

DRAFT
RESOLUTION NO. R25-66

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLUMBUS, NEBRASKA, APPROVING SHORT FORM AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH HDR ENGINEERING, INC. IN AN AMOUNT NOT TO EXCEED \$149,995 FOR 8TH STREET AND 12TH AVENUE INTERSECTION DESIGN; A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN; TO AUTHORIZE THE MAYOR TO EXECUTE THE SAME ON BEHALF OF THE CITY; AND TO REPEAL ALL RESOLUTIONS OR PORTIONS THEREOF IN CONFLICT HEREWITH.

WHEREAS, the City standard request for qualifications process was followed and HDR Engineering selected for this project; and

WHEREAS, the City intends to evaluate and provide improvements to the 8th Street and 12th Avenue intersection; and

WHEREAS, professional engineering services for this project can be provided by HDR, Engineering, Inc. as set out in the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF COLUMBUS, NEBRASKA, that a Short Form Agreement Between Owner and Engineer for Professional Services with HDR Engineering, Inc. in an amount not to exceed \$149,995 for 8th Street and 12th Avenue Intersection Design, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved and the mayor is authorized, directed, and empowered to execute the same on behalf of the City of Columbus.

This resolution shall repeal all resolutions or portions thereof in conflict herewith.

INTRODUCED BY COUNCIL MEMBER _____

PASSED AND ADOPTED THIS _____ DAY OF _____, 2025.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



Accountability - Dedication
Honesty - Integrity - Respect

MEMORANDUM

DATE: April 16, 2025

TO: Tara Vasicek, City Administrator

FROM: Richard J. Bogus, P.E. City Engineer

RE: 8th Street and 12th Avenue Intersection Design

ELECTED OFFICIALS: Prent Roth, Ron Schilling, and Troy Hiemer

RECOMMENDATION:

I recommend approval of the professional services agreement between Owner and Engineer with HDR Engineering Inc. in the amount of \$149,995 for the 8th Street and 12th Avenue Intersection Design.

DISCUSSION:

The project consists of data collection summary, public involvement and outreach on concepts, preliminary and final design for roundabout alternatives and layouts, right-of-way acquisitions, opinions of costs and final design plans. Services does not include right-of-way acquisition, bidding and construction phase services. Included are multiple design charrette meetings, roundtable discussion with city stakeholders, and a presentation of the concept layout to the Committee as a Whole. Anticipated final deliverables are September 2025.

The Engineering Department will provide topographic surveying services.

FISCAL IMPACT:

Lump Sum \$149,995. Part of 2024-2025 Budget CIP # 25-35 in the amount of \$150,000. The Engineering Department to provide topographic survey service, thus, saving additional consulting fees.

ALTERNATIVE:

Do not approve.

SIGNATURE:

By: Richard J. Bogus

Approved By: [Signature]

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

THIS AGREEMENT is made as of this _____ day of _____, 20____, between The City of Columbus (“OWNER”) a municipal corporation, with principal offices at 2500 14th Street, P.O. Box 1677, Columbus, NE 68602-1677, and HDR ENGINEERING, INC., (“ENGINEER” or “CONSULTANT”) for services in connection with the project known as 8th Street & 12th Avenue Intersection Design (“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 cost plus fixed fee. ENGINEER’S fee will be One Hundred Forty-Nine Thousand, Nine Hundred Ninety-Five Dollars (\$149,995). OWNER authorization is required for the ENGINEER compensation to exceed the stated fee of \$149,995. Cost shall be an amount equal to salary cost times a factor of 2.5794. Reimbursable expenses incurred in connection with such services shall be in addition to ENGINEER’S compensation.

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. ENGINEER will add ten percent (10%) to invoices received by ENGINEER from subconsultants and subcontractors to cover administrative expenses and vicarious liability.

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 (One-Hundred Fifty-Seven and ninety-four hundredths) percent (157.94%) 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.

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.

SECTION VI. SPECIAL PROVISIONS

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

CITY OF COLUMBUS

"OWNER"

BY: _____

NAME: _____

TITLE: _____

ADDRESS: 2500 14th Street, P.O. Box
1677
Columbus, NE 68601-1677

HDR ENGINEERING, INC.

"ENGINEER"

BY: _____

Ann Williams

NAME: _____

Ann Williams

TITLE: _____

Sr Vice President

ADDRESS: _____

1917 S 67th Street
Omaha, NE 68106

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A

8th Street & 12th Avenue Intersection Design

PROJECT DESCRIPTION:

HDR Engineering, Inc. (**Consultant**) has been selected by the City of Columbus (**City**) to provide engineering services for designing the reconstruction of the 8th Street and 12th Avenue intersection. The project improvements include analysis of the existing corridor, alternatives analysis, and preliminary and final design of a single-lane roundabout intersection. The project extends approximately 150 LF from the intersection in all cardinal directions and impacts to existing adjacent properties will be minimized to the extent possible.

SCOPE OF SERVICES:

KEY UNDERSTANDINGS

In the development of our scope, we have assumed the following:

1. The **City** will complete NEPA documentation and field studies, if necessary.
2. Field studies and hazardous materials documentation associated with gas station is not included in this Scope of Work.
3. The **City** will lead all coordination with utility companies and the project plans and specifications will not include design of utility relocations.
4. The **City** will provide field survey to support roadway design, including DTM and planimetric files with field survey and utility information incorporated. **Consultant** will use the **City** provided horizontal survey control.
5. The **City** will complete right-of-way design or supplement ROW services as described in **Additional Services**.
6. The **City** will confirm final pavement determination for all proposed roadways, including depth.
7. The **City** will obtain all necessary permits and approvals required for construction.
8. Soil investigation for the roadway improvements is not anticipated and not included with this work.
9. The final roadway design will be completed in AutoCAD Civil3D 2024.
10. Scheduled plan submittals will be via electronic PDF plot files and Autodesk CADD files.
11. New lighting units shall be installed where required.
12. A new lighting control station will not be included.
13. Proposed inlets will be sized for drainage areas affected by this project. Efforts to improve the existing storm main will be limited to the roadway project limits. The existing storm main will not be analyzed. The **City** will provide pipe size for any reconstructed storm main.

PROJECT TASKS - ROADWAY ENGINEERING SERVICES:

The following is a detailed description of the services to be performed as a part of this agreement.

A. PROJECT MANAGEMENT, COORDINATION AND QC

- 1 **Project Management.** **Consultant** will provide overall project management including monthly progress reports and invoicing, monitoring project progress, and assigning appropriate personnel to meet the agreed upon schedule.
- 2 **Meetings and Site Visits.** **Consultant** will participate in an on-site kick-off meeting. Two (2) personnel are assumed to participate in this meeting at the project location. Kick-off meeting will be followed by a design charrette with the engineering team. Design charrette will conclude with a roundtable discussion(s) to **City** stakeholders. **Consultant** will participate in three (3) conference calls with **City** staff to review miscellaneous design details as well as to review Submittal comments. **Consultant** will provide minutes for these meetings. **Consultant** will present the project at one **City** committee meeting at a preferred time within the project schedule.
- 3 **QC Review.** **Consultant** will provide QC review of draft and final versions of the deliverables.
- 4 **Internal Coordination.** This task covers internal coordination and team meetings. **Consultant** will conduct continued coordination with staff on design and location of project improvements. **Consultant** will coordinate with **City** throughout the project on required information.

B. CORRIDOR ANALYSIS

- 1 **Data Collection Summary.** This task includes: reviewing previous traffic studies in the area, including the South Mobility Study;

review and incorporation of data collected during the previously completed SS4A Study, including historical crash analysis, AADT, and multimodal traffic counts; and coordination with **City** to establish limits of topographic survey. **Consultant** to document operational and safety impacts for the proposed roundabout in a 2-page memo.

C. MISCELLANEOUS DESIGN TASKS

- 1 **Public Involvement.** **Consultant** will develop public information figures for outreach and discussion contracted under the Columbus SS4A scope of work. Attendance at Public Information Meetings and Interactive Design Meetings will be limited to the events described in the Columbus SS4A Scope.
- 2 **Utility Coordination.** **Consultant** will coordinate with the **City** to identify utilities in conflict with the final intersection design. The **Consultant** will provide reviews of the utility relocations to identify conflicts with the proposed design of the intersection and proposed utilities. Limited to one (1) review per utility and reviews will be based on information available.
- 3 **SWPPP and Erosion Control.** **Consultant** to develop an erosion control design based on the grading and drainage design using storm water pollution Best Management Practices (BMP).
- 4 **Drainage Analysis and Design.** This task includes effort required to complete drainage analysis and design for the project based on preferred alternative. It is estimated that eight (8) locations will include a hydrologic and hydraulic analysis for pavement drainage and storm sewer design of the intersection. Information to be documented in a Hydrologic and Hydraulic Analysis Report. This scope does include effort to model the proposed storm sewer system in StormCAD. This model will include the proposed drainage elements and tie-ins to existing storm sewer. This scope does not include effort to evaluate the existing condition of any portions of the existing stormwater utility. The consultant will coordinate with the **City** to either upsize or run a parallel storm sewer within the project limits, based on information provided by the **City**. **Consultant** can perform this analysis as a separate project or under a supplemental agreement.
- 5 **Lighting, Signing, and Striping.** Consultant to develop lighting, signing, and striping plans for final design.

D. PRELIMINARY DESIGN

This task involves the development of preliminary plans for roadway design. Work includes conceptual analysis, design criteria, and development of preliminary 30% and 60% plans.

- 1 **Roundabout Alternative Analysis.** **Consultant** will develop up to three (3) unique layouts for roundabout at the 8th Street and 12th Avenue intersection as part of the pre-design concept phase
- 2 **Design Criteria.** A pre-design concept document will be developed which provides the following project specific information:
 - a. Project Description
 - b. Project Data
 - c. Proposed Alternative with Layout Sketch
 - d. Special Considerations
 - e. Applicable Road Design Criteria
- 3 **Preliminary Plan Development.** This task involves developing preliminary plans for the selected roundabout layout to a 60% level of design. Plans will include the following:
 - a. Title Sheet
 - b. Typical Sections
 - c. Removal
 - d. Construction
 - e. Horizontal and Vertical Geometrics
 - f. Storm Sewer Inlet Locations
 - g. Staging and Traffic Control
- 4 **Preliminary Opinion of Probable Construction Cost (OPCC).** **Consultant** will prepare one (1) construction cost estimate at the time of the 30% Preliminary Plan Deliverable. Contingencies will be utilized to account for unknown construction items not yet defined at the 30% design level.

- 5 Deliverables.** Electronic PDF of 30% and 60% Plan Submittals, Electronic PDF of OPCC

E. FINAL DESIGN

This task involves the development of final plans and specifications for letting. Work includes development of 90% plans and final sealed plans and specifications for letting.

- 1 Final Plans and Specifications Development.** This task involves developing final plans and specifications. Plans will include the following:
 - a. Title Sheet
 - b. Typical Sections
 - c. Quantities
 - d. Removal
 - e. Construction
 - f. Horizontal and Vertical Geometrics
 - g. Survey Control
 - h. Intersection Geometric, Staking, and Jointing Details
 - i. Storm Sewer Plan and Profile
 - j. Staging and Traffic Control
 - k. Erosion Control
 - l. Special Details
 - m. Lighting Details
 - n. Cross Sections
- 2 Final Opinion of Probable Construction Cost (OPCC).** *Consultant* will prepare one (1) construction cost estimate at the time of the Final Plan Deliverable.
- 3 Deliverables.** Electronic PDF of 90% and Final Sealed Plan and Specifications Submittal, PDF of OPCC. Electronic deliverables including DWG files and XML Surface Files.

F. ADDITIONAL SERVICES

The following tasks may be supplemented at the request of the *City*:

- 1 Future Grant Funding.** *Consultant* can perform analysis to directly inform future grant application to USDOT.
- 2 Bid Phase Services.** Assist the *City* in soliciting bids for the Project. Including advertising, attending a Prebid meeting, answering RFI's during bidding, evaluating bids, and providing a recommendation.
- 3 Construction Phase Services.** Including construction observation, construction management, materials testing, answering RFI's and reviewing shop drawings.
- 4 Right-of-way Services.** Including Land Survey for property acquisition, acquisition plats, right-of-way design, title services, easement exhibits, parcel files, and plot plans.

EXHIBIT B

TERMS AND CONDITIONS

HDR Engineering, Inc. Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

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

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. If flying an Unmanned Aerial System (UAS or drone), ENGINEER will procure and maintain aircraft unmanned aerial systems insurance of \$1,000,000 per occurrence. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for third party personal injury and property damage claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract. The employees of both parties are intended third party beneficiaries of this waiver of consequential damages.

3. OPINIONS OF PROBABLE COST

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

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be

entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

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

6. SERVICES AND INFORMATION

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

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

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

7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees,

arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments to ENGINEER within thirty (30) days of OWNER's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance

of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and

OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE LESSER OF \$1,000,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. ENGINEER'S AND SUBCONSULTANTS' EMPLOYEES ARE INTENDED THIRD PARTY BENEFICIARIES OF THIS ALLOCATION OF RISK.

18. LITIGATION SUPPORT

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

19. NO THIRD PARTY BENEFICIARIES

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

20. UTILITY LOCATION

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

21. UNMANNED AERIAL SYSTEMS

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

22. OPERATIONAL TECHNOLOGY SYSTEMS

OWNER agrees that the effectiveness of operational technology systems and features designed, recommended or assessed by ENGINEER (collectively "OT Systems") are dependent upon OWNER's continued operation and maintenance of the OT Systems

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

23. FORCE MAJEURE

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

24. EMPLOYEE IMMUNITY

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

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).