



November 13, 2023

Ms. Shawna Burkhart  
City Manager  
City of Bay City  
1901 Fifth Street  
Bay City, Texas 77414

**Re: Proposal for Professional Engineering Services: City Wide Quiet Zone**

Dear Ms. Burkhart:

HDR Engineering, Inc. (HDR) is pleased to submit this proposal for the for the above referenced project. This proposal provides a general overview of the project, proposed scope of services, and a fee summary.

**GENERAL OVERVIEW:**

The City of Bay City currently has two independent railroad companies that traverse through the City's jurisdiction. The Burlington Northern Sante Fe Railway (BNSF) runs north/south and Union Pacific Railroad (UPRR) runs west/east. The following are the two identified rail Routes:

**UPRR's Angleton Subdivision**

This main line between Avenue A and TxDOT's FM 457 traverses through the City from east to west. Lane and North Industrial Road. The CP/DME Railroad also maintains trackage rights on this segment. This rail segment includes eleven (11) public rail crossings and no other types of rail crossings. Based on this information gathered, all of the public crossings on the UP Angleton Subdivision meet the minimum warning device requirements for a quiet zone.

**BNSF's Bay City Subdivision**

This main line between Grace Street and Nichols Avenue traverses through the City from north to south and intersects with UP's Angleton Subdivision. Just south of this intersection, the mainline turns east towards Nichols Avenue. This rail segment has fifteen (15) grade crossings, thirteen (13) public and two (2) private. Only one public crossing on the BNSF Bay City Subdivision (4<sup>th</sup> Street, 023380Y) is currently equipped with the minimum warning devices requirements. The other crossings in the corridor will need to be updated accordingly.

The City has request HDR to provide a proposal to coordinate with both railroad companies, identify improvement required to meet the identified supplementary safety measures (SSM) required to establish the city wide quiet zone and provide the necessary documentation to the Federal Railroad administration (FRA) to establish a City wide quiet zone in the City limits.

HDR (“Consultant”) proposes to complete the study using the tasks described in the following scope of work. Quiet zone requirements as well as the review and implementation process are outlined in the FRA’s Quiet Zone Rule.

**SCOPE OF SERVICES:**

HDR will perform the following Scope of Services on this Project:

**Task 1: Initiate Study**

- **Online Kick-off Meeting:** Consultant will hold a kickoff meeting with the City and other interested stakeholders to discuss the overall study process, key deliverables, and study timeline. Consultant will prepare an MS PowerPoint summary including a base map of the proposed crossing locations, a summary of the relevant FRA grade crossing inventory information, and a summary of the FRA accident/incident reports for the past five years (accidents within this time frame are included in the FRA’s quiet zone risk calculations).
- **Project Management Plan (PMP):** Consultant will develop a PMP to summarize the scope of work, key deliverable due dates, public engagement timelines, and review/revision periods.
- **Project Management Team (PMT):** Consultant will work with the city to establish a PMT consisting of stakeholders from the City of Bay City and other agencies. The PMT will guide the overall development of the study. Monthly PMT check-in meetings will be held via teleconference to provide updates on study progress and to receive comments on draft materials.
- **Contact Stakeholders:** Early communication with relevant stakeholders will be critical to study success. Consultant will establish contact with representatives from the FRA, UP, BNSF, TxDOT, and other partner agencies to inform them of the study and request information needed to complete the study.

**Task 2: Preliminary Investigation/Risk Index Update and Review**

- **Data Collection:** Consultant will collect grade crossing inventory forms and accident/incident reports for each grade crossing in the study corridor. Data in the inventory will be compared and confirmed against the TxDOT grade crossing database and or the railroad’s internal records. Confirm inventory traffic counts with City and collect updated traffic counts from the City if available. Traffic counts should be within one to three years for the FRA risk calculations. Grade crossing information will be summarized to highlight which crossings will need to be upgraded to meet the minimum requirements for quiet zone implementation.
- **Map/Layout Development:** Consultant will prepare base map showing crossing locations and type. Prepare individual crossing aerials to highlight layout and characteristics of each crossing.

- **Initial Risk Calculations:** Consultant will conduct preliminary risk calculation using FRA’s online risk calculator. The inputs for each crossing will be updated based on the collected data. This calculation of the current risk levels will highlight the relative risk from crossing to crossing. Safety improvements at high-risk crossings will be more effective than improvements at low-risk crossings.

### **Task 3: Preliminary Design Stage and Agency Input**

- **Field Diagnostic Meetings:** Consultant will coordinate and facilitate an on-site meeting with representatives from FRA, TxDOT, UPRR, BNSF, the City, and other partner stakeholders. The purpose of the meeting is to conduct a crossing-by-crossing walkthrough to determine existing conditions and identify relevant safety issues that should be addressed. Appropriate supplementary safety measures (SSMs) and alternative safety measures (ASMs) will be identified by the diagnostic team. Consultant will prepare diagnostic meeting packets for the participants including:
  - a. Evaluation form and aerial image of each crossing to record findings and discussion
  - b. Overview map of the corridor
  - c. FRA grade crossing inventory forms for each crossing
  - d. Accident/incident reports for each crossing (within past five years).

Consultant will prepare and distribute meeting minutes documenting the discussion and recommendations of the group. Draft minutes will be submitted to attendees for review and comment prior to being finalized.

### **Task 4: Concept Development and Evaluation**

- **Improvement Scenario Development:** Consultant will develop up to five quiet zone implementation scenarios based on the SSM and ASM improvements recommended during the diagnostic meeting. Consultant will work with the City to develop a range of scenarios with specific focuses including: 1) providing the greatest reduction in risk level, 2) identifying the lowest cost option that allows for implementation, and 3) identifying the scenario with the smallest impact to access to properties adjacent to the crossings. For this task, consultant will use a custom spreadsheet tool to mix and match improvement options at each crossing. This will allow the consultant to quickly develop improvement scenarios and immediately see their impact on estimated risk levels and their relation to the risk thresholds required for quiet zone implementation.

Consultant will work to create improvement scenarios that result in a quiet zone risk level below the Risk Index With Horns (RIWH) threshold as calculated by the FRA quiet zone calculator. Meeting this threshold will allow for easier implementation and substantially reduce the potential that the quiet zone would be revoked in the future. Improvement scenarios that result in a quiet zone risk level below the Nationwide Significant Risk Threshold (NSRT) will also be considered.

- **Open House:** Coordinate and facilitate a public open house to present the findings of the study, outline the various improvement scenarios developed for the corridor, and

describe the benefits and costs of each. The open house will also provide an overview of the quiet zone review and implementation process.

### **Task 5: Final Report and Presentation to City Council**

- **Draft and Final Report:** Consultant will prepare draft final report summarizing the quiet zone evaluation process including the diagnostic review recommendations, the proposed improvement scenarios (with planning-level layouts and cost estimates), and a discussion of the next steps required for quiet zone implementation. The final report will include detailed implementation plan and the following information:
  - a. Recommended prioritization of crossing safety improvements.
  - b. Planning-level layouts and cost estimates for proposed improvements.
  - c. Estimated timeline for implementation including construction, document review time by the FRA and railroad, and a final date for quiet zone establishment.
  - d. Summary of quiet zone risk levels used to establish quiet zone designation.
  - e. Identification of potential funding sources. Potential sources of funding include TxDOT Section 130 funds and Federal Consolidated Rail Infrastructure and Safety improvements (CRISI) program funding. In some cases, railroads may also provide incentive funding in exchange for crossing closure, consolidation, or other similar efforts.

The report will be finalized after incorporating feedback from City staff and the Bay City Council

- **Presentation to City Council:** Consultant will develop and present a PowerPoint presentation summarizing the findings of the draft report to the City Council to discuss the proposed improvement options and the benefits and costs of each. It is assumed that this meeting will be held in person.

### **Task 6: Quiet Zone Implementation**

- **Documents for Quiet Zone Implementation:** Consultant will prepare and submit documents to relevant stakeholders to allow for quiet zone implementation as required by the FRA Quiet Zone Rule. Note that in the case of a preliminary feasibility study option, these documents would be prepared and provided to the City, but not submitted. Potential submittal documents include the following:
  - a. Consultant will prepare and submit a Quiet Zone Notice of Intent (NOI) to the FRA, railroad, and other stakeholders.
  - b. Additional documentation to implement the quiet zone may include a Quiet Zone Application, CWT Waiver Request, and Notice of Establishment (NOE). The specific documentation required will not be known until the preferred implementation scenario is selected by the City. Services for developing and submitting these documents and any additional quiet zone implementation services will be negotiated under a separate agreement.

**Other Additional Services**

Other Additional Services are those services that are beyond the Scope of Services section of this proposal. Additional Services shall only be performed when directed by the City to HDR. These services are not considered normal or customary engineering services and may include, but not be limited to, the following:

- Services resulting from significant changes in the extent of the project or its design including but not limited to changes in size, complexity, schedule, or character of construction or method of financing; and revising previously accepted studies, reports design documents or Contract Documents when such revisions are due to causes beyond HDR’s control.
- Preparing documents for alternate bids outside of the original scope requested by the City or documents for out of sequence work.
- Preparing to serve, or serving as a consultant, or witness for the City in any litigation, public hearing or other legal or administrative proceedings involving the Project.

HDR will endeavor to appraise the City of any potential additional or extended services that may result from the above listed items, prior to HDR’s expenditure of time on such services. As previously noted, any such extended or additional services shall only be performed when directed by the City to HDR. Any appropriate engineering fee for these additional services will be negotiated with the City as an amendment to HDR’s contract, as required.

**FEES:**

Task 1 Initiate Study (Lump Sum):	\$ 8,800.00
Task 2 Preliminary Investigation/Risk Index Update and Review (Lump Sum):	\$ 11,500.00
Task 3 Preliminary Design Stage and Agency Input (Lump Sum):	\$ 18,200.00
Task 4 Concept Development and Evaluation (Lump Sum):	\$ 25,700.00
Task 5 Final Report and Presentation to City Council (Lump Sum):	\$ 14,200.00
<u>Certified Mailing (Lump Sum):</u>	<u>\$ 100.00</u>
<b>Total Fee:</b>	<b>\$ 78,500.00</b>

**SCHEDULE:**

The anticipated project schedule will take 7 Months to complete.

**TERMS AND CONDITIONS:**

The terms and conditions between the City and the HDR for this proposed project are attached as Attachment “A”.

HDR will invoice monthly. The invoice package will include the percentage of the project complete.

We appreciate the opportunity to be of service on this project. If you have any questions, please do not hesitate to contact me at (713)-622-9264.

Sincerely,

HDR ENGINEERING, INC.



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David Weston  
Vice President/ Area Manager

ACCEPTANCE: City of Bay City

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City of Bay City  
Robert K. Nelson, Mayor

Date 

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Attachments

- Terms and Conditions

# Attachment "A"

## HDR Engineering, Inc. Terms and Conditions for Professional Services for City of Meadows Place, Texas

### 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. 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.

### 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.

### 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.

### 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, 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.

#### **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. 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.

#### **18. 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.

#### **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.

#### **20. 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.

#### **21. 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.

#### **22. 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.