

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

THIS AGREEMENT is made as of this 14th day of July 2021, between City of Grand Island, Nebraska ("OWNER") a municipal corporation, with principal offices at 100 East First Street, Grand Island, Nebraska, and HDR ENGINEERING, INC., ("ENGINEER") a Nebraska corporation, with principal offices at 1917 S 67th Street, Omaha, NE, 68106 for services in connection with the project known as Wastewater Treatment Plant On Call Operations Support ("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 the hourly basis with a not to exceed amount of **\$175,109**

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, technology charges, 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 administrative expenses and vicarious liability.

SECTION V. PERIOD OF SERVICE

Upon receipt of written authorization to proceed, ENGINEER shall perform the services within the time period(s) described in Exhibit A.

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

CITY OF GRAND ISLAND, NEBRASKA

“OWNER”

Stacy R. Jankof
Interim City Attorney

BY:

Roger G. Steele

NAME:

Roger G. Steele

TITLE:

Mayor

ADDRESS:

100 East First Street
Grand Island, NE 68802

HDR ENGINEERING, INC.

“ENGINEER”

BY:

Matt B. Tondl

NAME:

Matt Tondl, P.E

TITLE:

Senior Vice President

ADDRESS:

1917 S 67th Street,
Omaha, NE 68106

EXHIBIT A

SCOPE OF SERVICES



EXHIBIT A

SCOPE OF WORK

GRAND ISLAND WWTP ON CALL OPERATIONS SUPPORT

PART 1.0 PROJECT DESCRIPTION:

The City of Grand Island's Wastewater Treatment Plant (WWTP) was constructed in 1966 with major upgrades in 1980 and 1995. The existing facility consists of a new headworks screening and pumping facility (constructed in 2015), grit removal facility, primary clarifiers, screw pumps, aeration basins with three anoxic zones each, secondary clarifiers, UV disinfection. Primary solids and WAS are combined, pressed using one GBT and 4 belt filter presses, temporarily stored in a metal building and then hauled off to landfill for cover. The treated liquid stream is discharged into the Wood River. The facility has allocated a portion of its capacity to industries, with the majority of industrial flows and loads coming from the JBS beef plant located adjacent to the south side of the WWTP.

Due to staff retirements and unforeseen vacancies, the City needs a trusted partner who will work alongside you to provide technical operations assistance until vacant positions can be filled. HDR will provide professional services focused on your specific needs with the required depth of knowledge, availability and relevant experience to assist your operators personnel.

Our operations support team will integrate with your operators, augmenting your staffing needs where necessary and providing you the tools to manage your treatment systems. Our experienced operations team includes three certified wastewater treatment plant operators who have direct experience working for utilities, including Chris Malinowski (licensed in Texas), Scott Joslyn (licensed in California), Dr. Eric Evans (licensed in Iowa) who have spent their careers working together with operators and maintenance staff to diagnose and troubleshoot wastewater facility issues.

Additionally, our team includes Dillon Devitt, who is an operations-based process engineer licensed in Nebraska, who will work to obtain his Level 4 Wastewater Operator Certification from the state of Nebraska in the next 6 months. Dillon will also be HDR's point of contact for the plant operators.



PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:

Key Understandings:

1. Providing HDR with complete access to the wastewater treatment plant to perform the services included.
2. OWNER will provide all manpower/personnel, supplies, tools, and equipment required for proper operation and maintenance.
3. HDR will not sign any Discharge Monitoring Reports or other documents that need to be submitted to NDEE.
4. OWNER will provide access to system components for visual inspection.
5. OWNER will provide available relevant plant operational data for HDR to perform the services included.
6. Daily meetings will be attended virtually through webex or by a conference call.
7. Monthly site visits by the on-call operations support personnel from HDR will be arranged a mutually agreeable day/week of each month.
8. Services under this scoped for a time period of 15 months (July 2021 to September 2022)

PART 1 – BASIC SERVICES

The Basic Services to be provided initially include the following tasks further defined on the pages which follow.

- TASK SERIES 100 – PROJECT MANAGEMENT
 - TASK 110 - PROJECT MANAGEMENT/INITIATION/SETUP
- TASK SERIES 200 – KICK-OFF MEETING AND DATA COLLECTION
 - TASK 210 – INITIAL IN PERSON MEETING/REVIEW PROCEDURES
 - TASK 220 – DAILY OPERATIONS CALL
 - TASK 230 – MONTHLY SITE VISIT
 - TASK 240 – UPSET CONDITIONS SUPPORT
 - TASK 250 – SENIOR ADVISOR SUPPORT



Task Series 100 - Project Management

Objective: Plan, organize, and monitor project team activities.

- HDR Activities:**
- Task 110– Project Management/Initiation/Setup**
- Budget and invoice management.
 - Schedule monitoring and update for Project.
 - Resource management and allocation based on Project schedules and activities.
 - Monthly progress reports submitted to City with each payment request documenting HDR’s activities the previous month, scope issues, schedule issues and financial issues.
 - Facilitate internal audits of the Project to confirm compliance with scope and the Project quality assurance plans.
 - a. 0% Project Review.
 - Develop guidance document (Project Management Plan) for project team to define activities, constraints, guidelines, budgets and procedures for design and bidding services.
 - a. Maintain Project Management Plan, distribute and update as activities dictate.
 - b. Define project activities, constraints, procedures, guidelines, schedules and budgets for HDR team. Review processes and procedures to be implemented for the project with City.

- HDR Deliverables:**
- Project Management Plan (for internal use).
 - Monthly status reports and invoices.

Meetings: None anticipated for this specific task series.

- Key Understandings and Assumptions:**
- Meetings and workshops are included under subsequent tasks as specifically identified in other task items.

Task Series 200 – On Call Operations Support

Objective: Provide Operations Support to GI Staff.

- HDR Activities:**
- Task 210– Initial In person Meeting/Review Procedures**
- HDR’s operations on call point contact, Dillon Devitt will set up an initial in person meeting on site to get familiar with the site, plant personnel, etc.
 - Review WWTP operating procedures, SCADA system etc. Review and establish Project Scope.
 - Establish communication protocols.
 - Up to 24 hours for Dillon Devitt are allocated for this task.



Task 220 – Daily Operations Call and ongoing Support

- Attend daily (Monday to Friday) operations call (typically around 8:00 AM). HDR will participate in the call via conference call or a virtual platform such as Webex.
- Provide ongoing support as necessary to answer operational questions as they come up
- Up to 3 hours per week (200 hours total) are allocated for the daily operations call.
- Up to 3 hours per week (200 hours total) are allocated for ongoing support.

Task 230 – Monthly Site Visit

- HDR (Dillon Devitt) will visit the site once a month and spend time with the operations personnel at the WWTP.
- Up to 6-8 hours will be spent on site at each monthly site visit.
- Up to 4 hours of drive time and a rental car cost are included for each monthly visit.

Task 240 – Upset Conditions Support

- Approximately 2 times a year, the WWTP receives flows from customers that cause significant increases in loadings at the plant. These loadings can sometime lead to upset conditions at the plant’s biological processes. During these events, HDR will help the plant personnel in suggesting operational changes that will help the WWTP recover from these upset conditions.
- Three (3) such events are included in the HDR’s scope of services
- Up to 40 hours for Dillon Devitt are allocated for each event (120 hours total)
- Up to 20 hours for a HDR Senior Advisor are allocated for each event (60 hours total)
- Up to 8 hours of PM time is allocated for each event (24 hours total).

Task 250 – Senior Advisor Support

- To assist and advise Dillon Devitt, up to 5 hours a month are allocated for a HDR Senior Advisor each month (75 hours total). The senior advisors will help in diagnosing and troubleshoot wastewater facility issues

HDR Deliverables:

- None.

Meetings:

Meetings anticipated and identified in the scope for the project work include the following:

- Initial In person Meeting.
- Fifteen (15) monthly site visits

Key Understandings and Assumptions:

- Allocated hours for individual tasks are included above under each subtask.

PART 3.0

AUTHORIZATION

Work will not proceed on a task without authorization.



PART 4.0 OWNER'S RESPONSIBILITIES:

OWNER will be responsible for the following as identified in the above Scope of Work:

- i. Coordinate Owner staff participation and actively participate in monthly site visits/weekly
- ii. Provide meeting facilities.
- iii. Provide existing reports/studies/drawings/technical information as necessary.
- iv. Participate in ongoing project activities to support consultant activities.
- v. Provide timely payment for services provided.
- vi. Provide relevant background information including design drawings and specifications.

PART 5.0 PERIODS OF SERVICE:

Contract Period	July, 2021 – September, 2022
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NEXT PHASES OF WORK:

TBD.

**GI WWTP ON CALL OPERATIONS SUPPORT
Fee Summary**

Task Series	Labor Hours	Labor Cost				Direct Expenses	Total Fee
			Travel Expenses	Mail	Print & Photo-copy		
TASK SERIES 100 - PROJECT MANAGEMENT	107	\$23,947	\$100	\$0	\$0	\$100	\$24,047
TASK SERIES 200 -On Call Operations Support	883	\$149,162	\$1,900	\$0	\$0	\$1,900	\$151,062
Total	990	\$173,109	\$2,000	\$0	\$0	\$2,000	\$175,109

Project Start Date:	Jul-21	Escalation Rate:	4.00%
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ESTIMATED LABOR-HOURS

TASK DESCRIPTIONS	PROJ	PROJ	Ops On call	Senior Advisor Support		TOTAL	TOTAL
	PRINC	MAN	PE	SR	Acct	LABOR HOURS	BASE LABOR (\$)
Proposed Personnel	Williams	Amit Shrivastava	Dillon Devitt	Evans/Malinowski/Joslyn	Sayler		
2021 Salary Rate							
Rate Multiplier	3,180	3,180	3,180	3,180	3,180		
2021 Labor Rate	293	232	143	270	127		
TASK SERIES 100 - PROJECT MANAGEMENT							
Task 110 Project Management/Initiation/Setup	2	90				15	107
TOTAL HOURS	2	90	0	0	0	15	107

Escalated Cost \$23,947

TASK SERIES 200 -On Call Operations Support							
Task 210 Initial In person meeting/Review procedures			24			24	\$3,434
Task 220 Daily Operations call and Ongoing support			400			400	\$57,240
Task 230 Monthly Site Visit			180			180	\$25,758
Task 240 Upset Conditions Support (assume 3 times during contract period)		24	120		60	204	\$38,961
Task 250 Senior Advisor Support					75	75	\$20,273
TOTAL HOURS	0	24	724	135	0	883	\$145,666

Escalated Cost \$149,162

Total Hours	2	114	724	135	15	990	\$173,109
	\$585	\$26,464	\$103,604	\$36,491	\$1,908	\$0	

DIRECT COSTS

Trip Rate from Omaha(Rental and Gas), \$/trip \$70.00
 Other Travel Expenses, \$/Trip \$30

TASK		OTHER DIRECT COSTS					TOTALS
		No Trips	Travel Expenses	Mail	Print & Photo-copy	Sub	
TASK SERIES 100 - PROJECT MANAGEMENT							
Task 110	Project Management/Initiation/Setup	1	\$ 100	\$ -	\$ -	\$ -	\$ 100
		1	\$ 100	\$ -	\$ -	\$ -	\$ 100
TASK SERIES 200 -On Call Operations Support							
Task 210	Initial In person meeting/Review procedures	1	\$ 100				\$ 100
Task 220	Daily Operations call and Ongoing support						\$ -
Task 230	Monthly Site Visit	15	\$ 1,500				\$ 1,500
Task 240	Upset Conditions Support (assume 3 times during contract period)	3	\$ 300				\$ 300
Task 250	Senior Advisor Support						\$ -
		19	\$ 1,900	\$ -	\$ -	\$ -	\$ 1,900
			\$ 2,000	\$ -	\$ -	\$ -	

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 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
(9/2016)

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. 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. NO THIRD PARTY BENEFICIARIES

No third party beneficiaries are intended under this Agreement.

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.