




## LOWER PLATTE SOUTH natural resources district

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### Memorandum

TO: Board of Directors  
 DATE: July 16, 2020  
 FROM: David Potter, Assistant General Manager   
 SUBJECT: Integrated Management Subcommittee meeting minutes.

The Integrated Management Subcommittee had a virtual (Go-To) meeting Wednesday, July 15, 2020 hosted from the NRD Office in Lincoln. Subcommittee members participating included Sarah Wilson, Bob Andersen, Gary Hellerich, Bruce Johnson, Chelsea Johnson, Greg Osborn, Mark Spangler, and Luke Peterson. Others participating in the meeting were Paul Zillig, David Potter, Dan Schulz, Dick Ehrman, and John Engel of HDR. The meeting was called to order by Chair Wilson at 4:31 p.m. and the agenda was reviewed.

The only agenda item was consideration of a professional services agreement for the Lower Platte River Consortium Drought Workshop.

In August 2016, the District entered into an Interlocal Agreement with Lower Platte North NRD, Papio-Missouri River NRD, City of Lincoln-water, Metropolitan Utilities District (MUD), and the Nebraska Department of Natural Resources (NeDNR) to form the Lower Platte River Consortium. The agreed upon purpose of the Consortium is to study the long-term water supplies available to the Lower Platte River sub-basin to enhance stream flows or aquifer storage to support during times of drought. Members of the Consortium recently amended the duration of the agreement from three (3) years to four (4) years, now ending September 27, 2020.

The study conducted by the Consortium led to the development of a Drought Contingency Plan. The Lower Platte River Drought Contingency Plan was approved by the U.S. Bureau of Reclamation (BOR) on September 30, 2019 as a requirement of their Water Smart Grand funding and approved by LPSNRD on December 18, 2019 on behalf of the Consortium. Funding was also obtained through the Water Sustainability Fund (WSF).

The Consortium has planned for a drought table top exercise as the next step since the plan's approval. HDR assisted the Consortium in completing the plan and was asked to prepare an agreement and scope of services for a drought workshop. David Potter introduced John Engel with HDR. Engel gave an overview of the scope of services and outline of the proposed workshop to be possibly held in September with wrap up in December of 2020. He stated the purpose of the workshop is to 1) simulate drought monitoring and reporting activities identified in the plan and to evaluate content of monitoring reports, protocols for monitoring and communication, and roles or communication during drought, and 2) refine drought response actions, both individual actions and the potential consortium actions identified in the plan. Potter stated that funding for the workshop will utilize remaining funds from the total contributions received so far and additional budgeted funds from each of the members.

**It was moved by Andersen, seconded by Osborn and unanimously approved to recommend the Board of Directors approve the professional services agreement with HDR in the amount of \$39,723 for the Lower Platte River Consortium Drought Workshop, subject to legal counsel review.**

Potter stated that the next subcommittee meeting is scheduled for Thursday, August 6<sup>th</sup> at 5:30 for discussion and consideration of the 2019 IMP Annual Review. It will be a Go-To meeting. Zillig stated that the District will also need to again amend the duration of the consortium agreement and that will be need to come before the subcommittee for consideration.

The subcommittee meeting was adjourned at 4:50 p.m.

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

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of July, 2020, between Lower Platte South Natural Resources District, a political subdivision of the State of Nebraska, as Administrator, acting on behalf of the Lower Platte River Consortium, an entity established under the Interlocal Cooperation Act, *Neb. Rev. Stat. §§ 13-801 to 13-827*, (“OWNER”) and HDR ENGINEERING, INC., (“ENGINEER”) a Nebraska corporation, with principal offices at 1917 S 67<sup>th</sup> St, Omaha, Nebraska, 68106 for services in connection with the project known as Lower Platte River Drought Tabletop Exercise. (“Project”);

**WHEREAS**, OWNER is the Administrator of the Lower Platte River Consortium (the “Consortium”), acting pursuant to *Neb. Rev. Stat. § 13-804(a)*, consisting of the following public agencies as that term is defined in *Neb. Rev. Stat. § 13-803(2)*, to wit:

Lower Platte South Natural Resources District,  
Lower Platte North Natural Resources District,  
Papio-Missouri River Natural Resources District,  
State of Nebraska Department of Natural Resources,  
City of Lincoln, Nebraska, Lincoln Water System,  
Metropolitan Utilities District.

**WHEREAS**, OWNER desires to engage ENGINEER on behalf of the Consortium 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 on behalf of the Consortium 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, 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 basis of

- Direct Labor Costs times a factor of 3.2 for the services of ENGINEER'S personnel engaged on the Project, plus Reimbursable Expenses, with total charges not to exceed \$39,723.

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:

Direct Labor Cost shall mean salaries and wages, (basic and overtime) paid to all personnel engaged directly on the Project. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually as of the first of every year to reflect equitable changes to the compensation payable to Engineer.

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 zero percent (0%) 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

described in Exhibit A, with estimated completion by December 31, 2020. Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER'S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER'S compensation shall be equitably adjusted.

**SECTION VI. NOT USED**

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

Lower Platte South Natural Resources District  
"OWNER"

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

NAME: Paul Zillig

TITLE: General Manager

ADDRESS: 3125 Portia Street  
Lincoln, NE 68521

HDR ENGINEERING, INC.  
"ENGINEER"

BY: 

NAME: Matthew B. Tondl

TITLE: Senior Vice President

ADDRESS: 1917 S 67<sup>th</sup> Street  
Omaha, Nebraska 68106

**EXHIBIT A**  
**SCOPE OF SERVICES**

Lower Platte River Consortium Drought Contingency Planning  
Drought Workshop Scope

**Background**

This scope of services is in support of conducting a drought workshop with Consortium members as a supplement to the development of the Lower Platte River Drought Contingency Plan (2019). The purpose of the workshop will focus on two primary areas:

- 1) Simulate drought monitoring and reporting activities identified in the plan to evaluate content of monitoring reports, protocols for monitoring and communication, and roles or communication during a drought. Key discussions to include:
  - a. Protocols for communication (about status, actions, etc.)
  - b. Content for communication
  - c. What are people's expectations for us in these efforts?
  - d. What are everyone's roles?
  - e. Strategies for involving the public

Monitoring and reporting protocols will be evaluated throughout monitoring/preparing for drought, warnings of drought conditions, triggers, responses during drought, and triage and documentation following drought.

- 2) Refine drought response actions, both individual actions and the potential consortium actions as identified in the plan.
  - a. Testing of mitigation actions in plan for function and projected effect during drought conditions – both flash drought and extended duration drought conditions.
  - b. Municipal and industrial
    - i. Identify locations or 'bulls eyes' of most vulnerable areas/users to extremes droughts
    - ii. Define thresholds where demand management approaches are no longer sufficient to address shortages
    - iii. Identify emergency response actions to shortage
      1. Estimate emergency water supply requirements
      2. Potential sources and volume of emergency water sources
      3. Water quality, waste generation, how to manage
      4. Distribution of emergency water, how to marshal
      5. Navigating the administrative and regulatory process (e.g., FWS, etc.)
      6. Ideas for possible sources of equipment, water trucks from contractors, cities, military
  - c. Agricultural supplies
    - i. Identify critical areas of individual domestic/ag well interference
    - ii. Define plan of action for well interference in these areas for both individual domestic and ag uses (consider state ag drought management plan actions)

The results of the workshop will be documented and included as an addendum to the Drought Contingency Plan document. In addition, any modifications or enhancements to protocols developed through the workshop will be updated.

### **Scope of Services**

#### **Task Series 100 – Project Management**

*Objective: Provide project management activities including planning, organizing and monitoring project team activities, schedule and budget management, preparing progress reports and invoices, liaison with the District and Consortium, Water Sustainability Fund reporting.*

#### **HDR Activities:**

##### **110 TEAM MANAGEMENT AND PROJECT CONTROL**

- Budget and invoice management.
- Resource scheduling, management, and allocation based on project schedules and activities.
- Production coordination.
- Invoice preparation and submittal to District.
- Water Sustainability Fund reporting

##### **120 – PROJECT COORDINATION MEETINGS**

- Conduct and attend project coordination meetings with the Consortium members and the Drought Mitigation Center in preparation of drought workshop. (3 anticipated)

#### **Task Deliverables:**

- Monthly invoices.
- Meeting minutes/comments/notes
- Water sustainability funding reports

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

- Coordination meetings with Consortium members and Drought Mitigation Center (3 meetings total)

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

- Project Duration of 5 months
- Coordination meetings to be held using virtual meeting technology

#### **Information and Services Provided by Others:**

- District will provide timely review and comment on meeting minutes.
- District will provide timely review and processing of invoices.

#### **Task Series 200 – Drought Workshop**

*Objective: Prepare and conduct drought workshop*

##### **210 – WORKSHOP PREPARATION**

- Preparation of materials to facilitate drought workshop, including potential scenarios to facilitate the discussion. Up to three scenarios will be developed for conducting the workshop. Written descriptions of the scenario will be prepared for distribution prior the workshop. Included in the scenario document will be descriptions and data for hydrologic conditions, forecasts, and specific questions identified for consideration by



members to prepare for workshop. Anticipated supporting materials include streamflow/aquifer data and trends (historical or hypothetical based on historical), forecasts, etc. as necessary to use in simulating drought conditions and impacts, mapping and graphics, and monitoring data.

- Meeting materials to include agenda identify purpose, goals, and expected outcomes of workshop, and powerpoint/graphics/documents as need to facilitate the discussions.

## 220 – CONDUCT DROUGHT WORKSHOP

- Facilitation of workshop discussion

### Task Deliverables:

- Scenario packets for distribution prior to workshop
- Workshop Agenda
- Workshop materials
- Facilitation of workshop

### Meetings/Travel:

- Anticipated workshop will be held in Lincoln at offices of LPSNRD or NeDNR. Preparation meetings/coordination included in Task 100.

### Key Understandings and Assumptions:

- HDR's team will compile meeting materials and facilitate workshop

### Information and Services Provided by Others:

- Supporting materials and data for workshop.
- Attendance by key personnel from each Consortium participant at workshop

## Task Series 300 – Documentation

*Objective: Document drought workshop and update plan document as necessary*

### HDR Activities:

## 310 – DROUGHT WORKSHOP NOTES

- Prepare draft/final workshop notes. Notes to document key discussion points, comments, suggestions, and outcomes, including potential additions to the plan document.

## 320 – FINAL PLAN UPDATE

- Incorporate Consortium comments on draft plan/report and finalize document

### Task Deliverables:

- Drought Workshop meeting notes
- Update to drought contingency plan

### Meetings/Travel:

- None

### Key Understandings and Assumptions:

- Draft update to drought contingency plan in electronic format for review/comment
- Final update to drought contingency plan will be in electronic (pdf) format and 7 bound hard copies

### Information and Services Provided by Others:

- Timely review and comment on draft report.

# ESTIMATED FEE

## Lower Platte River Consortium Drought Workshop

### HDR STAFF HOUR TABULATION

TASK	Project Manager	Project Engineer	Jr. Engineer/ Facilitation	TFG - Sr. Water Resources Eng.	TFG - Jr. Water Resources Eng.	Hours	Labor Total
<b>100 Project Management</b>							
110 Project Management	5			5		10	\$ 2,230
120 Project Coordination Meetings	16			16		32	\$ 7,135
<b>200 Drought Workshop</b>							
210 Workshop Material Preparation	12	24	24	16	20	96	\$ 15,989
220 Conduct Drought Workshop	8	8	8	8	8	40	\$ 7,053
<b>300 Documentation</b>							
310 Drought Workshop Notes	2	2	4	4		12	\$ 2,106
320 Final Plan Update	8	4	4	8		24	\$ 4,710
	<b>51</b>	<b>38</b>	<b>40</b>	<b>57</b>	<b>28</b>	<b>214</b>	<b>\$ 39,223</b>
					<b>Direct Expenses</b>		<b>\$ 500</b>
					<b>TOTAL BASE FEE</b>		<b>\$ 39,723</b>

**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; Umbrella or Excess Liability of \$2,000,000; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. If flying an Unmanned Aerial System (UAS or drone), ENGINEER will procure and maintain aircraft unmanned aerial systems insurance of \$1,000,000 per occurrence. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for third party personal injury and property damage claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract. ENGINEER shall waive subrogation for Commercial and Automobile liability and agrees to add Owner as an additional insured.

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

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

### 4. CONSTRUCTION PROCEDURES

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

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

### 5. CONTROLLING LAW

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

### 6. SERVICES AND INFORMATION

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

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

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

### 7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

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

### 8. RE-USE OF DOCUMENTS

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

all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

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

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

#### **10. SEVERABILITY**

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

#### **11. INVOICES**

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

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

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

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

#### **12. CHANGES**

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

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

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

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

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

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

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

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

#### **16. EXECUTION (NOT USED)**

**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 SPECIFIED AMOUNT OF APPLICABLE INSURANCE PROVIDED FOR IN PARAGRAPH 2, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY.

**18. LITIGATION SUPPORT**

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

**19. NO THIRD PARTY BENEFICIARIES**

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

**20. UTILITY LOCATION**

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

**21. UNMANNED AERIAL SYSTEMS**

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

**22. OPERATIONAL TECHNOLOGY SYSTEMS**

OWNER agrees that the effectiveness of operational technology systems ("OT Systems") and features designed, recommended or assessed by ENGINEER are dependent upon OWNER's continued operation and maintenance of the OT Systems in accordance with all standards, best practices, laws, and regulations that govern the operation and maintenance of the OT Systems. OWNER shall be solely responsible for operating and maintaining the OT System in accordance with applicable industry standards (i.e. ISA, NIST, etc.) and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training

requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, OWNER recognizes and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by ENGINEER are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, ENGINEER does not guarantee that OWNER's OT Systems are impenetrable and OWNER agrees to waive any claims against ENGINEER resulting from any such incidents that relate to or affect OWNER's OT Systems.

**23. FORCE MAJEURE**

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

**24. INDEPENDENT CONTRACTOR**

The Parties agree that this Agreement shall not create an employer-employee relationship, and the ENGINEER, or employees or other persons acting on behalf of the ENGINEER in the performance of this Agreement, shall be independent contractor(s) during the entire terms of the Agreement or any extension or renewal thereof.