



## Board of Aldermen Request for Action

**MEETING DATE:** 6/2/2026

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Resolution 1590, authorizing the mayor to sign an agreement with HDR Engineering for the development of a sludge management plan

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### **REQUESTED BOARD ACTION**

A motion to approve Resolution 1590, authorizing the mayor to sign an agreement with HDR Engineering for the development of a sludge management plan.

### **SUMMARY**

The City's wastewater is conveyed to the wastewater treatment plant, where solids are removed and the treated effluent is disinfected using ultraviolet (UV) light prior to discharge into the Little Platte River. Biosolids (sludge) generated during the treatment process are land applied to fields adjacent to the wastewater treatment plant.

The City is responsible for managing these land application areas in accordance with applicable regulatory requirements, including monitoring and maintaining pollutant limits (e.g., metals), pathogen reduction, vector attraction reduction, and associated recordkeeping.

The U.S. Environmental Protection Agency (EPA) has established regulations under 40 CFR Part 503 that define the standards and requirements governing the final use or disposal of sewage sludge.

To maintain compliance with these regulations, the City is required to implement a management plan that establishes standard operating procedures (SOPs) for the handling, treatment, storage, and land application of wastewater treatment sludge.

HDR has submitted a scope of services that meets the federal requirements in an amount of \$27,295.00

### **PREVIOUS ACTION**

None

### **POLICY ISSUE**

Maintaining infrastructure

### **FINANCIAL CONSIDERATIONS**

The CWWS has funds available in the operations budget for this expense.

**ATTACHMENTS**

- Ordinance
- Resolution
- Staff Report
- Other: Agreement / Scope
- Contract
- Plans
- Minutes

## RESOLUTION 1590

### **A RESOLUTION AUTHORIZING MAYOR TO SIGN AN AGREEMENT WITH HDR ENGINEERING FOR THE DEVELOPMENT OF A SLUDGE MANAGEMENT PLAN**

**WHEREAS**, the City operates and maintains the wastewater treatment plant; and

**WHEREAS**, the city land applies the solids collected from the wastewater treatment process; and

**WHEREAS**, the city's permit with the Missouri Department of Natural Resources (MoDNR) and the EPA requires a Sludge Management Plan; and

**WHEREAS**, HDR Engineering has developed a scope of services that would meet the requirements of 40 CFR Part 503 of the U.S. Environmental Protection Agency's regulation that sets federal standards for the final use or disposal of sewage sludge from domestic sewage treatment works in an amount of \$27,295.00.

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:**

**THAT** the agreement with HDR Engineering for the development of a sludge management plan in an amount of \$27,295.00 in substantially the form attached hereto as **Exhibit A**, incorporated into this Resolution as if fully set forth herein, is hereby approved and the Mayor is authorized to execute the same on behalf of the City.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, this 2<sup>nd</sup> day of June, 2026.

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Damien Boley, Mayor

ATTEST:

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Brandi Schuerger, Assistant City Clerk

**SHORT FORM AGREEMENT BETWEEN OWNER AND  
HDR ENGINEERING, INC. FOR PROFESSIONAL SERVICES  
AGREEMENT NUMBER 10463862**

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, between City of Smithville (“OWNER”) a Municipality , with principal offices at \_\_\_\_\_ 107 West Main Street, Smithville, MO , and HDR ENGINEERING, INC., (“ENGINEER” or “CONSULTANT”) for services in connection with the project known as Smithville Sludge Management (“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 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:

Direct Labor Cost shall mean salaries and wages, (basic and overtime) paid to all personnel engaged directly on the Project. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually as of the first of every year to reflect equitable changes to the compensation payable to Engineer.

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.

**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.

within the time period(s) described in Exhibit A.

as follows:

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.

\_\_\_\_\_  
"OWNER"

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

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

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

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

HDR ENGINEERING, INC.

"ENGINEER"

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

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

Cory Imhoff, PE

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

Senior Vice President

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

10450 Holmes Rd, Ste 600  
Kansas City, MO 64131

**EXHIBIT A**

**SCOPE OF SERVICES**

**Exhibit A – Scope of Services  
City of Smithville, MO  
Sludge Management Plan Development**

**Task 1 – Project Management and Administration**

1. Prepare project instructions, management, quality and safety plans.
2. Provide monthly progress reports.
3. Provide project management and administration for up to four (4) months following Notice to Proceed.
4. Project closeout including Complete internal record filing procedures and confirm phase completion with City.

Deliverables:

- Monthly invoices

**Task 2 – Sludge Management Plan**

1. Conduct a kickoff meeting and staff interview with the City. Interview includes documentation of existing sludge handling practices. Meeting duration will be up to one hour and held virtually. HDR will prepare a meeting summary.
2. Conduct up to two (2) project review meetings with the City. HDR will present the draft deliverable and final draft deliverable at the corresponding review meeting. Meeting duration will be up to one hour each and held virtually. HDR will incorporate City comments into the document revisions.
3. Complete calculations for applicable land application rates.
4. Develop Sludge Management Plan (“Plan”) in accordance with Section 405(d)(1) of the Clean Water Act, and the regulations governing the Standards of the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the “Sludge Management Program”). The Plan will include recordkeeping and reporting requirements, pollutant limits and site management practices applicable to the City WWTP, standards for the final use or disposal of the domestic sewage sludge generated at the WWTP.
5. Assist the City with addressing any review comments provided by the US EPA.

Deliverables:

- Kick-off meeting summary
- Sludge Management Plan

**Key Understandings:**

1. City intends to continue land applying Class B biosolids.
2. Plan contents include, but are not limited to, sludge sample laboratory results for metals, demonstration of one of six alternatives contained in 391-3-6-.17(8)(a)-(h) for meeting vector attraction reduction requirements, approval and/or permit status, and details of the sludge treatment processes.

3. Options for vector attraction reductions are anticipated to be based on either Option 1 (38% volatile reductions) or Option 4 (SOUR test requirements).
4. Sampling and laboratory analyses are excluded from the project.
5. City to provide responses to data requests.

**Schedule:**

A Notice to Proceed is anticipated to be received from the City on or around June 16, 2026. The project will be completed within 120 days from Notice to Proceed.



Client Name: City of Smithville  
 Project Name: Sludge Management Plan  
 Scope and Fee Estimate - 5/18/26

Int #	TASKS	Staff Name	Bunch, D	Farrow, E	Duckworth, C	Crabtree, I	Bui, M	DeCou, C	Geha, L	Total HDR Hours	HDR Expenses	Total
		Rate Schedule Code	Senior Technical Specialist/Project Principal	Project/Design Manager II	Project/Design Manager V	Engineer/Architect/Designer X	Engineer/Architect/Designer V	Engineering Support Staff II	Engineering Support Staff II			
		Billing Rate	\$340	\$195	\$265	\$275	\$190	\$130	\$130			
<b>Task 1: Project Management and Administration</b>												
1	Monthly Invoicing			2				4	4	10		\$1,430
2	Project Management and Administration		1	4		2				7		\$1,670
3	Project Closeout			2				1	1	4		\$650
<b>Subtotal Hours</b>			<b>1</b>	<b>8</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>5</b>	<b>5</b>	<b>21</b>		
<b>Subtotal Dollars</b>			<b>\$340</b>	<b>\$1,560</b>	<b>\$0</b>	<b>\$550</b>	<b>\$0</b>	<b>\$650</b>	<b>\$650</b>		<b>\$0</b>	<b>\$3,750</b>
<b>Total Task 1</b>												<b>\$3,750</b>
<b>Task 2: Sludge Management Plan</b>												
1	Kickoff meeting, staff interview, document existing practices			4	6	10	22			42		\$9,300
2	Review meetings (Qty up to 2)			2	2	2				6		\$1,470
3	Project calculations				2		8			10		\$2,050
4	Plan development, written report, and deliverable		1	8	1	8	16			34	\$75	\$7,480
5	Submit Plan to City and address US EPA comments		1	4	1	4	4			14		\$3,245
<b>Subtotal Hours</b>			<b>2</b>	<b>18</b>	<b>12</b>	<b>24</b>	<b>50</b>	<b>0</b>	<b>0</b>	<b>106</b>		
<b>Subtotal Dollars</b>			<b>\$680</b>	<b>\$3,510</b>	<b>\$3,180</b>	<b>\$6,600</b>	<b>\$9,500</b>	<b>\$0</b>	<b>\$0</b>		<b>\$75</b>	<b>\$23,545</b>
<b>Total Task 2</b>												<b>\$23,545</b>
<b>Total Hours</b>			<b>3</b>	<b>26</b>	<b>12</b>	<b>26</b>	<b>50</b>	<b>5</b>	<b>5</b>	<b>127</b>		<b>127</b>
<b>Total Billing Amount</b>			<b>\$1,020</b>	<b>\$5,070</b>	<b>\$3,180</b>	<b>\$7,150</b>	<b>\$9,500</b>	<b>\$650</b>	<b>\$650</b>		<b>\$75</b>	<b>\$27,295</b>

Estimated Project \$27,295

**HDR Engineering, Inc.**  
**2026 Hourly Billing Rates**  
**Effective through 12/26/2026**

Billing rates will be updated on an annual basis. Employees may move within categories at any time throughout the year based on any salary adjustments incurred by employees. The rates listed below do not include reimbursable expenses.

<b>Description</b>	<b>Billing Rate/Hour</b>
Senior Technical Specialist/Project Principal	\$340
Technical Specialist/Senior Project Manager III	\$325
Technical Specialist/Senior Project Manager II	\$300
Technical Specialist/Senior Project Manager I	\$285
Project/Design Manager V	\$265
Project/Design Manager IV	\$245
Project/Design Manager III	\$220
Project/Design Manager II	\$195
Project/Design Manager I	\$175
Engineer/Architect/Designer X	\$275
Engineer/Architect/Designer IX	\$260
Engineer/Architect/Designer VIII	\$240
Engineer/Architect/Designer VII	\$225
Engineer/Architect/Designer VI	\$210
Engineer/Architect/Designer V	\$190
Engineer/Architect/Designer IV	\$170
Engineer/Architect/Designer III	\$155
Engineer/Architect/Designer II	\$140
Engineer/Architect/Designer I	\$130
Cadd/BIM Manager II	\$250
Model Manager II/Cadd/BIM Manager I	\$225
Model Manager I/Cadd/GIS Technician VII	\$200
Cadd/GIS Technician VI	\$185
Cadd/GIS Technician V	\$170
Cadd/GIS Technician IV	\$155
Cadd/GIS Technician III	\$140
Cadd/GIS Technician II	\$120
Cadd/GIS Technician I	\$100
Environmental/Water Quality Scientist/Modeler V	\$250
Environmental/Water Quality Scientist/Modeler IV	\$210
Environmental/Water Quality Scientist/Modeler III	\$180
Environmental/Water Quality Scientist/Modeler II	\$150
Environmental/Water Quality Scientist/Modeler I	\$120
Survey Manager	\$225
Construction Manager II	\$250
Construction Manager I	\$235
Survey Technician/Construction Inspector VI	\$215
Survey Technician/Construction Inspector V	\$180
Survey Technician/Construction Inspector IV	\$160
Survey Technician/Construction Inspector III	\$140
Survey Technician/Construction Inspector II	\$125
Survey Technician/Construction Inspector I	\$100
Public Involvement/Communications/Graphic Designer V	\$250
Public Involvement/Communications/Graphic Designer IV	\$210
Public Involvement/Communications/Graphic Designer III	\$175
Public Involvement/Communications/Graphic Designer II	\$150
Public Involvement/Communications/Graphic Designer I	\$125
Engineering Support Staff V	\$190
Engineering Support Staff IV	\$175
Engineering Support Staff III	\$150
Engineering Support Staff II	\$130
Engineering Support Staff I	\$110
Admin Assistant	\$95

**Direct Expenses**

Personal Vehicle Mileage	CURRENT IRS RATE
Fleet Vehicle Mileage	*HDR CURRENT ANNUAL RATE
Printing	AT COST
Travel	AT COST
Subconsultants	AT COST

\*Fleet Vehicle Mileage - determined based on HDR current annual rate, effective 7/1/25, annual rate is 88 cents \*(subject to change)

**EXHIBIT B**

**TERMS AND CONDITIONS**

## Exhibit B

### 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:

**THE PARTIES ACKNOWLEDGE THAT PURSUANT TO APPLICABLE FLORIDA STATUTES 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. The Parties further acknowledge that the Florida statutes referred to above include but are not limited to:

§558.0035(1)(a)-(e); §471.023(3) (an engineer is personally liable for negligence except as provided in § 558.0035); §472.021(3) (surveyor and mapper); §481.219(11) (architect and interior designer); §481.319(6) (landscape architect); and §492.111(4) (geologist).