

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **City of Dickinson** (Owner) and **Houston Engineering, Inc.** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Dickinson Solid Waste Emergency Inert Landfill (ND DEQ Facility 0194) Closure** (Project). Engineer's services under this Agreement (Services) are generally identified as **Engineering Design and Solicitation Support Services to facilitate the development of engineering plans and specifications subject to North Dakota Department of Environmental Quality (ND DEQ) review and acceptance and support with project solicitation.**

Detailed scope of services are provided in the following attachments:

Attachment A1: Engineering Design and Solicitation Support Services (Estimated Budget)

Attachment A2: Engineering Design and Solicitation Support Services (Project Expenses)

Owner and Engineer further agree as follows:

1.01 Services of Engineer

A. Engineer shall provide or furnish the Services set forth in this Agreement, and any Additional Services authorized by Owner and consented to by Engineer.

2.01 Owner's Responsibilities

A. Owner shall provide Engineer with existing Project-related information and data in Owner's possession and needed by Engineer for performance of Engineer's Services. Owner will advise the Engineer of Project-related information and data known to Owner but not in Owner's possession. Engineer may use and rely upon Owner-furnished information and data in performing its Services, subject to any express limitations applicable to the furnished items.

1. Following Engineer's assessment of initially-available Project information and data, and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information and data as Additional Services.

B. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance. Owner shall give prompt notice to Engineer whenever Owner observes or otherwise becomes aware of (1) any relevant, material defect or nonconformance in Engineer's Services, or (2) any development that affects the scope or time of performance of Engineer's Services.

3.01 Schedule for Rendering Services

A. Engineer shall complete its Services within the following specific time period: **Services are completed as stated in the Scope of Work attachment during calendar year 2026 to**

facilitate construction during the 2027 construction season. A separate task order will be provided for City consideration to support construction management services after development of the construction plans and subsequent approval/authorization from ND DEQ and bidding. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.

- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

4.01 Invoices and Payments

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.
- B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay: If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; and (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2.
- D. Reimbursable Expenses: Engineer is entitled to reimbursement of expenses only if so indicated in Paragraph 4.01.E or 4.01.F. If so entitled, and unless expressly specified otherwise, the amounts payable to Engineer for reimbursement of expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external expenses allocable to the Project, including Engineer's subcontractor and subconsultant charges, with the external expenses multiplied by a factor of **1.10**.
- E. Basis of Payment
 - 1. Hourly Rates. Owner shall pay Engineer for Services as follows:
 - a. An amount equal to the cumulative hours charged to the Project by Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.
 - b. The total compensation for Services and reimbursement of expenses is estimated to be:

The estimated fees for each scope of work is further defined in the respective attachments defining the individual tasks.

Dickinson Solid Waste Emergency Inert Landfill (IT-194) Closure – Phase 1 Engineering Design	
Task 1 - Engineering Design	\$109,373
Task 2 - Coordination, Project Management & Meetings	\$11,858
Project Expenses	\$2,400
Engineering Design Total (Labor & Expenses)	\$123,631

- c. Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount noted above unless approved in writing by the Owner.
- F. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services.

5.01 Termination

A. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. In addition to its termination rights in Paragraph 5.01.A.1, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.01.I.
3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

- B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.
 - 1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
 - 2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.01.F.

6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under 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 any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over

competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Engineer grants to Owner a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the deliverable documents, and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants;
 - 3. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer agree to transmit, and accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. Insurance: Commencing with the Effective Date of the Agreement, Engineer shall obtain and maintain during the term of this Agreement, at its own expense, workers' compensation insurance and comprehensive general liability insurance in the amounts determined **below** and will, upon request, furnish insurance certificates to Client. **The limits of liability required are as follows:**

1. Workers' Compensation:	Statutory
2. Employer's Liability –	
a. Bodily injury, each accident:	\$ 1,000,000
b. Bodily injury by disease, each employee:	\$ 1,000,000
c. Bodily injury/disease, aggregate:	\$ 1,000,000
3. General Liability –	

- a. **Each Occurrence (Bodily Injury and Property Damage):** \$ 1,000,000
- b. **General Aggregate:** \$ 2,000,000

4. **Excess or Umbrella Liability –**

- a. **Each Occurrence:** \$ 4,000,000
- b. **General Aggregate:** \$ 4,000,000

5. **Automobile Liability – Combined Single Limit**

- (Bodily Injury and Property Damage):** \$ 1,000,000

6. **Professional Liability –**

- a. **Each Claim Made:** \$ 5,000,000
- b. **Annual Aggregate:** \$ 5,000,000

- I. **Waiver of Damages; Limitation of Liability:** To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, and (2) agree that Engineer's total liability to Owner under this Agreement shall not exceed **the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement.**
- J. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- K. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the parties may exercise their rights at law.
- L. This Agreement is to be governed by the laws of the state in which the Project is located.
- M. **Engineer's Subcontractors and Subconsultants:** Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the

performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

- N. Engineer's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

7.01 Definitions

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 Successors, Assigns, and Beneficiaries

- A. Successors and Assigns
1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
 2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Attachments:

Attachment A1: Engineering Design and Solicitation Support Services (Estimated Budget)

Attachment A2: Engineering Design and Solicitation Support Services (Project Expenses)

This Agreement's Effective Date is **February 3, 2026**.

Owner:

City of Dickinson

(name of organization)

By:

(authorized individual's signature)

Date:

(date signed)

Name: Scott Decker

(typed or printed)

Title: President of City Commission

(typed or printed)

Address for giving notices:

38 1st Street West

Dickinson, ND 58601

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

3411 Public Works Blvd

Dickinson, ND 58601

Phone:

Email:

Engineer:

Houston Engineering Inc.

(name of organization)

By:

(authorized individual's signature)

Date:

(date signed)

Name: Sherwin Wanner, PE

(typed or printed)

Title: Client Manager

(typed or printed)

Address for giving notices:

3712 Lockport St

Bismarck, ND 58102

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

135 Sims Street, Suite 204

Dickinson, ND 58601

Phone:

701.323.0200

Email:

swanner@houstoneng.com

Attachments:

ATTACHMENT A1 - ESTIMATED BUDGET

Engineering Design for Dickinson Emergency Inert LF Closure

Date Prepared: 1/16/2026

Revised: 1/20/2026

Prepared by: Dennis McAlpine

Checked by: Sherwin Wanner

Total Estimated Labor \$121,231
Total Estimated Expenses \$2,400
Total Estimated Budget \$123,631

TASK DESCRIPTION	Engineer 13	Engineer 11	Land Surveyor 4	Technician 8	Engineer 5	2-Person Crew Survey	Total	
							Hours	Dollars
Project Totals	38	195	2	38	264	16	553	\$121,231
Dickinson Emergency Inert LF Existing Facility Closure - Phase 1 Engineering Design 2026 Rates	38	195	2	38	264	16	553	\$121,231
Task 1 - Engineering Design	26	175	0	30	256	16	503	\$109,373
Project Preparation	12	47	0	24	34	16	133	\$29,997
Project kick-off meeting w/Facility Staff as coordination for expectations of final design elements/components ¹	1	1					2	\$532
Processing of Field Survey data to characterize topography of intermediate cover grades and onsite soil stockpiles ²		4		8			12	\$2,516
Facilitate test-pitting to confirm waste limits and depth of intermediate cover ^{3,4}	4	24			16	16	60	\$14,044
Generate/update existing conditions base mapping with waste limits via test-pitting for use w/preliminary/final design							20	\$3,744
Project coordination meeting w/Facility Staff	6	16			6		28	\$6,870
Generate memorandum of understanding detailing project design elements and results of test-pitting/survey/soil testing effort ⁵	1	2			8		11	\$2,291
Preparation of Preliminary (75%) Design Plans	10	58	0	6	142	0	216	\$45,378
Cover sheet, legend & existing conditions		1			4		5	\$1,007
Site Plan, Construction Limits		4			12		16	\$3,276
SWPPP/Erosion Control		4			10		14	\$2,900
Stormwater Management		6			16		22	\$4,538
Final Cover Grading Plan		6		4	24		34	\$6,790
Final Cover Thickness Documentation Point Schedule		1			8		9	\$1,759
Coordination with local NRCS representative and seed supplier to identify vegetative restoration BMPs/preferred native seed mix		2			8		10	\$2,014
Details - Erosion Control		1			8		9	\$1,759
Details - Liner System/Connections/Terminations/Perimeter Controls		4			16		20	\$4,028
Details - Ancillary/Perimeter Improvements and/or Drainage Improvements		1			8		9	\$1,759
QC/QA of Preliminary Plans (HEI internal)	8						8	\$2,216
Develop Preliminary Opinion of Probable Construction Cost (POPCC) Estimate		8			8		16	\$3,544
Generate earthwork spreadsheet detailing soil material needs		4			16		20	\$4,028
Project coordination meeting #2 w/facility staff to review plans	2	16		2	4		24	\$5,760
Development of Final (100% Design)/Construction Plans	0	36	0	0	70	0	106	\$22,340
Revise Plans per City of Dickinson comments		8			16		24	\$5,048
Generate project specification manual (front-end contractual documentation)		10			12		22	\$4,806
Generate project specification manual (technical specifications)		8			16		24	\$5,048
Generate Construction Quality Assurance Plan (CQAP) - Soil Testing Documentation for compliance w/ND DEQ permit		6			20		26	\$5,290
Refine Preliminary Opinion of Probable Construction Cost (POPCC) Estimate		4			6		10	\$2,148
Project Solicitation & Coordination	4	34	0	0	10	0	48	\$11,658
Support City with preparation of project advertisement		4					4	\$1,020
Respond to Contractor questions/inquiries, prepare addenda (2 addendums at 4hrs each)		8					16	\$3,544
Attend/facilitate pre-bid meeting	2	16					18	\$4,634
Attend bid opening	2						2	\$554
Conduct bid review and generate recommendation letter		6			2		8	\$1,906
Task 2 - Coordination, Project Management & Meetings	12	20	2	8	8	0	50	\$11,858
General Coordination	12	20	2	8	8	0	50	\$11,858
Internal coordination & meetings	6	8	2	8	8		32	\$7,136
Project Administration	4	8					12	\$3,148
Coordination/Approvals from ND DEQ	2	4					6	\$1,574

Total Estimated Labor \$121,231
Total Estimated Expenses \$2,400
Total Estimated Cost \$123,631

Assumptions:

- Services provided at no cost to the City
- Previous Field Survey conducted via the use of Unmanned Aerial Drone with Lidar data capture.
- HEI to utilize/direct City provided excavator (w/City operator) to conduct thickness/soil depth and waste test-pitting
- Availability of onsite topsoil materials is unknown at this time. Engineering design assumes that topsoil (SPGM materials) will be imported and not require Owner characterization. If significant amount(s) of topsoil are observed via test-pitting activities an SPGM soil classification may be justifiable. This effort will be completed as an additional service or direct bill to the City
- Memorandum to serve as notification to ND DEQ for project approach
- City staff/legal at facilitate bid opening. HEI will be present for questions/support

ATTACHMENT A2 - PROJECT EXPENSES**Dickinson Emergency Inert LF Existing Facility Closure - Phase 1 Engineering Design
Houston Engineering, Inc.**

Item	No.	No. Per Trip or Item	Unit Cost	Units	Total
Travel					
Mileage (inspection/survey/senior PM support)	5	10	\$0.725	mile	\$36.25
Mileage (PM support)	1	840	\$0.725	mile	\$609.00
Mileage (survey support)	2	200	\$0.725	mile	\$290.00
Lodging					
Hotel (PM support)	1	1	\$125.00	night	\$125.00
Per Diem					
Per Diem	2	2	\$50.00	day	\$200.00
Survey Equipment					
GPS (VRS Rover Kit) (survey support)	2	8	\$25.00	hour	\$400.00
Robotic Total Station (survey support)	2	8	\$40.00	hour	\$640.00
sUAS (survey support - drone)	1	2	\$50.00	hour	\$100.00
Total				Total (Phase 1 Expenses) =	\$2,400.25