

## AGREEMENT

THIS AGREEMENT made and entered into this 26<sup>th</sup> day of **May, 2015**, by and between **SCS Aquaterra**, hereinafter called the Consultant, and the **City of Grand Island, Nebraska**, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused agreement documents to be prepared and an advertisement of a **Request for Proposals for Professional Engineering Consulting Services for Re-Permitting of the Solid Waste Landfill for the City of Grand Island**, and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined that the aforesaid Consultant submitted the best proposal based on the evaluation criteria listed in the Request For Proposals, a copy thereof being attached to and made a part of this agreement, and has duly awarded to the said Consultant an agreement therefore, for the sum or sums named in the **Re-Permitting of the Solid Waste Landfill Proposal Form** with terms & conditions submitted by the Consultant, a copy thereof being attached to and made a part of this agreement;

NOW, THEREFORE, in consideration of the compensation to be paid to the Consultant and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Consultant for itself, himself/herself, or themselves, and its, his/hers, or their successors, as follows:

ARTICLE I. That the Consultant shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the agreement documents as listed in the attached **Request for Proposals for Professional Engineering Consulting Services for Re-Permitting of the Solid Waste Landfill for the City of Grand Island** and in the attached **Re-Permitting of the Solid Waste Landfill Proposal Form** as Submitted by the Consultant; said documents forming the agreement and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this agreement to the said Consultant, such award being based on the acceptance by the City of the Consultant's proposal;

ARTICLE II. That the City shall pay to the Consultant for the performance of the work embraced in this agreement and the Consultant will accept as full compensation an amount not to exceed **TWENTY THOUSAND ONE HUNDRED EIGHTY EIGHT AND 00/100 Dollars (\$20,188.00)** for all services, materials and work covered by and included in the agreement award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the agreement.

ARTICLE III. The Consultant hereby agrees to act as agent for the City in purchasing materials and supplies for the City for this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the consultant shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Consultant. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Consultant shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the consultant's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the

finished product of attached **Request for Proposals for Professional Engineering Consulting Services for Re-Permitting of the Solid Waste Landfill for the City of Grand Island.**

ARTICLE IV. That the Consultant shall start work as soon as possible after the agreement is signed.

ARTICLE V. The Consultant agrees to comply with all applicable State fair labor standards in the execution of this agreement as required by Section 73-102, R.R.S. 1943. The Consultant further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this agreement, the Consultant and all Sub Consultants agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, gender, national origin, age or disability. The Consultant agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE VI. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE VII. GRATUITIES AND KICKBACKS: City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or an agreement or sub agreement, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub Consultant under an agreement to the prime Consultant or higher tier Sub Consultant or any person associated therewith, as an inducement for the award of a Sub Consultant to order.

ARTICLE VIII. FAIR EMPLOYMENT PRACTICES: Each proposer agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

ARTICLE IX. LB 403: Every public consultant and his, her or its subconsultants who are awarded an agreement by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

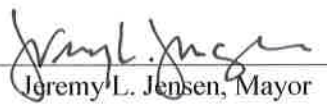
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.


**SCS AQUATERRA**

By   
JOEL STENBERG

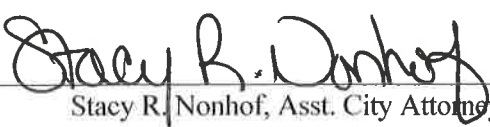
Title SENIOR PROJECT PROFESSIONAL

**CITY OF GRAND ISLAND, NEBRASKA,**

By   
Jeremy L. Jensen, Mayor

Attest:   
RaNae Edwards, City Clerk 7/13/2015

The agreement is in due form according to law and is hereby approved.

  
Stacy R. Nonhof, Asst. City Attorney

**APPENDIX A – TITLE VI NON-DISCRIMINATION -**

During the performance of this agreement, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

- (1) **Compliance with Regulations:** The consultant shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the consultant for work to be performed under a subagreement, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the consultant of the consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Grand Island or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information the consultant shall so certify to the City of Grand Island, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this agreement, the City of Grand Island shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a.) withholding of payments to the consultant under the agreement until the consultant complies, and/or
  - (b.) cancellation, termination or suspension of the agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The consultant shall include the provisions of paragraphs (1) through (6) in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The consultant shall take such action with respect to any subagreement or procurement as the City of Grand Island or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the consultant may request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island, and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

**SCS AQUATERRA  
TERMS AND CONDITIONS  
FOR PROFESSIONAL CONSULTING SERVICES**

**AGREEMENT FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES  
FOR RE-PERMITTING OF THE SOLID WASTE LANDFILL  
CITY OF GRAND ISLAND**

- 1. SCOPE OF SERVICES:** SCS Aquaterra will perform the services set forth in the Request for Proposals and the proposal submitted for this project, of which these terms and conditions are a part. Initiation of services by SCS Aquaterra will automatically incorporate these terms and conditions into this project. All amendments to the Scope of Service Proposal shall be made in writing, and signed by SCS Aquaterra and Client.
- 2. PAYMENTS:** SCS Aquaterra will submit invoices to Client monthly and a final bill upon completion of services. Unless expressly provided and denominated as such in a Scope of Services Proposal, no retainage shall be withheld by Client. Time is of the essence in payment of invoices and timely payment is a material part of the consideration of this Agreement. Payment is due upon presentation of invoice, and is past due thirty 30 days from the date of invoice. Client agrees to pay a finance charge of one and one half percent per month on past due accounts. Client also agrees to pay all costs and expenses, including reasonable attorney fees incurred by SCS Aquaterra relating to collection proceedings on overdue accounts. Failure of client to abide by the provisions of this section will be considered grounds for termination by SCS Aquaterra.
- 3. OWNERSHIP OF DOCUMENTS:** All documents, including but not limited to, reports, plans, designs, boring logs, field data, field notes, laboratory test data, calculations, estimates, and all electronic media prepared by SCS Aquaterra are considered its work product and to be instruments of service. SCS Aquaterra shall retain all common law, statutory and other reserved rights, including the copyrights on said work product and instruments of service. However, all work product and instruments of service specific to an executed Scope of Services Proposal shall be supplied to Client for use, but not ownership. SCS Aquaterra shall not be responsible for any conclusions, interpretations, or recommendations generated or made by others, which are based, in whole or in part, on SCS Aquaterra generated work product or instruments of service. Any reuse of work product or instruments of service by Client without a specific agreement with SCS Aquaterra in each case shall be at Client's risk. At Client's request, SCS Aquaterra may provide a letter authorizing limited reliance on certain documents by a third party, but only if the third party agrees to pay a reliance fee and be bound by the terms and conditions in this Agreement between SCS Aquaterra and Client
- 4. INSURANCE:** SCS Aquaterra will maintain appropriate workers compensation/employers liability; automobile; general liability; and professional liability insurance coverages at all times. An insurance certificate will be provided upon request.
- 5. INDEMNITY:** To the fullest extent permitted by law, SCS Aquaterra hereby indemnifies and agrees to hold harmless Client, including Client's officers, directors, agents, and employees, to the extent a loss, damage, expense (including reasonable attorney's fees), or injury is caused by SCS Aquaterra, or its employees by the negligent performance of professional services, limited, however, as provided elsewhere in this Agreement.

To the fullest extent permitted by law, Client hereby indemnifies, releases, and agrees to hold harmless SCS Aquaterra including SCS Aquaterra's officers, directors, agents, and employees, to the extent a loss, damage, expense (including reasonable attorney's fees), or injury is: (a) caused

by any cause other than the negligent errors or omissions of SCS Aquaterra, or (b) is based on a claim that SCS Aquaterra is a generator, disposer, or arranger of hazardous materials or substances at Clients site.

The terms of this Article shall survive the expiration or termination of this Agreement.

6. **STANDARD OF CARE:** SCS Aquaterra agrees to perform its services in a manner consistent with that level of care and skill ordinarily exercised by other members of its profession currently practicing under similar circumstances, in the same locale, at the time the services are performed and with the information available to SCS Aquaterra.
7. **LIMITATION OF LIABILITY:** Client agrees that, to the fullest extent permitted by law, SCS Aquaterra's total aggregate liability per Scope of Services Proposal to Client for injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement from any cause(s), shall not exceed the fee in the Scope of Services Proposal which included the services under which the claim arose, or \$50,000, whichever is greater, and Client releases SCS Aquaterra from any liability above such amount. This release applies to any loss and all damages, injuries, claims, and expenses (including attorney's fees and expert witness fees and expenses), regardless of the cause, whether, but not limited to, strict liability, statutory liability, the negligence, errors or omissions of SCS Aquaterra, breach of contract, breach of warranty, negligent misrepresentation, or other contract or tort claims, and whether, but not limited to, special, indirect, or consequential or punitive damages. SCS Aquaterra shall not be responsible for damages or costs resulting from hidden conditions or latent defects in design, materials, or construction of existing facilities. Unless expressly provided and denominated as such on a Scope of Services Proposal, there shall be no liquidated damages.
8. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES:** SCS Aquaterra and Client agree that neither shall be liable to the other, or anyone claiming on their behalf, for any special, indirect or consequential damages of any type, whether arising in tort (including negligence), contract, warranty (express or implied), strict liability, statutory liability or any other cause of action, including but not limited to loss of profit, loss of use, loss of business, reputation or financing.
9. **SAFETY:** SCS Aquaterra is not responsible and shall not be liable for injuries or damages incurred by third parties who are not employees of SCS Aquaterra. It is agreed that SCS Aquaterra is not responsible for job or site safety on this project, unless specifically agreed to in writing. Job site safety in, on or about the site is the sole and exclusive responsibility of the contractor.
10. **THIRD PARTY RELIANCE:** All documents produced by SCS Aquaterra are for client's use only. At Client's request, SCS Aquaterra may provide a letter authorizing limited reliance on certain documents by a third party, but only if the third party agrees to pay a fee and be bound by the terms and conditions in this Agreement between SCS Aquaterra and Client.
11. **UTILITIES AND SUBTERRANEAN STRUCTURES:** SCS Aquaterra will take reasonable precautions to avoid causing damage to utilities and subterranean structures. SCS Aquaterra is not responsible for any loss, damage or injury arising from damage to, or contact with, any utilities or subterranean structures that were not properly called to SCS Aquaterra's attention, were not properly located on drawings, or was caused by the providing of inaccurate or incomplete information regarding their location.
12. **CHANGED CONDITIONS:** If, during the performance of this Agreement, unexpected conditions or circumstances are discovered, SCS Aquaterra will notify Client and the parties will renegotiate the previously agreed upon Scope of Services Proposal. SCS Aquaterra and Client will promptly

and in good faith enter into a renegotiation process. If renegotiated terms cannot be agreed to within sixty (60) days, SCS Aquaterra will have the right to terminate this Scope of Service Proposal without penalty.

- 13. DISPUTE RESOLUTION:** In the event of any dispute between the parties arising out of or in connection with this Agreement or the services or work contemplated herein, the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the principals of each party. If the parties are unable to resolve the dispute through negotiation within forty-five (45) days, then either party may give written notice that it elects to proceed with non-binding mediation pursuant to the Commercial Mediation Rules of the American Arbitration Association then in effect. In the event that mediation is not invoked by the parties within fifty-five (55) days or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a statute of limitations may expire.

Each party shall be responsible for its own costs and expenses, including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

- 14. TESTING AND OBSERVATION SERVICES:** If SCS Aquaterra is hired by Client to provide a site representative for the purpose of testing or observing specific portions of the work, this work will not include supervision or direction of the actual work of any contractors, their employees or agents. SCS Aquaterra will observe only the portion of the work we have been hired for and perform tests, the results being delivered to Client or others if directed by Client. Client understands that even with very careful field testing and observation, field testing and observation is conducted to reduce, not eliminate, the risk of problems arising, and that providing these services does not create a warranty or guarantee of any type by SCS Aquaterra.

- 15. SOIL BORING AND TEST LOCATIONS:** The accuracy of test locations and elevations will commensurate only with pacing and approximate measurements or estimates. SCS Aquaterra can provide a professional surveyor if greater accuracy is required or desired. SCS Aquaterra reserves the right to deviate a reasonable distance from the boring and test locations unless this right is specifically revoked in writing.

- 16. ON SITE SERVICES:** Project site visits by SCS Aquaterra, or the furnishing of employees to work on the project, will not make SCS Aquaterra responsible for construction means, methods, techniques or procedures; or for any construction contractor's failure to perform its work in accordance with the drawings and specifications.

- 17. TERMINATION:** Either party may terminate this Agreement or an executed Scope of Services Proposal, or both, with or without cause, by providing seven (7) days written notice. SCS Aquaterra shall be paid for all services performed and all expenses incurred prior to the effective date of the Notice of Termination, and for all additional services or expenses authorized by Client thereafter. Following termination, Client shall not utilize any consultant or subcontractor of SCS Aquaterra for any services related to Client's project without the prior written consent of SCS Aquaterra.

- 18. CONFIDENTIALITY:** SCS Aquaterra will keep confidential all documents, reports and information generated for Client on this project and will not release or disclose said information without Client's consent, except to the extent required by court order, subpoena, governmental directive, or by law.

**19. SEVERABILITY:** If any provision contained in this Agreement is held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired.

**20. GENERAL RESPONSIBILITIES OF CLIENT:** Client will, within a reasonable period of time, so as not to delay the services of SCS Aquaterra: place at SCS Aquaterra's disposal all available information pertinent to the project; SCS Aquaterra may rely on the information provided as being accurate without independent verification; client will provide prompt written notice to SCS Aquaterra whenever Client observes or otherwise becomes aware of any defect in SCS Aquaterra's services; and Client will arrange for access to public and private property as required for SCS Aquaterra to provide its services.

**21. GOVERNING LAW:** Unless otherwise provided, the substantive law of the state of Kansas will govern the validity of this Agreement, its interpretation and performance and remedies for contract breach or any other claims related to this Agreement.

**COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT**

During the performance of this Agreement, Client acknowledges the applicability of the Federal Immigration Reform Control Act of 1986 ("IRCA"). Client agrees to comply with the law in performing under this Agreement.

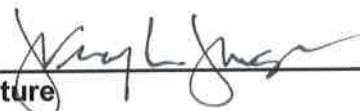
**22. ENTIRE AGREEMENT—PRECEDENCE:** These Terms and Conditions and SCS Aquaterra Scope of Service Proposal contain the entire agreement between SCS Aquaterra and Client. All previous or contemporaneous agreements, representations, promises and conditions relating to SCS Aquaterra services are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event client issues to SCS Aquaterra a purchase order, no preprinted terms thereon will become part of the agreement of the parties; any purchase order document, whether or not signed by SCS Aquaterra, shall be considered a document for Client's internal management of its operations.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed by their duly Authorized Representatives, as follows:

**SCS Aquaterra**

**City of Grand Island, Nebraska**

By   
Signature

By   
Signature

JOEL STENBERG  
Typed Name

Jeremy L. Jensen  
Typed Name

SENIOR PROJECT PROFESSIONAL  
Title

Mayor  
Title

6/10/15  
Date of Signature

7/15/2015  
Date of Signature