

**BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA
RESOLUTION AUTHORIZING TASK ORDER #3 WITH HDR ENGINEERING, INC. FOR
PROFESSIONAL SERVICES**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 1997), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 1997), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, On February 12, 2008 the Sarpy County Board of Commissioners approved the attached Multiple Project Agreement for Professional Services with HDR Engineering, Inc. for professional engineering services.

WHEREAS, Task Order #3 has been proposed for professional engineering services in conjunction with the Realigned 84th Street and Platteview Road Feasibility Study.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT The Chairman and Clerk are hereby authorized to execute on behalf of Sarpy County, Task Order #3 with HDR, Engineering, Inc. for the Realigned 84th Street and Platteview Road Feasibility Study, a copy of which is attached hereto, the same being approved by the Board.

DATED this 24th day of February, 2009.

MOVED by Pat Thomas, seconded by Rusty Hike, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

none

none

ABSTAIN:

none

Rusty Hike
Pat Thomas
Carl Richard
Pat Thomas
Tom Jones



Attest:

SEAL

Debra J. Houghtaling
County Clerk

Approved as to form:

Will O'Neil
Deputy County Attorney

Sarpy County Board of Commissioners

1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046-2895
593-4155
www.sarpy.com

ADMINISTRATOR
Mark Wayne

DEPUTY ADMINISTRATOR
Scott Bovick

FISCAL ADMIN./PURCHASING AGT.
Brian Hanson



COMMISSIONERS

Rusty Hike
District 1
Joni Jones
District 2
Tom Richards
District 3
Pat Thomas
District 4
Rich Jansen
District 5

MEMO

To: Sarpy County Board

From: Brian Hanson

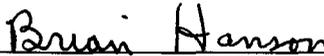
Re: Design Engineer for Intersection of 84th and Platteview Road

At the February 24, 2009 Board meeting, the County Board will be asked to approve the attached Agreement with HDR for preliminary design work on the intersection of 84th and Platteview Road. This design work is necessary so that the building sites and access roads can be laid out on the property that the County is acquiring at the southeast corner of 84th and Platteview.

At some point five, ten or more years down the road, Sarpy County will want to access federal funds for the four-laning/improvement of Platteview Road. We want to make sure that this preliminary design work does not jeopardize the potential federal funds. To that end, I have attached an e-mail from Mr. Jim Miller at the Nebraska Department of Roads stating that the preliminary design work will not adversely affect future federal funds.

Tom Lynam has negotiated the attached Agreement with HDR based on their familiarity with Platteview Road from the Outer Loop Beltway study they did for MAPA. The maximum fee for the design work is \$49,905.

February 20, 2009



Brian E. Hanson

BEH/dp

cc: Mark Wayne
Deb Houghtaling
Scott Bovick
Mike Smith
Tom Lynam

Brian Hanson

From: Miller, James [James.Miller@nebraska.gov]
Sent: Friday, February 20, 2009 8:13 AM
To: Brian Hanson
Subject: FW: Consultant for 84th and Platteview Rd.

Per request

From: Miller, James
Sent: Wednesday, February 18, 2009 8:28 AM
To: Sarpy County Hwy Surveyor - Lynam
Cc: Wilkinson, Jim; 'Fredrichs, Kirk'
Subject: Consultant for 84th and Platteview Rd.

Tom: You asked me to document in writing our phone conversation about the consultant selection to perform the feasibility study/traffic study on the relocation of the above referenced intersection. In checking with FHWA it is our understanding that future Federal funding would not be jeopardized by the county using a consultant of their choosing without going through a qualification based selection process.

If there are further questions, please contact us. Jim Miller

James (Jim) Miller

Urban Engineer

Local Projects Section

1400 Highway 2

PO Box 94759 *NEW*

Ph: 402-479-4442

EXHIBIT A
TASK ORDER

This Task Order pertains to an Agreement by and between SARPY COUNTY, ("OWNER"), and HDR Engineering, Inc. ("ENGINEER"), dated November 20th, 2007, ("the Agreement"). Engineer shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: 003

PROJECT NAME: REALIGNED 84TH STREET AND PLATTEVIEW ROAD
FEASIBILITY STUDY

PART 1.0 PROJECT DESCRIPTION:

This feasibility study includes the development of conceptual plans for realigning Platteview Road at the intersection of 84th Street. The realignment will provide a through movement for Platteview Road and create a four way intersection. The work required for this project includes: conceptual design, traffic counts, traffic operation analysis, data collection, and utility coordination.

The goal of this project is to provide enough roadway design information on possible future improvements to 84th Street and Platteview Road in order to support the redevelopment of Sarpy County's property on the SE quadrant of the existing intersection.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:

A detailed scope of service is provided in Exhibit "B" attached.

PART 3.0 OWNER'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

The period of service is expected to be February 24, 2009 to April 24, 2009 with the ability to cancel or extend upon written notice.

PART 5.0 PAYMENTS TO ENGINEER:

Compensation for ENGINEER'S services under this Agreement shall be on the basis of cost plus fixed fee.

Compensation terms are defined as follows:

Cost-Plus-Fixed Fee shall mean Cost plus a Fixed Fee.

Cost, as used in "Cost-Plus-Fixed Fee," shall mean Direct Labor Cost plus Overhead Costs, plus Reimbursable Expense.

Overhead Costs, as used in "Cost-Plus-Fixed Fee," shall mean indirect costs which include payroll and administrative expenses. For this Agreement, overhead costs shall be percent (153.22%) of Direct Labor Cost.

Fixed Fee shall mean a fixed amount of fee that is added to the Cost in a Cost-Plus-Fixed Fee basis of payment. The sum of Cost and Fixed Fee shall be the compensation for the Scope of Services. The Costs may vary, but the Fixed Fee shall remain the same provided the Scope of Services does not change.

The maximum fee will consist of a compilation of direct labor costs, overhead costs, reimbursable expenses, and fixed fee, as provided in Exhibit "C" attached.

PART 6.0 OTHER:

This Task Order is executed this 24th day of February, 2009.

SARPY COUNTY
"OWNER"

HDR ENGINEERING, INC.
"ENGINEER"

BY: Joni Jones

BY: Matthew Tondl

NAME: Joni Jones

NAME: Matthew B. Tondl, PE

TITLE: Chairman, County Board

TITLE: Senior Vice President

ADDRESS: 1210 Golden Gate Dr.
Papillion NE 68046

ADDRESS: 8404 Indian Hills Drive
Omaha, NE 68114

Approved as to form:

Matthew Tondl
County Engineer

**EXHIBIT B
DESCRIPTION OF PROJECT AND SCOPE OF SERVICES**

**REALIGNED 84TH STREET AND PLATTEVIEW ROAD FEASIBILITY STUDY
SARPY COUNTY, NE**

I. DESCRIPTION OF TASKS

The details of the tasks are described as follows:

1. Project Management

This task includes activities to initiate and monitor project schedules, manpower assignments and internal cost controls throughout this phase of the project. Also included are efforts to prepare and process invoices and monthly progress reports; and prepare project correspondence with the Sarpy County.

2. Site Inspections

This is an allowance for one site visit including three staff members.

3. Project Meetings

It is anticipated that 2 progress meetings will be held with the Sarpy County with two HDR staff attending each meeting. It is assumed that Sarpy County's architect for the site will in attendance at the meetings for overall site coordination.

4. Data Collection and Review

This task includes the compiling and review of data and information collected from the County, utilities or any other sources. Also included is effort to incorporate hard shot information provided by the County to confirm GIS data.

5. Traffic Analysis

Visit the study area to conduct traffic counts, and review existing traffic control and access along the transportation system. Intersections that will be considered in this evaluation include:

- 84th Street/Platteview Road
- Plattview Road/84th Street (Highway and Surveyor's Office Access Road)
- Platteview Road/Hidden Valley Drive
- Platteview Road/87th Street

Two-hour AM and PM peak hour turning movement counts will be conducted at the study area intersections in order to establish the AM and PM peak hour. Year 2035 average daily traffic projections will be obtained from MAPA (Metropolitan Area Planning Agency). Existing year and year 2035 AM and PM peak hour volumes will be developed.

Operational evaluations will be conducted with Synchro 7.0 software for signalized intersections and HCS software for unsignalized intersections to determine geometric

configurations of the at-grade intersections. A technical memorandum will document the procedures, findings and recommendations of the analysis.

6. Conceptual Roadway Alternatives

Develop up to two roadway alternatives for the realignment of 84th Street and Platteview Road intersection to support Sarpy County's development of office space on the SE quadrant of the existing intersection. The alternatives will also develop the configuration and access treatment of: Hidden Valley Road and 84th Street south of Platteview (current access to County Surveyors Office). The alternatives will compare cost, geometrics, traffic analysis, and constructability. A design criteria memorandum will be developed to document the design standards and assumptions. HDR will document our findings and recommend the preferred alternative.

7. Roadway Horizontal / Vertical Alignment

This task will include developing conceptual horizontal and vertical alignments for 84th Street, Platteview Road, and local roads. Effort to develop special ditch grades and create the Plan and Profile sheets is included in this task. The goal is to provide Sarpy County approximate roadway grades to assist in laying out floor elevations for planned building structures on their property.

8. Geometrics

This task will include developing conceptual roadway geometrics including turn bays. As part of this effort, turning radii will be checked using the design vehicle's turning template.

9. Typical Sections

This task includes effort to develop the roadway typical sections for the full reconstruction, widening, and median work.

10. Roadway Cross-Sections

This task will include developing cross sections at 50' intervals and at select locations to provide clarity. Included in this task is the development of approximate limits of construction and earthwork quantities. Preparation of earthwork quantities by construction phases is not included.

11. Utilities Coordination / Verification

This task includes coordination of the roadway improvements with the utilities to identify conflicts. A plan layout will be sent to known utility companies to establish their facilities. HDR will transfer this information into the conceptual drawings. No meetings with affected utility companies are included with this scope of service.

12. Quantities/Estimates

The effort identified in this task includes quantity calculations and the engineer's estimate of probable cost.

13. CADD File Submittals

This task identifies the effort to prepare electronic CADD files as a deliverable to the County. The concept work will be completed using Microstation and Geopak.

14. Revisions \ Quality Control

Time has been estimated based upon past experience with similar projects for quality revisions and response to County review comments.

15. Right of Way Design

Delineate conceptual right of way acquisition, permanent easements, and temporary easements per affected parcel. The existing right-of-way lines will be taken from GIS information with no title research anticipated.

ESTIMATED SHEET COUNT

Project Plan Sheets		Scale	Estimated Number
Cover		NTS	1
Typical Section Sheets		NTS	2
Right-of-Way Strip Map		1"=50'	5
Plan and Profile Sheets		1"=50'	8
Cross-Section Sheets	1"=10' H	1"=10' H 1"=5' V	20
	PLAN	TOTAL	36

INFORMATION TO BE PROVIDED BY THE CITY

1. Available GIS information including aerial photography, 3D contours, parcel information, and utilities.
2. Names and addresses of known utilities.
3. All pertinent reports on planning, traffic studies, and development.
4. Current traffic counts and accident data.
5. As-built plans

ASSUMPTIONS AND UNDERSTANDINGS

1. The conceptual layouts will be based on available GIS information with supplemental survey provided by Sarpy County.
2. CADD standards and cell libraries in MicroStation format following NDOR practices

ADDITIONAL SERVICES

The effort to provide the following is not included with this scope of service and can be supplemented if the County chooses.

- Survey and Final Design including:
 - Culvert and/or storm sewer design
 - Construction phasing
 - Lighting design
 - Retaining wall design
 - Trails & landscaping
 - Miscellaneous final design tasks
- Right-of-Way design
- Construction phase services

SCHEDULE

- | | |
|---------------------------------------|-------------------|
| • Notice to Proceed | February 24, 2009 |
| • Traffic Memorandum | March 20, 2009 |
| • In-Progress Plan Submittal | March 27, 2009 |
| ○ Alternatives Memorandum | |
| ○ Design Criteria Memorandum | |
| • Final Submittal of Conceptual Plans | April 24, 2009 |

Sarpy County
 Realigned 84th and Platteview Intersection

Staff Hour Tabulation

Item	Task	PM / Sr. Engr.	Eng. / Designer	Clerical	Total
1	Project Management	20		4	24
2	Site Inspections	12	6		18
3	Project Meetings	8	8		16
4	Data Collection and Review		20		20
5	Traffic Analysis	20	72		92
6	Conceptual Roadway Alternatives	18	40		58
7	Roadway Horizontal / Vertical Alignments	12	28		40
8	Geometrics	6	12		18
9	Typical Sections	4	12		16
10	Roadway Cross-Sections	8	40		48
11	Utility Coordination / Verification	4	8		12
12	Quantities / Estimates	4	20		24
13	CADD File Submittal		4		4
14	Revisions / Quality Control	4	8		12
15	Right-of-Way	4	16		20
TOTAL HOURS		124	294	4	422

Fee Summary

ESTIMATED DIRECT LABOR

CLASSIFICATION	TOTAL HOURS	HOURLY RATE	DIRECT LABOR COST	
Project Manager/Senior Engineer	124	\$55.67	\$ 6,903	
Engineer / Designer	294	\$33.58	\$ 9,873	
Clerical	4	\$33.40	\$ 134	
TOTAL DIRECT LABOR COST	422			\$ 16,909
OVERHEAD COST (153.22% OF DIRECT LABOR)				\$ 25,908
FIXED FEE (12%)				\$ 5,138

ESTIMATED DIRECT EXPENSES

	QUANT	UNIT	UNIT COST	TOTAL COST
Technology Charge	422	Hours	\$ 3.70	\$ 1,561
Facilities Cost of Capital (0.72347% of Labor)				\$ 122
Travel (Mileage)	120	Miles	\$ 0.550	\$ 66
Printing & Miscellaneous	1	Lump Sum	\$ 200.00	\$ 200
TOTAL ESTIMATED DIRECT EXPENSE				\$ 1,950

MAXIMUM FEE **\$ 49,905**

MULTIPLE PROJECT AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of this 20th day of November, 2007, between SARPY COUNTY, hereinafter referred to as "OWNER", and HDR Engineering, Inc., hereinafter referred to as "ENGINEER," for engineering services as described in this Agreement.

WHEREAS, OWNER desires to retain ENGINEER, a professional engineering firm, to provide professional engineering, consulting and related services ("Services") on one or more projects in which the OWNER is involved; and

WHEREAS, ENGINEER desires to provide such services on such projects as may be agreed, from time to time, by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION I. PROJECT TASK ORDER

- 1.1 This Agreement shall apply to as many projects as OWNER and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for OWNER hereunder shall be designated by a "Task Order." Task Orders 001 and 002 are attached to this Agreement and marked as Exhibits "B" and "C".

No Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.
- 1.3 ENGINEER will provide the Scope of Services as set forth in Part 2 of each Task Order.

SECTION II. RESPONSIBILITIES OF OWNER

In addition to the responsibilities described in paragraph 6 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services," OWNER shall have the responsibilities described in Part 3 of each Task Order.

SECTION III. COMPENSATION

Compensation for ENGINEER's Services shall be in accordance with Part 5 of each Task Order, and in accordance with paragraph 11 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services."

SECTION IV. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The "HDR Engineering, Inc. Terms and Conditions for Professional Services," which are attached hereto in Exhibit A, are incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, we the contracting parties, by our respective and duly authorized agents, hereto have executed this Agreement as of the day and year first written above.

(Seal)

COUNTY OF SARPY, NEBRASKA
A body Politic and Corporate



Debra J. Houghtaling
Debra Houghtaling
Sarpy County Clerk

Greg M. Boyer 2/12/08
Chairman
Sarpy County Board of Commissioners

Approved as to form and content:

Michael J. [Signature]
Deputy County Attorney

ATTEST:

Witness

HDR ENGINEERING, INC.
"ENGINEERING"

Matthew B. Tondl
Matthew B. Tondl, PE
Senior Vice President

EXHIBIT A

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

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. Upon request, 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 the claims covered by ENGINEER's insurance.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

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

4. CONSTRUCTION PROCEDURES

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

5. CONTROLLING LAW

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

6. SERVICES AND INFORMATION

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

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

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

7. SUCCESSORS AND ASSIGNS

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.

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, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating 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 prompt payments in response to ENGINEER's invoices.

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 forty-five (45) days from the date of the 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, and other employment, statutes and regulations.

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. LIMITATION OF LIABILITY

ENGINEER's and its employees' total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER's and its employees' professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total compensation received by ENGINEER hereunder, except as otherwise provided under this Agreement, and OWNER hereby releases and holds harmless ENGINEER and its employees from any liability above such amount.

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.