WEST DES MOINES WATER WORKS
BOARD OF TRUSTEES MEETING COMMUNICATION

DATE: November 16, 2026

ITEM:

7. Recommendations from Staff
   e. Motion – Approving a Professional Services Agreement with HDR for the Solids Contact Unit No.1 Repair Project

FINANCIAL IMPACT:

This engineering services agreement is in the not-to-exceed amount of $133,899.00. $250,000 is currently available with an additional $200,000 available in 2027 for this project. This is a joint capital project that will be reimbursed by Central Iowa Water Works

SUMMARY:

Several applicable vendors have been contacted by WDMWW staff to determine a strategic course of action on completing the SCU drive repair. While consulting the vendors, it became known to staff that there would be a considerable amount of electrical and welding work needed with the clarifier modifications to access the repair. Due to HDR having local expertise and availability for structural and electrical work, staff reached out and negotiated this final scope, schedule, and fee. The terms and conditions for this agreement are identical and consistent with the 2024 HDR Study, which was reviewed and approved with legal.

BACKGROUND:

Solids Contact Unit (SCU) No.1 has been out of service since early 2024 due to a necessary drive repair. The repair itself is simple, but modifications to the clarifier structure and platforms are needed to access the drive and bearing. These modifications will improve maintenance access for future needs. A variable frequency drive (VFD) will also be added to this project to make SCU No.1 similar to the other clarifiers.

RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:

To Concur with the Recommendation from Staff and Approve a Professional Services Agreement with HDR for the Solids Contact Unit No.1 Repair Project.

Prepared by: Darin Bilpacic

Approved for Content by: Clete Murphy

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

THIS AGREEMENT is made as of this _____ day of _____ 2026, between West Des Moines Water Works ("OWNER") and HDR ENGINEERING, INC., ("ENGINEER") for services in connection with the project known as the AC Ward Clarifier Drive Rehabilitation ("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 Direct Labor Costs times a factor of 3.2 for the services of ENGINEER'S personnel engaged on the Project, plus Reimbursable Expenses, estimated to be $133,899.

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, shipping and express, and other incurred expense.

SECTION V. PERIOD OF SERVICE

Upon receipt of written authorization to proceed, ENGINEER shall perform the services

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

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.

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: _____

TITLE: _____

ADDRESS: _____

_____

EXHIBIT A

SCOPE OF SERVICES

West Des Moines Water Works
A.C. Ward Water Treatment Plant
Clarifier Drive Rehabilitation

Scope of Services

PART 1.0 PROJECT DESCRIPTION

The purpose of this project is to rehabilitate the existing clarifier drive at the A.C. Ward Water Treatment Plant. The work will integrate the clarifier equipment vendor's proposed drive rehabilitation with the structural, mechanical, electrical, and controls modifications required for a complete and constructible installation. The design will address construction phasing, facility operating constraints, and access, and assist the contractor with lifting, staging, and temporary support of the existing clarifier mechanism, weirs, walkways, and other affected components during construction. It will also include a VFD for the existing mixer and reroute electrical wiring around the clarifier.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER

This Scope of Services is for HDR Engineering, Inc. ("HDR") to provide professional engineering services ("Services") to West Des Moines Water Works ("Owner") related to the A.C. Ward Water Treatment Plant Clarifier Drive Rehabilitation ("Project"). Estimated hours and fees include the Scope of Services Task Series 100 through Task Series 600.

Task Series 100 – Project Management

Objective:

Project management activities including planning, monitoring, reporting, coordination, budget tracking, invoicing, and communications with the Owner, equipment vendor, and design team.

Activities:

Task 110 – Project Management

- Develop a Project Management Plan describing Project activities, responsibilities, constraints, quality-control procedures, budget, and schedule.
- Prepare monthly invoices and progress reporting.

- Identify, track, and communicate scope, schedule, and budget changes to the Owner.

Task 120 – Team Kickoff and Coordination

- Conduct an internal multidisciplinary kickoff meeting to confirm Project objectives, design responsibilities, interfaces, and schedule.
- Coordinate process/mechanical, structural, electrical, and instrumentation and controls design activities.
- Coordinate with the Owner, clarifier equipment vendor, and prospective or selected contractor, as appropriate.

Key Assumptions:

- Owner will designate a Project representative with authority to provide direction and consolidate Owner comments.

Meetings/Travel:

- Up to four virtual Project coordination meetings.

Task Deliverables:

- Monthly invoice and progress reporting; electronic PDF.

Task Series 200 – Data Collection and Existing Conditions

Objective:

HDR will review available background information, perform a site visit, document existing conditions, and define the interfaces between vendor-furnished equipment and the remaining construction work.

Activities:

Task 210 – Client Kickoff Meeting and Site Visit

- Prepare an agenda, conduct a kickoff meeting, and document decisions and action items.
- Observe the clarifier drive, bridge and walkway, mechanism, weirs, structural supports, electrical equipment, controls, access routes, and potential construction staging areas.
- Discuss operational constraints, access, lifting, temporary support, and return-to-service requirements with Owner staff.

Task 220 – Review Background Information

- Review available record drawings, equipment data, operations and maintenance information, previous inspection information, and the clarifier equipment vendor's proposal(s).
- Identify discrepancies, missing information, and additional vendor data required to complete the design.

Task 230 – Vendor Design Coordination

- Coordinate required equipment dimensions, weights, operating loads, torque loads, connection details, electrical requirements, controls requirements, and installation procedures with the clarifier equipment vendor.
- Confirm the proposed modifications to the drive cage, bearing supports, bridge or walkway, and other affected components.
- Coordinate vendor requirements for installation observation, startup, testing, and certification.

Key Assumptions:

- Owner will provide available record drawings, equipment information, reports, and operating constraints.
- Owner will provide access to the clarifier and applicable electrical and control panels.
- The equipment vendor will provide design information for vendor-furnished equipment, including certified loads and connection requirements.
- Destructive investigation, materials testing, survey, and confined-space entry are not included unless authorized as additional services.

Meetings/Travel:

- One in-person kickoff meeting and site visit attended by up to two HDR staff.

Task Deliverables:

- Kickoff meeting agenda and meeting notes; electronic PDF.
- Existing conditions and design criteria summary incorporated into the design documents.

Task Series 300 – Design Development and Construction Phasing

Objective:

HDR will develop the design basis, construction sequencing approach, temporary support requirements, and interdisciplinary design necessary to integrate the drive rehabilitation into the existing facility.

Activities:

Task 310 – Basis of Design and Division of Work

- Coordinate design decisions with the Owner and equipment vendor.
- BODR will be limited to further defining scope of work between Engineer, Contractor, Vendor, and Owner to facilitate coordination between all parties.

Task 340 – 30% Design Review

- Prepare 30% drawings and TOC of technical specifications.
- Design includes temporary support and construction sequencing.
- Conduct an interdisciplinary quality-control review.
- Conduct a design review meeting with the Owner and incorporate one consolidated set of Owner comments.
- Prepare 30% OPCC.

Key Assumptions:

- Temporary support will be designed using equipment loads and removal or installation information provided by the vendor.
- The Contractor will remain responsible for construction means, methods, sequences, procedures, safety, and temporary conditions not specifically designed by HDR.
- The Owner will review and return one consolidated set of comments on the design-development submittal.

Meetings/Travel:

- One virtual design-development review meeting.

Task Deliverables:

- BODR, electronic PDF.
- 30% conceptual design drawings and TOC of specifications; electronic PDF.
- Preliminary construction sequencing narrative; electronic PDF.

Task Series 400 – Final Design and Contract Documents

Objective:

HDR will prepare final drawings and technical specifications for bidding or contractor procurement and construction of the clarifier drive rehabilitation.

Activities:

Task 410 – Final Drawings and Technical Specifications

- Prepare coordinated final drawings and technical specifications for the clarifier drive rehabilitation, incorporating vendor-furnished equipment; required mechanical, structural, electrical, and controls modifications; temporary support requirements; and construction sequencing and operational constraints.
- Include addition of a exterior VFD to the existing mixer and rerouting electrical conduit along the outer rim of the clarifier.
- Perform interdisciplinary quality-control review.
- Incorporate one consolidated set of Owner review comments and issue final Contract Documents.

Task 420 – Opinion of Probable Construction Cost and Schedule

- Prepare an opinion of probable construction cost based on the final design.
- Coordinate available vendor pricing with other anticipated construction costs.
- Prepare an anticipated procurement and construction schedule identifying major equipment, shutdown, and sequencing milestones.

Key Assumptions:

- The Project will be prepared as one construction package using the Owner's front-end procurement and contracting documents.
- The equipment vendor is responsible for the design and engineering of vendor-furnished equipment. HDR will not redesign or independently certify internal components of vendor-furnished equipment.
- Design will be based on visible and accessible existing conditions and available record information. Concealed conditions may require design modifications during construction.
- Permitting and regulatory agency submittals are not included unless specifically required and authorized.
- As-built drawings are available. If they are not available, there will be additional drafting work.

Meetings/Travel:

- One virtual final-design review meeting.

Task Deliverables:

- Final drawings and technical specifications; electronic PDF.
- Opinion of probable construction cost; electronic PDF.

- Anticipated procurement and construction schedule; electronic PDF.

Task Series 500 – Bidding Support and Construction-Phase Services

Objective:

HDR will assist the Owner during procurement of the construction work and coordination with the clarifier equipment vendor. HDR will provide limited engineering services during construction to support interpretation of the Contract Documents, review of technical submittals, coordination of temporary support and sequencing, and observation of critical work activities

Activities:

Task 510 – Bidding Support

- Document technical questions and clarify the division of work among the Owner, equipment vendor, and bidders or proposers.
- Respond to technical questions from bidders or proposers.
- Prepare technical addenda or clarifications, as required.
- Review bids or proposals for technical conformance with the Contract Documents.
- Assist the Owner in evaluating technical exceptions and coordinating the selected Contractor with the equipment vendor.

Task 520 – Preconstruction Conference

- Participate in one preconstruction conference and clarify design intent, submittal requirements, shutdown coordination, and vendor responsibilities.

Task 530 – Submittal and Request for Information Review

- Review technical submittals for general conformance with the Contract Documents, including clarifier drive equipment, structural modifications, temporary support systems, electrical equipment, controls, and installation procedures.
- Review and respond to Contractor requests for information and proposed substitutions.
- Coordinate technical responses with the Owner and equipment vendor, as appropriate.

Task 540 – Site Observation

- Perform site visits at selected stages of construction to observe general progress and conformance with the Contract Documents.
- Observe critical activities anticipated to include temporary support installation, existing drive removal, structural modification, new or rehabilitated drive installation, and startup or testing.
- Prepare field observation reports identifying observed conditions and follow-up items.

Task 550 – Startup and Closeout

- Coordinate with the equipment vendor and Contractor during startup and functional testing.
- Review vendor installation certification, testing documentation, and operation and maintenance information.
- Participate in one substantial completion observation and prepare a list of observed incomplete or corrective work items.
- Prepare record drawings based on Contractor-provided marked-up documents.

Key Assumptions:

- Owner will administer advertisement, distribution of procurement documents, receipt of bids or proposals, and contracting.
- Up to ten technical bidder questions and one technical addendum are included.
- Legal review and evaluation of bidder responsibility are not included.
- Fee includes an assumption of 10 submittals and 4 RFIs.
- HDR will not control or have responsibility for construction means, methods, techniques, sequences, procedures, site safety, or the Contractor's compliance with laws and regulations.
- Submittal review is for general conformance with the design concept and Contract Documents and does not relieve the Contractor or vendor of responsibility for dimensions, quantities, fabrication, installation, or performance.
- Continuous resident project representation and special inspection are not included except for those listed in Task 540.
- Record drawings will be based on Contractor-provided marked-up documents and information furnished by others.

Meetings/Travel:

- One preconstruction conference; virtual or in-person.
- Up to four site visits by up to two HDR staff.
- One substantial completion observation by up to two HDR staff.

Task Deliverables:

- Responses to bidder questions and technical addendum, if required; electronic PDF.

- Technical bid or proposal review memorandum; electronic PDF.
- Reviewed submittals and RFI responses; electronic PDF.
- Field observation reports; electronic PDF.
- Substantial completion corrective-work list; electronic PDF.
- Record drawings; electronic PDF.

Schedule: HDR anticipates initiating design in December 2026 and completing final bidding documents by April 2027. Bidding and award are anticipated in May and June 2027, with construction generally targeted for summer 2027. The final construction schedule and clarifier shutdown period will be coordinated with the Owner based on operational requirements, equipment availability, contractor scheduling, and procurement lead times.

PART 3.0 ADDITIONAL SERVICES

Services not specifically identified in Part 2.0 are not included. If requested by the Owner, HDR may provide additional services upon written authorization and adjustment to the scope, schedule, and fee. Potential additional services include destructive investigation, survey, materials testing, confined-space entry, permitting, preparation of multiple construction packages, extensive redesign resulting from concealed conditions, resident project representation, special inspections, and construction-phase services exceeding the stated assumptions.

EXHIBIT B

TERMS AND CONDITIONS

HDR Engineering, Inc. Terms and Conditions for Professional Services for West Des Moines Water Works

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

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. LITIGATION SUPPORT

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

18. NO THIRD PARTY BENEFICIARIES

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.

19. UTILITY LOCATION

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

20. UNMANNED AERIAL SYSTEMS

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

21. OPERATIONAL TECHNOLOGY SYSTEMS

OWNER agrees that the effectiveness of operational technology systems 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.

22. FORCE MAJEURE

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

23. 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).