensed Artwork

Images or graphic elements created by either BCWMC or HDR are available to use on the BCWMC website without restriction. HDR can provide full graphic design services for any graphic elements required by the website. Any stock artwork, such as images, purchased by HDR for BCWMC will be subject to the terms and conditions of the stock service they are purchased from. HDR has several contract agreements and accounts with various stock services, which offer stock at a variety of price points. However, any files used to create work products by HDR staff that are also accessed or used by BCWMC may require purchase by both entities, dependent on the terms and conditions of each individual stock house. HDR's contract agreements and typical prices for multi-user stock artwork are listed at left.

While iStock and Shutterstock typically have the broadest and highest quality offerings, they are also more expensive than other stock houses on average. Other options for images include Creative Commons license images, which are typically free to use but require attribution and have a limited selection, and government-owned images, which are free but often require attribution and also offer limited options.

TASK 3 DELIVERABLES:

- Secure staging site for review, including all desired functionality outlined in Task 2 (includes two rounds of review by BCWMC).
- Redirection of www.bassettcreekwmo.org to the new site.

TASK 3 ASSUMPTIONS:

- HDR will provide all site files (including page types, stylesheets, graphic elements, and databases) and all site, host, and database credentials to BCWMC upon request as a zipped electronic file.
- HDR will extract content from the existing website. BCWMC will provide any additional images, text, documents, and other files as requested by HDR.
- Any licensed artwork purchased from stock houses will be subject to the terms and conditions of the stock service.
- While HDR has had good success with Bluehost, like any web hosting company, HDR cannot guarantee 100% uptime for the BCWMC site. Any website outages will be promptly reported to Bluehost and HDR will proactively communicate estimated resolution times in the event of an outage.
- HDR cannot guarantee 100% uptime of any third party services used, such as Google Maps, CartoDB, Google Search, Google Analytics, or similar services.
- BCWMC understands that there is a possibility that some specific concrete5 components may not be available immediately.

TASK 4: STAFF TRAINING AND SUPPORT

HDR will hold one two-hour in-person meeting to train BCWMC staff on how to edit the website. HDR will also provide two hours per month of as-needed support for five months (the length of time from scheduled website launch to contract end). Typically, support is not frequently required due to the ease of use of the concrete5 framework.

TASK 4 DELIVERABLES:

- One in-person staff training session.
- Monthly support as needed, up to two hours per month for five months.

TASK 4 ASSUMPTIONS

- HDR assumes five months of support, from a July 25, 2015 website launch to a December 1, 2015 contract end.
- Support required beyond the monthly allotment of hours will be subtracted from the following month. If support is required beyond the total monthly support hours allotted, a contract amendment will be required.
- All BCWMC staff who will act as website editors will be present at the training session.

TASK 5: WEBSITE MAINTENANCE AND UPGRADES

Periodic Site Framework Updates

Concrete5 is an active website framework, and as such the concrete5 development team periodically releases framework upgrades to address requests, fix bugs, improve functionality, and enhance security. Additionally, individual concrete5 add-ons receive occasionally upgrades as well. HDR assumes that up to three framework upgrades and up to 10 add-on updates will be made annually. While typically no issues result from framework or add-on upgrades, HDR will create a full website backup before updating the framework or any add-ons, to ensure there is no disruption to the live website.

Data Ownership

To maintain full ownership over the web hosting account, HDR recommends that BCWMC creates the Bluehost account using an organization credit card and places the account under the name of a BCWMC staff member. HDR can guide a BCWMC staff member through this easy process. BCWMC will then provide HDR with the username and password to the Bluehost account.

Alternatively, HDR can create the Bluehost hosting account with an HDR staff name and credit card, and if requested, can transfer ownership of the account at any time by updating the account information and signing a notarized transfer of ownership form.

For the purposes of this proposal, HDR will assume that BCWMC will create the Bluehost account and provide HDR with the username and password.

Full Site Backups

A full site backup can be created at anytime. HDR creates a full site backup when website framework or add-on upgrades are made, or when significant back-end changes are made. Additionally, concrete5 offers page versioning, so full site backups are not required for changes made within the website to the website content, including editing page content, adding or deleting pages, and adding or deleting files. While Bluehost will create non-guaranteed weekly backups as a customer courtesy, HDR recommends including Site Backup Pro as an additional service to ensure regular, easily accessible full site backups.

TASK 5 DELIVERABLES:

- Up to three full site backups provided by HDR (BCWMC will also have access to extract a full site backup at anytime).
- Up to three framework updates and up to 10 add-on updates.

TASK 5 ASSUMPTIONS:

- HDR assumes one framework upgrade
- Slight changes may occur to the user interface of concrete5 with framework updates. Any changes that would impact editing workflow will be communicated to BCWMC staff.
- HDR cannot predict if, when, or how frequently concrete5 updates will be released.
- HDR will not necessarily immediately upgrade when upgrades are available, and instead will opt to make upgrades at scheduled times. This is not anticipated to affect site performance.
- Site Backup Pro will be included in the hosting account.

SCHEDULE

DATES	ACTIVITIES
April 17	Notice to Proceed
April 18 – May 1	HDR develops preliminary website content schematic based on existing website. BCWMC sets up hosting account and provides HDR with login credentials.
May 1 (approximate)	HDR and BCWMC meet for a two-hour website content planning session. Availability of concrete5 add-ons will be discussed at this meeting dependent upon the content and functionality required.
May 6	HDR provides BCWMC final website content schematic for review, along with website design examples.
May 6 – May 30	BCWMC reviews final content website schematic and design examples
May 31	BCWMC provides final edits to the website content schematic and feedback on design examples.
June 7	HDR provides finalized website content schematic to BCWMC
June 20	HDR provides designed website mockup to BCWMC
June 20 – July 10	BCWMC reviews designed website mockup
July 11	BCWMC provides edits on designed website mockup to HDR
July 20	HDR provides final designed website mockup to BCWMC
July 20 – August 20	HDR develops staging site based on designed website mockup and grants review access to BCWMC
August 20 – Sept 10	BCWMC reviews staging site
Sept 10	BCWMC provides HDR with edits to staging site
Sept 10 – Sept 25	HDR finalizes staging site
Sept 25 – Oct 15	BCWMC reviews final staging site.
Oct 15	BCWMC provides final edits to HDR
Oct 15 – Oct 30	HDR makes final edits to staging site
Nov 1 (approximate)	HDR works with existing website provider to point bassettcreekwmo.org to the new site
Nov 1 – December 1	HDR provides training, maintenance, and support as needed. HDR will also integrate additional functionality not included in the initial build-out due to the new version of concrete, as needed.

The schedule above assumes BCWMC will return reviewed content within the allotted timeframes above. The schedule is subject to change.

BUDGET

Based on the scope of work described above, HDR proposes to provide these services on a time and expenses basis with a limit not to exceed **\$10,980** without prior authorization of Bassett Creek Watershed Management Commission.

ITEM	HOURS/FEES	TOTAL COST
Task 1: Project Management	12 hours	\$950
Task 2: Website Planning and Mockup	22 hours	\$2,400
Task 3: Staging Site Build-out	Base site: 26 hours Interactive Project Map: 16 hours Event Calendar: 5 hours News Feed: 3 hours Web component expenses: \$230 Web hosting, domain, privacy, backup, and technology fees for 1 year: \$330	\$5,460
Task 4: Staff Training and Support	14 hours	\$1,520
Task 5: Site Maintenance and Upgrades	6 hours	\$650
TOTAL	Total Hours: 100 Total Fees: \$560	\$10,980

Most of the desired functionality identified in the RFP are included by default in any concrete website. The list below indicates which functions are included by default, and a cost for functionality that would required development time and expenses. BCWMC can remove any of the optional functionality, and by doing so would reduce the total cost of services by the total amount of functionality removed.

Functionality included:

- Linkages to databases
- Responsive site design
- In-site search
- Ability for BCWMC staff to edit website
- Page version control
- Google Analytics account
- Back-end file management
- Interactive project map
- Event calendar
- News feed

RELEVANT EXPERIENCE

All website and graphic work below was completed by Kelly Spitzley

PROJECT NAME AND CLIENT	DESCRIPTION
<p>Website Redesign and Graphic Design: Riley Purgatory Bluff Creek Watershed District RPBCWD Eden Prairie, MN</p> <p>www.rpbcwd.org</p> <p>Claire Bleser District Administrator cbleser@rpbcwd.org 952.607.6512</p>	<p>HDR provided a complete redesign of the Riley Purgatory Bluff Creek Watershed District website, including rebranding, content restructuring, and functionality enhancement using the concrete5 framework. HDR added web functionality including interactive district region and project maps, and interactive event calendar, and a sortable and searchable document library with uploading functionality. HDR also provided web survey design and reporting services, as well as designed templates for public materials including newsletters, brochures, and presentations. Additionally, HDR migrated the District to a new integrated email and document management service.</p>
<p>Website Redesign and Graphic Design: Vadnais Lake Area Watershed Management Organization VLAWMO Vadnais Heights, MN</p> <p>www.vlawmo.org</p> <p>Vanessa Strong Communications & Education Programs Manager Vanessa.Strong@vlawmo.org 651.204.6070</p>	<p>HDR provided a complete redesign of the Vadnais Lake Area Watershed Management Organization (VLAWMO) website, including refreshed design, content restructuring, and functionality enhancement using the concrete5 framework. HDR added web functionality including interactive WMO waterbody and project maps, a cost share grant application system and interactive event calendar, and a sortable and searchable document library with uploading functionality. HDR also designed templates for public materials including presentation and event flyers. Additionally, HDR migrated VLAWMO to a new integrated email and document management service.</p>

PROJECT NAME, CLIENT AND WEBSITE

D.C. to Richmond High Speed Rail
Virginia Department of Rail and Public Transportation
Washington D.C. and Virginia
www.dc2rvairail.com

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

Great Northern Transmission Line
Minnesota Power
Northern MN
www.greatnortherntransmissionline.com

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

North System Renewal
Denver Water
Denver, CA
www.northsystemrenewal.com

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

Outer Powell Safety Project
Oregon Department of Transportation
Portland, OR
www.outerpowellsafety.org

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

Envision BisMan 2040 Long Range Transportation Plan
Bismarck-Mandan Metropolitan Planning Organization
Bismarck and Mandan, ND
www.envisionbisman2040.com

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

U.S. Navy Marine Species Monitoring Program
U.S. Navy
Nationwide
www.navymarinespeciesmonitoring.us

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

Lower Oak CSO
City of Des Moines
Des Moines, IA
www.loweroakcso.com

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

McKenzie County Northern Bypass
McKenzie County
ND
www.northernbypass.com

SCREENSHOT

PROJECT NAME, CLIENT AND WEBSITE

South Mountain Freeway EIS
Arizona Department of Transportation
Phoenix, AZ
www.smfonlinehearing.com

SCREENSHOT

EXHIBIT B

TERMS AND CONDITIONS

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 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 AND ASSIGNS

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.

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 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 prompt payments in response to ENGINEER's invoices.

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 of the 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 GREATER OF \$100,000 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. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.

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. 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.