

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

THIS AGREEMENT is made as of this 2<sup>nd</sup> day of August, 2016, between the City of Camas, Washington ("OWNER") a municipality with principal offices at 616 NE 4<sup>th</sup> Avenue, Camas, WA 98607, and HDR ENGINEERING, INC., ("ENGINEER") a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as WWTP and Pump Station Condition Assessment and Preventative Maintenance Program ("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 basis of lump sum. The amount of the lump sum is One Hundred Sixty-two Thousand, Six Hundred and Seventeen Dollars (\$162,617).

Compensation terms are defined as follows:

Lump Sum shall mean a fixed amount which shall be the total compensation agreed upon in advance for Scope of Services.

**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.

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.

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

**CITY OF CAMAS, WASHINGTON**

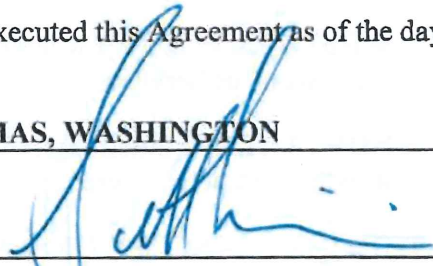
"OWNER"

BY:

NAME:

TITLE:

ADDRESS:

  
\_\_\_\_\_  
Scott Higgins  
\_\_\_\_\_  
Mayor  
\_\_\_\_\_  
616 NE 4th Avenue  
\_\_\_\_\_  
Camas, WA 98607  
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**HDR ENGINEERING, INC.**

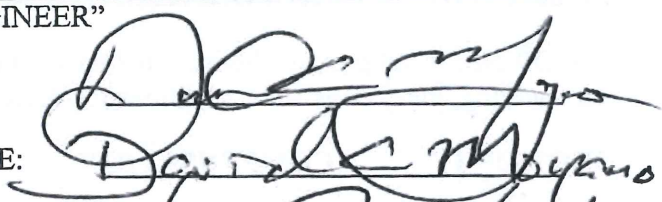
"ENGINEER"

BY:

NAME:

TITLE:

ADDRESS:

  
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David A. Myrnes  
\_\_\_\_\_  
Vice President  
\_\_\_\_\_  
1001 S.W. 5th Avenue, Suite 1800  
\_\_\_\_\_  
Portland, OR 97204-1135  
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**EXHIBIT A**  
**SCOPE OF SERVICES**

# **HDR Engineering, Inc. Scope of Work**

## **WWTP and Pump Station Condition Assessment and Preventative Maintenance Program**

City of Camas, Washington

### **BACKGROUND**

The City of Camas (City) has expressed an interest in developing a condition assessment and preventative maintenance program at the Wastewater Treatment Plant (WWTP) and 23 pump stations in the collection system.

The scope of this project is to conduct a condition assessment of the City's above-ground infrastructure at the WWTP and 23 pump stations, provide recommendations for system repair or replacement, and assist in developing an equipment preventative maintenance program.

A condition assessment will field verify above-ground and accessible WWTP and pump station systems, including mechanical, electrical instrument and control (EI&C) and structural components; and will assess below-ground infrastructure based on a Remaining Useful Life (RUL) analysis. A prioritized condition assessment with recommendations on system repair or replacement will be prepared, along with preliminary cost estimates for recommendations.

This scope includes the following tasks:

### **TASK 1 PROJECT MANAGEMENT**

#### **Activities**

- Prepare an internal project management plan to include schedule, budget, roles, project team contact information, and procedures.
- Prepare monthly invoices
- Prepare monthly progress reports to advise City project manager of project status.
- Conduct internal team meetings to review progress, coordinate disciplines, and identify information needs.

#### **Assumptions**

- Project duration is 6 months.

#### **Deliverables**

- Monthly invoices and progress reports

## TASK 2 COMPILE FACILITY INFORMATION

### Activities

- Participate in a kickoff meeting to confirm project goals and review information request and data collection.
- Compile existing information on facilities, including size, material, manufacturer, age, and known issues.
- Prepare facility evaluation worksheets to aid in facility tour.
- Develop and discuss asset class Original Useful Life (OUL) estimates to be used later in RUL analysis.

### Assumptions

- City will provide information on existing facilities including record drawings, operations and maintenance manuals, equipment replacement/repair records, and other relevant information. See Appendix A for a complete list of information requested.
- Information compilation will only occur for the facilities and pump stations being inspected as part of Task 2.
- City will review and comment on evaluation worksheets to confirm the inspection criteria meets their goals.
- Kickoff meeting will last 2 hours and will be attended by three HDR staff.

### Deliverables

- Facility evaluation worksheets
- Kickoff meeting agenda and minutes

## TASK 3 FACILITY TOUR AND SITE VISITS

- Coordinate a tour of the WWTP facilities and collection system pump stations listed in Table 1. Verify and note the general condition of infrastructure for use in condition assessment.

**Table 1. Facilities to be Evaluated**

<b>WWTP Facilities</b>	
Main Pump Station	UV Disinfection
Primary Clarifiers (exposed/above-ground portion only)	Effluent Pumping
WPS Pumping	Chemical Feed Systems
Secondary Treatment System (splitter box, basins, blowers, mixers, exposed piping)	Grit Removal System
Secondary Clarifiers 1, 2 & 3 (exposed/above-ground portion only)	Gravity Thickener
RAS/WAS Pumping	Centrifuge and Centrate Handling

**Table 1. Facilities to be Evaluated**

<b>WWTP Facilities</b>	
Scum Handling Systems	Plant Drain PS
Septage Handling System	Odor Control Systems 1 & 2
Standby Power System	Headworks Screens
Waste Activated Sludge Thickener and associated equipment	Anaerobic Digesters and associated equipment
Biosolids Dryer	Effluent Disc Filters
<b>Collection System Pump Stations</b>	
23 Pump Stations	

The following components for each process/building will be inspected where applicable:

- Mechanical – includes process piping and equipment; heating, ventilation, and air conditioning (HVAC); odor control; and other mechanical support facilities.
- Electrical – includes electrical, instrumentation, controls, and power source/backup facilities.
- Structural – includes structural building components (e.g., concrete, steel) as well as building envelope components (e.g., windows, doors, skylights).

**Assumptions**

- Facility tours assume the following level of effort for HDR staff:
  - 24 hours each at the WWTP for two process mechanical engineers
  - 16 hours each at the WWTP for electrical and structural engineers
  - 1 hour per pump station for three HDR staff (process mechanical, electrical and structural).
- It is assumed that all 23 pump stations will be inspected. Inspectors will not enter wet wells for the inspections, but will observe wet well conditions with the use of a field camera
- Below-grade or submerged structures/equipment will not be visually inspected. Condition of assets not visible from the surface will not be included in the assessment. This condition assessment will not document changes in the condition of assets that occurs after the date of inspection.
- Inspections will be visual observation and will not include destructive or nondestructive testing.
- Electrical and control cabinets will be opened by City staff. Electrical inspections will be visual observation and no testing will be performed.
- Pump stations and treatment plant will be inspected in current operating configuration,

### **Deliverables**

- Site visit schedule

## **TASK 4 CONDITION ASSESSMENT TECHNICAL MEMORANDUM**

- Prepare a high-level condition assessment of above-ground facilities using data gathered during facility tours. Complete evaluation worksheets for each facility. Develop recommendations for the repair, replacement, or upgrade of facilities. HDR will work with the City to establish an overall RUL of each facility to aid in calculating risk and prioritizing recommendations.
- Develop conceptual-level cost estimates for the recommendations (Class 5 based on Association for the Advancement of Cost Engineering [AACE] 18R-97)
- Document condition assessment activities in a Technical Memorandum (TM). TM will include photos documenting the conditions as well as a GIS file with the pump station locations.
- Attend condition assessment review meeting to discuss the results of the condition assessment. Discuss estimate of risk for above-ground facilities based on facility RUL and criticality. Criticality will be established during the condition assessment meeting with City staff using a scale of low, medium, and high. A numeric estimate will be based on RUL multiplied by criticality. Prioritize recommendations based on input from the City into the 6-year, 10-year, and 20-year planning horizons. Review and update prioritization of recommendations.

### **Assumptions**

- Review meeting will last 4 hours and be attended by two HDR staff.
- The City will provide one set of consolidated comments for its review of the Draft Condition Assessment TM.
- The condition assessment TM will be based upon visual observation and best professional judgment.

### **Deliverables**

- Draft Condition Assessment TM (electronic PDF submittal)
- Final Condition Assessment TM (electronic PDF submittal)
- Review meeting minutes (electronic PDF submittal)
- Electronic GIS shapefile with pump station locations

## **TASK 5 PREVENTATIVE MAINTENANCE PROGRAM EVALUATION**

- Facilitate a preventative maintenance program workshop to present options for creating an electronic preventative maintenance program. Up to three options will be compared. The workshop agenda will include discussion with City staff on the

ability of the electronic preventative maintenance program to satisfy the needs of other departments beyond the wastewater utility.

- After selection of the preferred program, HDR will populate the database with the preventative maintenance activities for two systems: the Class A Solids Drying System and the Main Pump Station.
- A second workshop will be conducted to train City staff on the use of the new system and procedures for populating it with data.

### **Assumptions**

- Two, 4-hour workshops will be conducted for this task.
- Workshop 1 will include Camas staff from multiple City departments and will be attended by four HDR staff.
- Workshop 2 will include Camas staff representing the wastewater utility and will be attended by three HDR staff.
- Software purchase is not part of this scope of work.
- Additional training and/or support can be provided under a contract addendum.
- The intent of this task is to develop a foundational computerized maintenance management system that will schedule, document and report preventative maintenance activities.

### **Deliverables**

- Meeting minutes for both workshops (electronic PDF submittal)
- Preventative Maintenance Database (electronic submittal)



## Appendix A. Information Request

The following is a list of requested information to assist the team in data review. It is assumed that not everything on this list will be available; however, it will serve as a starting point for the data request.

1. Asset Inventory, by facilities, including original installation dates and/or replacement dates
2. Record drawings as up to date as possible
3. Concept reports that contain original concepts and criteria
4. Operating records and standard operating procedures (SOPs) – flow rates; chemical feeds; daily and weekly changes
5. Maintenance records and SOPs for the WWTP
6. Equipment submittals and descriptions
7. Operations and maintenance (O&M) manuals
8. Any special reports that were prepared for the facility (e.g., inspections, cleaning, noise, odor)
9. Any performance tests that were performed on the facility (e.g., pump tests, unit process loading and head loss, other)
10. Results of any pilot tests and special water quality studies
11. Reports routinely submitted to health or environmental agencies for regulatory compliance
12. Sanitary survey or other reports from state, federal or other governmental agencies
13. Photos taken throughout the years that may depict changes
14. Consent decrees, legal mandates or negotiated arrangements related to the facility
15. Community/neighborhood issues associated with the facility (e.g., noise, chemical deliveries, odor)
16. Zoning ordinances or planning requirements for the facility
17. Building, plumbing, fire, electrical and safety code requirements
18. Contracts with other districts that influence quantity, flow, pressure, water quality, etc.
19. Flood zone and earthquake requirements, and any other natural or site issues
20. Painting and coating requirements and history
21. Lead, asbestos, or other potentially hazardous materials at the facilities
22. Power and electrical supply – existing situations and future needs
23. Electric rate structures, demand charges, and usage charges
24. Water/wastewater planning documents that may reflect future changes in demands/flows or other requirements
25. Capital funding requirements that may influence the level of inspection or report requirements
26. Architectural requirements or special designations
27. Listing of corrosive chemicals used or on-site
28. Ventilation requirements or issues related to moisture

29. Security and vandalism issues
30. Instrumentation, controls and data acquisition and storage requirements
31. Special formats or needs related to cost estimates
32. Special issues related to protection of intakes or outfalls, diffusers, etc.
33. Issues or reports related to surge issues, pressure fluctuations, breaks, etc.
34. Permit requirements including National Pollution Discharge Elimination System (NPDES), Total Maximum Daily Loads (TMDLs), other
35. Any violations of codes or permits noted
36. Facility shutdown/outage requirements
37. Safety requirements – ingress and egress, confined space requirements

**EXHIBIT B**

**TERMS AND CONDITIONS**

# HDR Engineering, Inc.

## Terms and Conditions for Professional Services

### 1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

### 2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

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

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

### 4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

### 5. CONTROLLING LAW

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

### 6. SERVICES AND INFORMATION

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

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

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

### 7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

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

### 8. RE-USE OF DOCUMENTS

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

### 9. TERMINATION OF AGREEMENT

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

### 10. SEVERABILITY

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

### 11. INVOICES

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

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

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

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

## 12. CHANGES

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

## 13. CONTROLLING AGREEMENT

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

## 14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

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

## 15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is

performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

## 16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

## 17. ALLOCATION OF RISK

**OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$100,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.**

## 18. LITIGATION SUPPORT

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

## 19. UTILITY LOCATION

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

