



March 26, 2026

Mr. Lance Hopkin  
City Engineer/Public Works Director  
City of Lander, WY  
240 Lincoln Street  
Lander, WY 82520

**Project:** Buena Vista Water and Roadway Surface Improvements

**Subject:** Revised Construction Services Scope and Fee

Dear Mr. Hopkin,

Thank you for the opportunity to continue supporting the City on this important project. Enclosed are our revised Scope of Services and associated Fee for providing construction services in support of the project. The scope has been divided into Year 1 and Year 2 to reflect the two planned years of construction.

Because the project is located on Buena Vista Drive—a vital corridor that provides access to WYDOT, Wyoming Game & Fish, the Lander Community Center, the Lander Medical Center, Sage West Healthcare, and other key destinations— we propose a public outreach component under Task 2.0- Construction Administration. In addition, the requirements associated with SRF funding compliance, including SRF submittals and reviews, combined with the two-year construction duration, are included in the proposed construction administration effort.

As requested, our revised construction observation scope assumes periodic inspections at a level of ten (10) hours per week over the duration of the project. We are confident that our team's contribution to these activities along with a commitment to communication and coordination with City staff will support the successful completion of this critical project for the City of Lander.

Sincerely,  
HDR Engineering, Inc.

Marcus Krall  
Lander Office Leader

Jason Kjenstad, PE  
Sr Vice President

**Attachments:** Buena Vista Water and Roadway Surface Improvement Project Construction Services Scope  
Buena Vista Water and Roadway Surface Improvement Project Construction Services Fee

[hdrinc.com](http://hdrinc.com)

195 South 5th Street, Lander, WY 82520-3001  
(307) 228-6060

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

**THIS AGREEMENT** is made as of this 26<sup>th</sup> day of March, 2026, between City of Lander (“OWNER”) and HDR ENGINEERING, INC., (“ENGINEER” or “CONSULTANT”) for services in connection with the project known as Buena Vista Water and Roadway Surface Improvements Project (“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, 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

- Time and Materials with a not-to-exceed limit of **\$416,881.00**. Time and Materials shall mean actual labor hours at the rates included in Exhibit A, to be paid as total compensation for each hour an employee works on the project, plus Reimbursable Expenses.

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER’S compensation as Reimbursable Expenses.

Compensation terms are defined as follows:

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, technology charges, telephone, telex, shipping and express, and other incurred expense. ENGINEER will add ten percent (10%) to invoices received by ENGINEER from subconsultants and subcontractors to cover administrative expenses and vicarious liability.

#### **SECTION V. PERIOD OF SERVICE**

Upon receipt of written authorization to proceed, ENGINEER shall perform the services described in Exhibit A within a reasonable period of time.

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

**SECTION VI. SPECIAL PROVISIONS**

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

City of Lander  
"OWNER"

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

HDR ENGINEERING, INC.  
"ENGINEER"

BY: Jason L. Kjenstad

NAME: Jason Kjenstad

TITLE: Sr Vice President

ADDRESS: 101 S Phillips Ave, Ste 401  
Sioux Falls SD 57104

**EXHIBIT A**

**SCOPE OF SERVICES**



# Buena Vista Water and Roadway Surface Improvements Project Construction Services

## Background and Introduction

The following presents HDR's scope of work for the Buena Vista Water and Roadway Surface Improvements Project (Project). The construction scope for the Project is prescribed within the Drawings and Project Manual dated 11/14/25, and as amended by Addendums 1 and 2 (Contract Documents). The scope of work has been subdivided for the two years of construction planned for the Project. Year 1 work shall include all scope anticipated for the year 2026. Year 2 work includes all anticipated scope for the year 2027, with an anticipated substantial completion date of 10/15/27 as per the Contract Documents.

The Contract Documents do not require a winter shutdown during the winter of 2026-2027. However, for budgeting purposes, **it is assumed that active sitework and construction will pause from 11/1/26 through 4/1/27**. Tasks 1 and 2 were scoped to reflect this anticipated reduced effort throughout this period. **Task 3 assumes that no construction observation will be required over that period**. Task 3 assumes a 10 hours per week level of effort for the remaining active construction durations, with an anticipated initial mobilization date of 4/1/26.

The Contract Documents do not include the design of ADA ramps or acquisition of construction easements or rights-of-way. It is assumed that those tasks will be completed under a separate engineering services agreement.

Outside of the aforementioned assumptions, Tasks 1, 2, and 3 remain typical for years 1 and 2. Any exceptions to this are noted in the scope of work below. Task 4 is allocated to Year 2. HDR will bill Year 1 work in accordance with our 2026 Fee Schedule, and Year 2 work in accordance with our 2027 Fee Schedule (attached to the Agreement).

## Task 1 – Project Management and Administration

HDR will complete the following Project Management activities:

### Year 1 Scope of Work

Year 1 scope shall include the following activities:

#### PROJECT ADMINISTRATION

- Issue final contract documents.
- Execute HDR's internal quality control and assurance program.
- Manage HDR internal scope and budget.
- Coordinate HDR resources for execution of this scope of work.
- Develop coordination and communication plan with City staff.

#### PROJECT PROGRESS MEETINGS

- Work for this subtask includes organizing and facilitating a Pre-Construction Meeting. Provide an agenda, attendance sheet, and minutes.
- Facilitate and lead weekly construction progress meetings. Develop agenda and disseminate minutes.
- Facilitate and lead weekly coordination meetings with City staff. Develop agenda and disseminate minutes.



## Year 2 Scope of Work

Task 1 scope for Year 2 shall include Year 1 activities with the following exceptions:

- Pre-Construction Conference shall be a “Pre-Mobilization” conference prior to remobilization of resources for Year 2 work.

### Deliverables

- Issued for construction package including final drawings and project manual
- Pre-construction meeting agenda and minutes
- Weekly and bi-weekly coordination meeting agenda and minutes
- Monthly progress reports

### Assumptions

- HDR accounting and invoicing for the project will be for a duration of 21 months (February 2026 through December 2026 and January 2027 through October 2027).

### City Responsibilities

- Required City staff attend the Pre-Construction Meeting, weekly coordination meetings, and weekly progress meetings.
- Provide project-related information, decisions, and clarifications to HDR in a timely manner to support project management activities.
- City staff will coordinate with stakeholders and City departments as needed for project decisions occurring outside HDR's control.

## Task 2 – Construction Administration

HDR will complete the following Construction Administration activities:

### Year 1 Scope of Work

#### DOCUMENT CONTROL

- Review contractor's bonds and insurance for the project. Coordinate contractual notices provided by the Owner, including Notice to Proceed.
- Acquire, review, and accept (as applicable) a Schedule of Values and labor and equipment rates from the Contractor in conformance with the Contract Documents.
- Provide construction administrative website (Newforma or equal) for use by Owner and Contractor. Receive, log, and send out notifications of construction administrative transactions.

#### SCHEDULE ANALYSIS

- Review baseline schedule submitted by Contractor. Provide comments, if necessary, and advise the Owner and Contractor of issues identified.
- Review monthly schedule updates submitted by Contractor.
- Respond to monthly schedule updates. Advise the Owner and Contractor of issues identified.

#### SUBMITTALS

- Review contractor submittals for conformance with the Construction Documents. A single resubmittal is included in the assumed quantity. Additional re-submittals are assumed to be paid via offsets from the Contractor.

#### RFI'S

- Respond to Contractor's Request for Information (RFIs). Some RFI's may result in the issuance of a Field Order in addition to the RFI response, of which the design team will prepare.



#### **CHANGE MANAGEMENT**

- Review Contractor's change request proposals for validity, which may include recovery schedules and price estimates. Initiate necessary changes in forms of Work Change Directives (WCD), Change Order, or Change Proposal Requests (CPR).
- Review notices concerning claims and/or disputes filed by the contractor. Provide recommendation to owner on acceptability of the contractor's request/claim. Log all change requests and claims.

#### **PUBLIC OUTREACH**

- Work for this subtask includes organizing and facilitating a Pre-Construction Open House. Provide an agenda, informational displays, and attendance sheet.
- Facilitate and lead periodic stakeholder meetings. Develop agenda and disseminate minutes.

#### **APPLICATION FOR PAYMENT**

- Review Contractor's monthly pay applications including contractor project schedule updates.
- HDR will rely on the City's review of quantities and amounts requested by the contractor.

#### **CONTRACT ADMINISTRATION RELATED TO FUNDING REQUIREMENTS**

- Check origin of materials as required by American Iron and Steel requirements included in the Contract Documents.
- HDR will assist with the City's interviews of Contractor field personnel as required by final Contract Documents.
- Maintain a log of wage reports provided by the Contractor.

#### **Assumptions**

- Activities listed herein for this task are tied to the baseline construction schedule.
- Progress meetings may be remote via conference call.
- The budgeted hours included for Construction Administration are based on recent projects with similar project schedules. This effort is not controlled by the engineer, so the budget will be reviewed monthly and if additional items or staff are required to conduct tasks including but not limited to submittal reviews, responses beyond 25 RFIs, or additional site observational days beyond those assumed in this budget a change to the amendment will be requested.
- Construction meetings other than the pre-construction meeting noted under project management hours and expenses are included under Task 2.
- Schedule reviews shall be limited to their conformance to the contract requirements.
- Project coordination with the client and contractor for a duration of 48 weeks at an average of 8 hours per week (February 2026 through December 2026) and 26 weeks at an average of 3 hours per week (May 2027 through October 2027).

#### **City Responsibilities**

- Review Contractor quantities and percent-complete assessments to support HDR's monthly pay application reviews and provide information to HDR in a timely manner.
- Issue contractual notices prepared by HDR (e.g., Notice to Proceed, notices of noncompliance).
- Participate in pre-construction open houses, stakeholder meetings, and public outreach activities coordinated by HDR.
- Maintain direct communication and oversight of the Contractor regarding schedule, work sequencing, access, and coordination needs.
- Conduct interviews with Contractor field staff as required by the funding program (with HDR assistance).
- Coordinate with Contractor to ensure that American Iron and Steel (AIS) documentation is transmitted to HDR in a timely manner.



- Provide necessary information to HDR and participate in change management decisions, including approval of Change Orders, Work Change Directives, and CPRs.

## **Year 2 Scope of Work**

Year 2 scope of work shall include Year 1 activities described above with the following modifications:

- Initial Document Control Activities shall not be required for Year 2.

### **Deliverables**

- Submittal responses
- RFI responses
- Change Management Documents (if required)
  - Field Orders
  - Change Orders
  - Work Change Directive
- External Meeting Agendas and Minutes if not delivered under Task 01
- Contract Administration funding related documentation

### **Assumptions**

- Activities listed herein for this task are tied to the baseline construction schedule.
- Progress meetings may be remote via conference call.
- The budgeted hours included for Construction Administration are based on recent projects with similar project schedules. This effort is not controlled by the engineer, so the budget will be reviewed monthly and if additional items or staff are required to conduct tasks including but not limited to submittal reviews, responses beyond 25 RFIs, or additional site observational days beyond those assumed in this budget a change to the amendment will be requested.
- Construction meetings other than the pre-mobilization meeting noted under project management hours and expenses are included under Task 2.
- Schedule reviews shall be limited to their conformance to the contract requirements.
- Project coordination with the client and contractor for a duration of 48 weeks at an average of 8 hours per week (February 2026 through December 2026) and 26 weeks at an average of 3 hours per week (May 2027 through October 2027).

### **City Responsibilities**

- Review Contractor quantities and percent-complete assessments to support HDR's monthly pay application reviews and provide information to HDR in a timely manner.
- Issue contractual notices prepared by HDR (e.g., Notice to Proceed, notices of noncompliance).
- Participate in pre-construction open houses, stakeholder meetings, and public outreach activities coordinated by HDR.
- Maintain direct communication and oversight of the Contractor regarding schedule, work sequencing, access, and coordination needs.
- Conduct interviews with Contractor field staff as required by the funding program (with HDR assistance).
- Coordinate with Contractor to ensure that American Iron and Steel (AIS) documentation is transmitted to HDR in a timely manner.
- Provide necessary information to HDR and participate in change management decisions, including approval of Change Orders, Work Change Directives, and CPRs.



## Task 3 – Construction Observation

HDR will provide limited construction observation services in support of the City's self-performed inspection program. The City will conduct the majority of day-to-day construction inspection, while HDR will provide periodic inspections, technical assistance, and quality oversight for an estimated 10 hours per week. HDR's role will include periodic site visits to observe the Contractor's work, identification and reporting of non-conforming or defective work encountered during the limited site visits and in accordance with the Contract Documents, and aiding the City with construction documentation as needed. HDR will not maintain a full-time on-site presence; instead, services are limited to intermittent oversight and support. Specific responsibilities include the following:

### Year 1 and 2 Scope of Work

Construction Observation services for Year 1 assume initial mobilization on 4/1/26 and demobilization on 11/1/26. Construction Observation services for Year 2 assume re-mobilization on 4/1/27 and substantial completion on 10/15/27.

### FIELD ADMINISTRATION

- Provide periodic site visits by HDR staff (RPR and/or designer) to observe the progression of the Work and assess general conformance with the Contract Documents. HDR will not maintain full-time on-site presence.
- Serve as Engineer's liaison during site visits, assisting communication between the Contractor and the Owner as needed.
- Develop and maintain a project contact log including Owner, Stakeholders, Contractor, subcontractors, and major suppliers.
- Prepare site visit reports documenting observations made during HDR's intermittent presence.
- Maintain a construction photo log based on HDR's site visits.
- Review red-line drawings prepared by the City and update HDR-held construction documents with variations approved by the Owner and/or Engineer.
- Assist the City with preconstruction review of the work area.

### CONSTRUCTION SURVEY

Perform construction staking services as follows (GPS, Total Station, and a level will be used during the staking process):

- Initial Survey Preparation
  - Prepare Data Collector
  - Establish initial survey benchmarks for Contractor use
  - Provide periodic checks of Contractor established control points, if necessary

### Assumptions

- Periodic inspections will not exceed 10 hours per week.
- HDR will perform initial survey tasks (set initial benchmarks) and periodically check Contractor established control points if necessary.

### Deliverables

- Project contact logs and documentation of all communications between HDR, City, and Contractor.
- Report and photo log for preconstruction review of work area.
- Reports for periodic site inspections.



### City Responsibilities

- Perform the primary day-to-day construction inspection and documentation, including:
  - Primary on-site presence as required by the Contract Documents.
  - Daily inspection logs, photos, and redline drawings.
  - Verification of quantities and percentage complete.
- Tracking of materials, deliveries, and testing completed on site.
- Subgrade/gravel/finished concrete/asphalt surface checks as required.
- Documentation of all water/sewer/storm service locations and mainline, lateral, junction box, and drop inlet locations and elevations on redline drawings
- Maintain the official redline drawings for development of final as-built drawings.
- Notify HDR when assistance or spot inspections are needed so that HDR can schedule site visits within the 10 hr/week support allowance.
- Provide HDR with City generated daily logs, installed quantities, photos, redlines, test reports, and inspection findings.
- Coordinate directly with the Contractor on daily work direction, schedule adjustments, safety issues, access, and traffic control.
- Maintain on-site records required under the Contract Documents.

## Task 4-Project Close-Out

All effort for this task is assumed for Year 2. We propose the following scope of work be completed under the Project Close-Out task.

### CLOSE-OUT DOCUMENTATION

- Review Contractor's request for Substantial Completion and advise Owner accordingly.
- Conduct close-out inspection and provide recommended list of "punch-list" items for final completion.
- Review and comment on contractor submitted operation and maintenance (O and M) manuals.
- Review contractor warranty, lien waivers, final payment affidavits (if any), and other final close out documentation as required by the Contract Documents.

### AS-BUILTS

**WORK FOR THIS SUBTASK INCLUDES DEVELOPMENT OF THE PROJECT AS-BUILTS BASED ON THE SET OF REDLINE PLANS MAINTAINED BY CITY STAFF DURING THE CONSTRUCTION EFFORT.**

### WARRANTY REVIEW

- Conduct one-year warranty walk-through with the Owner. Advise Owner of potential deficiencies and warranty items.

### Deliverables

The following items are considered project deliverables:

- As-built drawings developed using information provided by Owner
- Notice for construction Substantial and Final Completions.
- Punch lists.
- Warranty walk-through review documentation.
- Electronic As-Built drawings set.
- As-Built CAD file for City's GIS database
- As-Built Plans (1 pdf electronic copy)
- Electronic files of all final CAD documents, daily reports, photos, meeting minutes, and shop drawing reviews



## Project Schedule

Our scope of services assumes the following schedule constraints:

- April 2026 – NTP – Begin Construction Administration
- April 2026 – Preconstruction Meeting
- April/May 2026 – Pre-Construction Open House
- April/May 2026 – Begin Construction
- October 15, 2026 – Interim Paving Completion for Construction (fully open to traffic and pedestrians)
- November 1, 2026-Contractor Demobilization-Year-1 Complete
- November 1, 2026 - April 1, 2027 - Limited PM and CA Support Required Over Winter Shutdown Period
- April 1, 2027 - Contractor Remobilization
- October 15, 2027 – Substantial Completion
- December 2027 – Complete Project As-Builts

## Proposed Budget

We propose the following budget to complete the above scope of work. Year 1 activities will be billed in accordance with HDR’s 2026 Fee Schedule. Year 2 activities will be billed in accordance with HDR’s 2027 Fee Schedule.

**Table 1: Proposed Budget Summary**

<b>PROFESSIONAL SERVICES - CONSTRUCTION YEAR 1</b>			
Task	Labor	Expenses	Total
Task 1.0 Project Management and Administration	\$ 63,265.00		\$ 63,265.00
Task 2.0 Construction Administration	\$ 63,110.00		\$ 63,110.00
Task 3.0 Construction Observation	\$ 71,820.00	\$ 3,434.00	\$ 76,334.00
<b>Year 1</b>			
<b>Subtotal:</b>			<b>\$ 202,709.00</b>
<b>PROFESSIONAL SERVICES - CONSTRUCTION YEAR 2</b>			
Task	Labor	Expenses	Total
Task 1.0 Project Management and Administration	\$ 58,810.00		\$ 58,810.00
Task 2.0 Construction Administration	\$ 50,060.00		\$ 50,060.00
Task 3.0 Construction Observation	\$ 64,810.00	\$ 1,632.00	\$ 66,442.00
Task 4.0 Project Closeout	\$ 38,860.00		\$ 38,860.00
<b>Year 2</b>			
<b>Subtotal:</b>			<b>\$ 214,172.00</b>
<b>TOTAL PROJECT</b>		<b>\$</b>	<b>416,881.00</b>

**EXHIBIT B**

**TERMS AND CONDITIONS**

# HDR Engineering, Inc. Terms and Conditions for Professional Services

## 1. STANDARD OF PERFORMANCE

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

## 2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; 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. The employees of both parties are intended third party beneficiaries of this waiver of consequential damages.

## 3. OPINIONS OF PROBABLE COST

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 LESSER OF \$1,000,000 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. ENGINEER'S AND SUBCONSULTANTS' EMPLOYEES ARE INTENDED THIRD PARTY BENEFICIARIES OF THIS ALLOCATION OF RISK.**

#### **18. LITIGATION SUPPORT**

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

#### **19. NO THIRD PARTY BENEFICIARIES**

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

#### **20. UTILITY LOCATION**

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

#### **21. UNMANNED AERIAL SYSTEMS**

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

#### **22. OPERATIONAL TECHNOLOGY SYSTEMS**

OWNER agrees that the effectiveness of operational technology systems and features designed, recommended or assessed by ENGINEER (collectively "OT Systems") 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 Systems in accordance with applicable laws, regulations, and industry standards (e.g. ISA, NIST, etc.) and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, OWNER recognizes and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by ENGINEER are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, ENGINEER does not guarantee that OWNER's OT Systems are impenetrable and OWNER agrees to waive any claims against ENGINEER resulting from any such incidents that relate to or affect OWNER's OT Systems.

#### **23. FORCE MAJEURE**

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

#### **24. EMPLOYEE IMMUNITY**

The parties to this Agreement acknowledge that an individual employee or agent may not be held individually liable for negligence with regard to services provided under this Agreement. To the maximum extent permitted by law, the parties intend i) that this limitation on the liability of employees and agents shall include directors, officers, employees, agents and representatives of each party and of any entity for whom a party is legally responsible, and ii) that any such employee or agent identified by name in this Agreement shall not be deemed a party. Specifically, in the event that all or a portion of the services is performed in the State of Florida, the following provision shall be applicable: