

**Silver Creek Watershed Project
Ad-Hoc Consultant Selection Subcommittee
Meeting
December 7, 2004
6:30 p.m.**

Agenda

Silver Creek Watershed Project Ad Hoc Consultant Selection Subcommittee:

Dick Connealy, Chairperson
John Conley
Rich Jansen
Barb Nichols
Tim Fowler

Staff Liaison: Ralph Puls*
Marlin Petermann

1. Meeting Called to Order -- Chairperson Connealy
2. Quorum Call
3. Adoption of Agenda
4. Proof of Publication of Meeting Notice
5. Review and Recommendation on Contract for Silver Creek Watershed Project with Olsson & Associates – Mike Sotak, Olsson & Associates; and Ralph Puls.
6. Other Items of Interest
7. Adjourn

MEMORANDUM

TO: Silver Creek Watershed Project Ad-Hoc Subcommittee

SUBJECT: Professional Services Contract for Planning, Design, Contract Administration of Silver Creek Dams

BY: Ralph Puls, Land/Water Programs Coordinator

DATE: November 30, 2004

At their November 18, 2004 meeting, the P-MRNRD Board of Directors voted to approve the recommendation of the Silver Creek Ad-Hoc Subcommittee authorizing the General Manager to negotiate a professional services contract with Olsson Associates for the planning, design and contract administration of ten dams in the Silver Creek Watershed.

Olsson Associates was selected as the "Technical Service Provider" (TSP) who would provide the services called for in the Contribution Agreement between the Natural Resources Conservation Service (NRCS) and the P-MRNRD. Attached for the Ad-Hoc Subcommittee's review and recommendation are contract documents that are the result of those negotiations.

The Contribution Agreement, approved at the September 7, 2004 Board Meeting, will accelerate the completion of the Silver Creek Watershed Plan. The P-MRNRD and the NRCS will share the costs of the Professional Services, estimated by the NRCS to be \$50,000 per structure (\$500,000 total); they will share the costs of construction of the structures as well.

Attached for the Ad-Hoc Subcommittee's review and recommendation are the contract documents, Scope of Services and the estimated total cost of the Services; \$416,742.00. The NRCS has reviewed and approved the attachments.

Staff recommends that the Ad-Hoc Subcommittee recommend to the Board of Directors that the proposed professional services contract for the Silver Creek Watershed Acceleration Plan with Olsson Associates be approved subject to review as to form by District's Legal Counsel.

Project Scope / Task Hours to P-MRNRD Silver Creek Watershed Project

Staff Category	Engineering - Civil				Geotechnical		Surveying		Scientist	Admin	Expenses		
	Sr. Designer	PM / QA	Proj. Engr.	Civil Tech	Sr. Geotech	Geotech	Sr. Surveyor	Surveyor					
Hourly Billing Rate	80	119.81	64.56	43.15	105.48	60.71	87.77	44.12	62.32	40.76			
Project Management	1		272										
Field Review Sites / Confirm Centerlines		12	12	12		12			12			400	32988
Surveying - Complete First Four Sites												350	6589
Surveying - Six Remaining Sites					20				50	40		100	7116
Project Kickoff Meeting		6	6	6	80				120	90		350	18305
Preliminary Design - Sites 23, 24, 25, 31													
Hydrology & Hydraulics		40	10	40									6981
Embarkment / Spillway Layout		60	20	60	60								13859
Develop Boring Plan		8	2	8		4	20						3032
NRCS / Owner Review		2	2	2									529
Landowner Coordination		8		8								100	1256
Geotechnical Exploration / Report						12	115					6300	14547
Final Design - Sites 23, 24, 25 & 31													
Embarkment / AS Layout		30	10	80	140								14804
NRCS / Owner Review		2	2	2									529
Landowner Coordination		8		8								100	1256
Drain / PS / Details		12	6	12									2454
Prepare Design Report		12		12							20	250	2800
Prepare Bid Package / Specifications		2	2	20								300	1991
Breach Routings / Inundation Maps			20	40	40			8	6				7671
Land Rights Map Preparation			2	8	30								2051
Easement Preparations								8	4				879
Permit Preparations													
Water Right / Storage			2	8								100	856
NPDES / Water Quality			2	4	8							100	943
USACE 404												80	3071
NRCS NE-CPA52									48				1994
NRCS / Owner Review		2	2	2					32				529
DNR Permitting Review			8										958
Advertise for Bids - 23,24, 25 & 31		8	4	4								300	1677
Construct Sites 23, 24, 25 & 31	2	6	4	6	40							325	47566
Preliminary Design - Remaining 6 Sites													
Hydrology & Hydraulics		50	15	50									9025
Embarkment / Spillway Layout		80	30	80	80								19611
Develop Boring Plan		12	4	12		8	40						5486
NRCS / Owner Review		4	4	4									1057
Landowner Coordination		12		12								100	1835
Geotechnical Exploration / Report						28	280					12300	32252
Final Design - Remaining 6 Sites													
Embarkment / AS Layout		40	12	100	160								17998
NRCS / Owner Review		2	2	2									529
Landowner Coordination		12		12								100	1835
Drain / PS / Details		16	10	16									3511
Prepare Design Report		12		12								300	2035
Prepare Bid Package / Specifications		4	2	24								350	2459
Breach Routings / Inundation Maps			20	40	40			12	8				8111
Land Rights Map Preparation			4	10	40								2851
Easement Preparations								12	6				1318
Permit Preparations													
Water Right / Storage			4	12								100	1354
NPDES / Water Quality			2	6	12							100	1245
USACE 404												120	4358
NRCS NE-CPA52									68				2991
NRCS / Owner Review		2	2	2					48				529
DNR Permitting Review			8										958
Advertise for Bids - Remaining 6 Sites		8	6	6									1746
Construct Remaining 6 Sites	3	6	4	6	40								7474
												325	7474
													76493
													395461
Wetland Banking Feasibility and Design													
Wetland Bank Site Application (Site 11, 35, 36, 6)													
Data Collection									20			100	1348
Site Visit									16			100	2130
Agency Coordination / Meetings			8	16					36			200	3402
Preliminary Site Layout / Pool Grading				8					36				2760
Wetland Bank Plans (Site 11, 35, 36, 6)													
Wetland Bank Final Grading and Design				24					80				6535
Wetland Bank Instrument Negotiations		16							48		200	5108	11643
													21282

Total Silver Creek Watershed Project Fees: 416742

- 1 6 hrs/wk x 24 wk design phase + 4 hrs / week x 32 week construction phase (averages)
- 2 Based on a 14 week construction period.
- 3 Based on a 22 week construction period.

APPENDIX 1 TO EXHIBIT A

NARRATIVE for PROJECT SCOPE / TASK HOURS for P-MRNRD SILVER CREEK WATERSHED PROJECT

Description of Services

This narrative to the above referenced master agreement is for professional services related to the planning, design and construction of ten dams in the Silver Creek Watershed in Burt County, NE. Specifically, a description of the five major tasks follows:

Project Management

This task represents the normal project management duties including client update meetings, monitoring progress and project team coordination. All proposed meetings with project stakeholders and the NRD Board as well as two presentations of the study results are also included in this task. 3 Coordination meetings with NRD staff, two information gathering meetings and two final presentation meetings are included.

Field Review Sites / Confirm Centerlines

This task is to field visit the site with the landowners along with representatives from NRCS, the NRD and the design team. The field review is to review preliminary dam centerlines, geographic features and discuss potential alternatives.

Surveying

This task involves topographic surveying efforts necessary to generate a topographic background that provides adequate information by which to plan and design the structures and generate the required maps for the necessary easements.

Preliminary Design Services – All Sites

This task is to identify and investigate the technical feasibility of dam locations along centerline alignments at ten sites in the Silver Creek Watershed. This includes a trip to the site with the NRD to discuss options, identifying site constraints and developing a level of design appropriate at this stage of the investigation in which to generate quantities to get order of magnitude costs. Also included in this task is the development

of a boring plan and the subsurface investigation at one or more of the sites to obtain soil data needed for the dams technical analyses.

Breach Routings / Inundation Maps

This task is to conduct a breach routing in accordance with State of Nebraska dam safety criteria for each site. A breach inundation map will be generated from the hydraulic output that will be reviewed by the NRD staff. If NRD staff determines that a downstream easement is necessary to protect the hazard classification of the structure, an easement map and description will be prepared. Time for services has been included to prepare one easement description for each of the ten sites planned.

Land Rights Map Preparation / Easement Preparations

This task includes the development of a map that shows the dam and related facilities on the topographic mapping. Easements needed for the dam and spillway area, permanent pool, buffer zone and flood pool will be delineated on the map. If a downstream easement intended to protect the design hazard classification is desired by the NRD, it will also be included. Property lines will be assumed, given how information from the Burt County plat book matches up with geographic features such as fences, tree lines and roads. **Meets and bounds descriptions for the easements will not be prepared, nor will the topographic surveys locate the property corners needed to write detailed descriptions.**

Final Design Services – All Sites

This task will prepare construction documents (plans and specifications) for the ten dams to be grouped in two bid packages. Plans will be developed in accordance with industry standards, NRCS design criteria and requirements of the State of Nebraska Dam Safety Division. The effort will include a geotechnical analysis of the subsurface investigation, detailed hydraulic and hydrologic analyses and the preparation of construction details necessary to properly construct the dams.

Permitting

This task will involve the preparation of applications for all required permits for plan approval and construction. In addition, any additional figures, drawings and correspondence needed to get the permits approved will be provided under this task.

Bid Phase Services

This task will involve the preparation of all required bid documents, the preparation for and attendance of a pre-construction conference, attendance of the bid letting and the follow up research necessary to analyze bids and make an engineer's recommendation of award to the Owner.

Construction Phase Services

This task involves all services necessary to perform the duties listed in Section A.105 of Exhibit A – Engineer’s Services of the contract. More generally, full time surveying, construction observation and administrative services will be provided to monitor the contractor’s activities, review material submittals and provide reporting services to the NRD.

Environmental Permitting

This task includes gathering pertinent environmental data, conducting site visits, delineating wetlands, and submitting Section 404 permits for the ten dams in the Silver Creek Watershed.

This task also includes preparing the NRCS NE-CPA52 forms required for NRCS-funded projects. These forms investigate the potential environmental effects of a project. The areas of investigation include: Cultural Resources, Economic Considerations, Environmental Justice, Floodplain Management, Invasive Species, Landscape Resources, Natural Areas, Prime and Unique Farmland, Riparian Area, Social Considerations, Special Aquatic Sites, Stream Channel Modification, Clean Water Act – Section 404, Threatened and Endangered Species, Wetlands, and Wild and Scenic Rivers. Not all of these areas of investigation will be evaluated in detail; many require only cursory review.

Wetland Banking Analysis and Design

This task includes all the work required to investigate the feasibility of constructing a wetland mitigation bank at Sites 11, 35, 36 and 6. The task will include data gathering, site visits, preliminary bank site design, preliminary pool grading and layout, preparation of a hydrologic budget, and meetings with the Mitigation Bank Review Team (MBRT) to submit, and gain approval of the site application.

Tasks associated with actually constructing the wetland mitigation bank include preparing final grading, site plans, technical specifications and performing QA/QC review in conjunction with final design of each dam. The bank sites may require separate Section 404 permits than the lake itself; the work required to obtain these permits is included in this task.

Additional site visits and meetings with the MBRT and NRD will also be required to negotiate the credits, credit types, and inclusion of buffer zones at each bank site.

This task does not include construction observation for the bank sites, annual monitoring, annual reporting and credit certification requests.

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Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

**Papio-Missouri River Natural Resources District
Silver Creek Watershed Project**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, No. E-001, 2002 Edition.

1420 King Street, Alexandria, VA 22314

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1015 15th Street N.W., Washington, DC 20005

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1801 Alexander Bell Drive, Reston, VA 20191-4400

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**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS AMENDS, AS OF THE DATE HEREOF, THE AGREEMENT effective as of 9, 2004 (“Effective Date”) between
Decemb
er

The Papio-Missouri River Natural Resources District (“Owner”) and

Olsson Associates, Inc. (“Engineer”).

Owner intends to _____

Plan, design and oversee construction of ten (10) low hazard

Dams in the Silver Creek Watershed in Burt County, NE. (“Project”).

Owner and Engineer agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Exhibit C.

C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 - SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 - INVOICES AND PAYMENTS

4.01 Invoices

A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.

D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition

to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories, which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under 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.

B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in

technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. Subject to the standard of care set forth in paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

G. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

H. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit J.

I. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

6.02 Design without Construction Phase Services

A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected

within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner, which are applicable to the Project.

C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance

with the requirements of paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.

F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. *Suspension.*

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

B. *Termination.* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination.

1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents,

at Owner's sole risk, subject to the provisions of paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.07 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 Dispute Resolution

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 Environmental Condition of Site

A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance

of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

F. 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 substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Indemnification and Mutual Waiver

A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit I, "Allocation of Risks," if any.

B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

C. *Environmental Indemnification.* In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), 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 own negligence or willful misconduct.

D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 Miscellaneous Provisions

A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement

shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):

1. *Additional Services*--The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

2. *Basic Services*--The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.

3. *Construction Cost*--The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

4. *Constituent of Concern*--Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to

[a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

5. *Consultants*--Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.

6. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

7. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

8. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

9. *Reimbursable Expenses*--The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

10. *Resident Project Representative*--The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

11. *Specifications*--That part of the Contract Documents consisting of written technical

descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

12. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "Engineer's Services," consisting of 9 pages.

B. Exhibit B, "Owner's Responsibilities," consisting of 2 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 2 pages.

D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.

E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.

~~F. Exhibit F, "Construction Cost Limit," consisting of _____ pages.~~

G. Exhibit G, "Insurance," consisting of 3 pages.

H. Exhibit H, "Dispute Resolution," consisting of 2 pages.

I. Exhibit I, "Allocation of Risks," consisting of 2 pages.

~~J. Exhibit J, "Special Provisions," consisting of 1 page.~~

K. Exhibit K, "Amendment to Standard Form of Agreement," consisting of 2 example format pages as of

the 8 April 2004 date of this agreement. Exhibits K to amend this agreement will be affixed and included in this Agreement to define and authorize Project phases beyond the initial study study and report phases, and to document other changes or additions to this agreement as may be mutually negotiated and accepted by Owner and Engineer.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 10 inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 Designated Representatives

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Papio-Missouri River Natural Resources District

By: Steven G. Oltmans

Title: General Manager

Date Signed: _____

Address for giving notices:

8901 South 154th Street

Omaha, NE 68138-3621

Designated Representative (see paragraph 8.03.A):

Ralph Puls

Title: Project Manager

Phone Number: (402) 444-6242

Facsimile Number: (402) 895-6543

E-Mail Address: rpuls@papionrd.org

Engineer:

Olsson Associates

By: Daryoush Razavian, P.E., P.H.

Title: Vice President

Date Signed: _____

Engineer License or Certificate No. E-6366

State of: Nebraska

Address for giving notices:

2120 South 72nd Street

Suite 1400

Omaha, NE 68124

Designated Representative (see paragraph 8.03.A):

Michael K. Sotak, P.E.

Title: Client Manager

Phone Number: (402) 341-1116

Facsimile Number: (402) 341-5895

E-Mail Address: msotak@oaconsulting.com

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Engineer's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the project, and provide engineering services required for the design and construction observation of ten (10) dams in the Silver Creek Watershed Project in accordance with State of Nebraska and NRCS guidelines, including performance of the tasks described in (a) the document entitled: "NARRATIVE FOR PROJECT SCOPE/TASK HOURS FOR P-MRNRD SILVER CREEK WATERSHED PROJECT," attached to and incorporated in this Exhibit A by reference as Appendix 1 and (b) the document entitled: "PROJECT SCOPE/TASK HOURS FOR P-MRNRD SILVER CREEK WATERSHED PROJECT," attached as Appendix 2 to this Exhibit A, and incorporated herein by reference.

2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, which are not part of Engineer's Basic Services.

3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.

4. Identify and evaluate ~~three~~ alternate solutions that may be suggested in landowner coordination to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.

5. Prepare a design report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.

~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables:~~

~~7. Furnish 5 review copies of the Report and any other deliverables to Owner within 150 calendar days of authorization to begin services and review it with Owner. Within 10 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~

~~8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish 35 copies of the revised Report and 30 copies of .pdf version of report on CD to the Owner within 20 calendar days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner. It is expected that ENGINEER'S services and fees for any subsequent phase will be determined and authorized by an Exhibit K to this Agreement, which will establish the scope, schedule, and compensation for further phases. In lieu of proceeding with any subsequent phase, the OWNER shall have the unrestricted right to terminate this Agreement without cause or penalty at the end of the Study and Report Phase upon written notice to the ENGINEER.~~

A1.02 Preliminary Design Phase –

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: Assess the feasibility of wetland banking at selected sites, as set forth in the task items listed in Appendix 2 of Exhibit A.
6. Furnish two review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 100 calendar days of authorization to proceed with this phase, and review them with Owner. Within 14 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner two copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 7 calendar days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.03 Final Design Phase -

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the

Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
4. Perform or provide the following additional Final Design Phase tasks or deliverables: Perform all wetland banking design tasks set forth in Appendix 2 to Exhibit A.
5. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 14 days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of paragraph 6.01.G, instructions for revisions.
6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit 2 final copies of the Bidding Documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 7 calendar days after receipt of Owner's comments and instructions.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 Bidding or Negotiating Phase -

A. After acceptance by Owner of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
5. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: (None)
6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase -

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. [If Engineer will not be providing the services of an RPR, then delete this paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.]

3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, paragraph B2.01.0.

4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

6. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in

progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.

10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been

fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in paragraph A1.05.A.11.

17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

18. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables: (none).

19. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.

C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 Post-Construction Phase -

A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:

1. Provide assistance in connection with the adjusting of Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.
3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
5. Perform or provide the following additional Post-Construction Phase tasks or deliverables: Furnish Owner with a set of record drawings for each site detailing any changes that may have been made to the original design documents during construction_____.
6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's correction period.

PART 2 -- ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below. (Unless through negotiations, some types of such services have been included within the basic services of Engineer provided for by a signed Exhibit K amending this agreement.)

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.

7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Engineer's Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.

10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.

15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

16. Providing Construction Phase services beyond the original date for final completion of the Work.

17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

18. Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

19. Preparation of operation and maintenance manuals.

20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the date stated in A1.05.B.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following: (Unless through negotiations some types of such additional information are to be provided as part of Engineer's basic services as provided for by a signed Exhibit K amending this agreement.)

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

Q. Perform or provide the following additional services: .

* Any additional services determined to be necessary for the Project, but which Owner elects not to retain Engineer to provide as additional services beyond Engineer's contracted basic services.

**COMPENSATION DECISION GUIDE
FOR USE WITH EXHIBIT C TO EJCDC E-500, 2002 EDITION**

1. Compensation for Basic Services (not including Resident Project Representative and Post-Construction Services)

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percent of Construction Costs	Direct Labor Costs Times a Factor	Direct Labor Costs Plus Overhead Plus a Fixed Fee	Salary Costs Times a Factor
Use These Sheets	Sheet C-2	Sheets C-3 and C-4	Sheets C-5 and C-6	Sheets C-7 and C-8	Sheets C-9 and C-10	Sheets C-11 and C-12
Use This Appendix	N/A	Appendices 1 (C-24) and 2 (C-25)	N/A	Appendix 1 (C-24)	Appendix 1 (C-24)	Appendix 1 (C-24)

2. Compensation for Resident Project Representative and Post-Construction Basic Services

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percent of Construction Costs	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use These Sheets	Sheet C-13	Sheets C-14 and C-15	Sheet C-16	Sheets C-17 and C-18	Sheets C-19 and C-20
Use This Appendix	N/A	Appendices 1 (C-24) and 2 (C-25)	N/A	Appendix 1 (C-24)	Appendix 1 (C-24)

3. Compensation for Additional Services

Decision Question: Which method of compensation is to be used?

	Standard Hourly Rates	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use These Sheets	Sheet C-21	Sheet C-22	Sheet C-23
Use This Appendix	Appendices 1 (C-24) and 2 (C-25)	Appendix 1 (C-24)	Appendix 1 (C-24)

Example: If Basic Services (other than RPR and Post-Construction) will be compensated using Lump Sum; RPR/Post-Construction services using Direct Labor Times a Factor; and Additional Services using Standard Hourly Rates; then use only Sheets C-2, C-17, C-18, C-21, Appendix 1 (Sheet C-24), and Appendix 2 (Sheet C-25) to form Exhibit C.

Page ___ of ___ Pages

Exhibit C - Basic Services (other than RPR and Post-Construction) - Lump Sum Method of Payment
EJCDC E-500 Standard Form of Agreement Between Owner and Engineer for Professional Services.
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SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 -- Owner's Responsibilities

C2.01 Compensation For Basic Services (~~other than Resident Project Representative and Post-Construction~~) -- Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, ~~except for services of Engineer's Resident Project Representative and Post-Construction Phase services, if any~~, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

2. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to Exhibit A as Appendix 2.

3. The total compensation for services under paragraph C2.01 is estimated to be \$1, which, notwithstanding any other provision of this Agreement, also shall be the maximum total amount due under this Agreement to the Engineer for compensation for Basic Services, for reimbursement of Reimbursable Expenses and for Engineer's subconsultant's charges:

a. Project Management / Pre-Design	\$66,586
b. Preliminary Design Phases	\$108,271
c. Final Design Phase	\$75,080
d. Bidding or Negotiating Phase	\$3,423
e. Construction Phase	\$122,313
f. Permitting Phase	\$19,787
g. Wetland Banking Services	\$21,282

* As indicated in Exhibit A, scope and compensation for Project phases subsequent to the Study and Report Phase will be negotiated between Owner and Engineer and authorized by preparation and signing Exhibit K amendments to this Agreement.

4. ~~Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.~~

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultant's charges and is detailed in Appendix 1.

6. The amounts billed for Engineer's services under paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges.

7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted in forthcoming work assignments ~~annually (as of _____)~~ to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation For Reimbursable Expenses

A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.1.

C2.03 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.

B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$ _____/page	
8"x11" Copies/Impressions	_____/page	
Blue Print Copies	_____/sq. ft.	
Reproducible Copies (Mylar)	_____/sq. ft.	
Reproducible Copies (Paper)	_____/sq. ft.	
Mileage (auto)	_____/mile	
Field Truck Daily Charge	_____/day	
Mileage (Field Truck)	_____/mile	
Field Survey Equipment	_____/day	
Confined Space Equipment	_____/day plus expenses	
Resident Project Representative Equipment	_____/month	
Computer CPU Charge	_____/hour	
Specialized Software	_____/hour	
Personal Computer Charge	_____/hour	
CAD Charge	_____/hour	
CAE Terminal Charge	_____/hour	
VCR and Monitor Charge	_____/day, \$ _____/week, or \$ _____/month	
Video Camcorder	_____/day, plus \$ _____/tape	
Electrical Meters Charge	_____/week, or \$ _____/month	
Flow Meter Charge	_____/week, or \$ _____/month	
Rain Gauge	_____/week, or \$ _____/month	
Sampler Charge	_____/week, or \$ _____/month	
Dissolved Oxygen Tester Charge	_____/week	
Fluorometer	_____/week	
Laboratory Pilot Testing Charge	_____/week, or \$ _____/month	
Soil Gas Kit	_____/day	
Submersible Pump	_____/day	
Water Level Meter	_____/day, or \$ _____/month	
Soil Sampling	_____/sample	
Groundwater Sampling	_____/sample	
Health and Safety Level D	_____/day	
Health and Safety Level C	_____/day	
Electronic Media Charge	_____/hour	
Long Distance Phone Calls	at cost	
Mobile Phone	_____/day	
Meals and Lodging	at cost	

This is **Appendix 2 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.

3. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule

Hourly rates for services performed on or after the date of the Agreement are:

Billing Class 9 Senior Associate	\$ _____/hour
Billing Class 8 Staff Manager	_____/hour
Billing Class 7 Professional VI	_____/hour
Billing Class 6 Professional V	_____/hour
Billing Class 5 Professional IV	_____/hour
Billing Class 4 Professional III	_____/hour
Billing Class 3 Professional II	_____/hour
Billing Class 2 Technician II	_____/hour
Billing Class 1 Technician I	_____/hour
Principal	_____/hour
Support Staff	_____/hour

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT D**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D1.01 Resident Project Representative

A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. *Shop Drawings and Samples:*

a. Record date of receipt of Samples and approved Shop Drawings.

b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. *Review of Work and Rejection of Defective Work:*

a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.

b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed

conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

d. Maintain records for use in preparing Project documentation.

e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.

3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 Insurance

A. The limits of liability for the insurance required by paragraph 6.05.A shall be itemized in the Engineer's current insurance certificate attached hereto as an Appendix to Exhibit G and incorporated herein by reference:

1. By Engineer:

- a. Workers' Compensation: _____ Statutory

- b. Employer's Liability —
 - 1) Each Accident: _____ \$ _____
 - 2) Disease, Policy Limit: _____ \$ _____
 - 3) Disease, Each Employee: _____ \$ _____

- e. General Liability —
 - 1) Each Occurrence (Bodily Injury and Property Damage): _____ \$ _____
 - 2) General Aggregate: _____ \$ _____

- d. Excess or Umbrella Liability _____
 - 1) Each Occurrence: _____ \$ _____
 - 2) General Aggregate: _____ \$ _____

- e. Automobile Liability —
 - 1) Bodily Injury:
 - a) Each Accident _____ \$ _____
 - 2) Property Damage:
 - a) Each Accident _____ \$ _____

- for*

- 1) Combined Single Limit (Bodily Injury and Property Damage):
Each Accident _____ \$ _____

- f. Professional Liability —
 - 1) Each Claim Made _____ \$ _____
 - 2) Annual Aggregate _____ \$ _____

- g. Other (specify): _____

_____ \$ _____

2. By Owner:

a. Workers' Compensation: _____ Statutory

b. Employer's Liability —

1) Each Accident _____ \$ _____

2) Disease, Policy Limit _____ \$ _____

3) Disease, Each Employee _____ \$ _____

c. General Liability —

1) General Aggregate: _____ \$ _____

2) Each Occurrence (Bodily Injury and
Property Damage): _____ \$ _____

d. Excess Umbrella Liability —

1) Each Occurrence: _____ \$ _____

2) General Aggregate: _____ \$ _____

e. Automobile Liability —

1) Bodily Injury:

a) Each Accident _____ \$ _____

2) Property Damage:

a) Each Accident _____ \$ _____

_____ *[or]* _____

1) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident _____ \$ _____

f. Other (specify): _____

_____ \$ _____

B. Additional Insureds

1. The following persons or entities are to be listed on Owner's general liability and property policies of insurance as additional insureds, as provided in paragraph 6.05.B:

a. _____
Engineer

b. _____
Engineer's Consultant

c. _____
Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in paragraph 6.05.A.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT H**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Dispute Resolution

Paragraph 6.09 of the Agreement is amended and supplemented to include the following agreement of the parties:

[NOTE: Select one of the two alternatives provided]

H6.09 Dispute Resolution

A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

[or]

~~A. Arbitration. All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [here insert the name of a specified arbitration service or organization] rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~

~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$ _____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$ _____ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$ _____ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

~~3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~

~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a “Joinable Party”), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to~~

~~being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

Allocation of Risks

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

16.11.B Limitation of Engineer's Liability

[NOTE: Select one of the three alternatives listed below for 16.11 B.1.]

~~1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever 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 the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.~~

~~[or]~~

1. *Engineer's Liability Limited to Amount of Insurance Proceeds.* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever 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 the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$_____.

~~[or]~~

~~1. *Engineer's Liability Limited to the Amount of \$_____.* Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever 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 the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total amount of \$_____.~~

[NOTE: If appropriate and desired, include 16.11.B.2 below]

~~2.—Exclusion of Special, Incidental, Indirect, and Consequential Damages.—To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of paragraph 6.11.E the Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, or any of them, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever 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, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, and including but not limited to:~~

[NOTE: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them."]

[NOTE: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of paragraph 16.11.B.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$_____."]

[NOTE: If appropriate and desired, include 16.11.B.3 below]

[NOTE: The foregoing provisions may be included as a supplement to paragraph 6.11.E, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer.]

~~3.—Agreement Not to Claim for Cost of Certain Change Orders.—Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed _____% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants.~~

[NOTE: The parties may wish to consider the additional limitation contained in the following sentence.]

[Owner further agrees not to sue and otherwise to make no claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 8 April, 2004.

Special Provisions

Paragraph(s) _____ of the Agreement is/are amended to include the following agreement(s) of the parties:

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9 December, 2004.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. Nature of Amendment [*Check those that are applicable and delete those that are inapplicable.*]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to Services of Engineer
- _____ Modifications to Responsibilities of Owner
- _____ Modifications to Payment to Engineer
- _____ Modifications to Time(s) for rendering Services
- _____ Modifications to other terms and conditions of the Agreement

3. Description of Modifications

Attachment 1, "Modifications"
[List other Attachments, if any]

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

This is **Attachment 1**, consisting of _____ pages, to Amendment No. _____, dated _____, _____.

Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

1. Engineer shall perform the following Additional Services:

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

3. The responsibilities of Owner are modified as follows:

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

5. The schedule for rendering services is modified as follows:

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
11/18/04

PRODUCER
THE HARRY A. KOCH CO.
PO BOX 45279
OMAHA NE 68145-0279

402 861-7000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Olsson Associates
P.O. Box 84608
Lincoln NE 68501

COMPANIES AFFORDING COVERAGE	
COMPANY A	CINCINNATI INS. CO.
COMPANY B	CINCINNATI INS. CO.
COMPANY C	CONTINENTAL CASUALTY CO.(CNA)
COMPANY D	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	CPP0916763	10/01/04	10/01/05	GENERAL AGGREGATE	\$ 2000000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2000000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1000000
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1000000
					FIRE DAMAGE (Any one fire)	\$ 1000000
					MED EXP (Any one person)	\$ 5000
A	AUTOMOBILE LIABILITY	CPP0916763	10/01/04	10/01/05	COMBINED SINGLE LIMIT	\$ 1000000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY	CPP0916763	10/01/04	10/01/05	EACH OCCURRENCE	\$ 4000000
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$ 4000000
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC2100943	10/01/04	10/01/05	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	<input type="checkbox"/> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE:				EL EACH ACCIDENT	\$ 500000
	<input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL				EL DISEASE - POLICY LIMIT	\$ 500000
					EL DISEASE - EA EMPLOYEE	\$ 500000
C	OTHER	AEA254046268	1/12/04	1/12/05	\$2,000,000 EA.CLAIM & \$2,000,000 ANNUAL AGGREGATE \$150,000 DED. EA. CLAIM	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
PROJECT: SILVER CREEK WATERSHED PROJECT
CERTIFICATE HOLDER IS ADDITIONAL INSURED FOR GENERAL LIABILITY

CERTIFICATE HOLDER

PAPIO-MISSOURI RIVER NRD
ATTN STEVE OLTMANS
8901 S 154TH ST
OMAHA NE 68138-3635

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

