

## MEMORANDUM

**TO:** Programs, Projects and Operations Subcommittee

**SUBJECT:** Turtle Creek Watershed Structure #2 Rehabilitation Project  
Professional Services Contract

**DATE:** February 5, 2008

**FROM:** Martin P. Cleveland, Construction Engineer

At the December 13, 2007 Board of Directors meeting, a Project Agreement with Natural Resources Conservation Service (NRCS) was approved. This structure is located near 156<sup>th</sup> Street and Pflug Road, southwest of Springfield, NE, (see enclosed map and structure photo). The agreement requires that federal funds be obligated (e.g. start construction) within 90 days. In addition, this agreement requires the District to acquire necessary land rights; federal, state and local permits and handle project bidding. The before-mentioned tasks, plus land rights cost, will apply towards the District's 35% share (\$282,692) of this project cost (\$807,692).

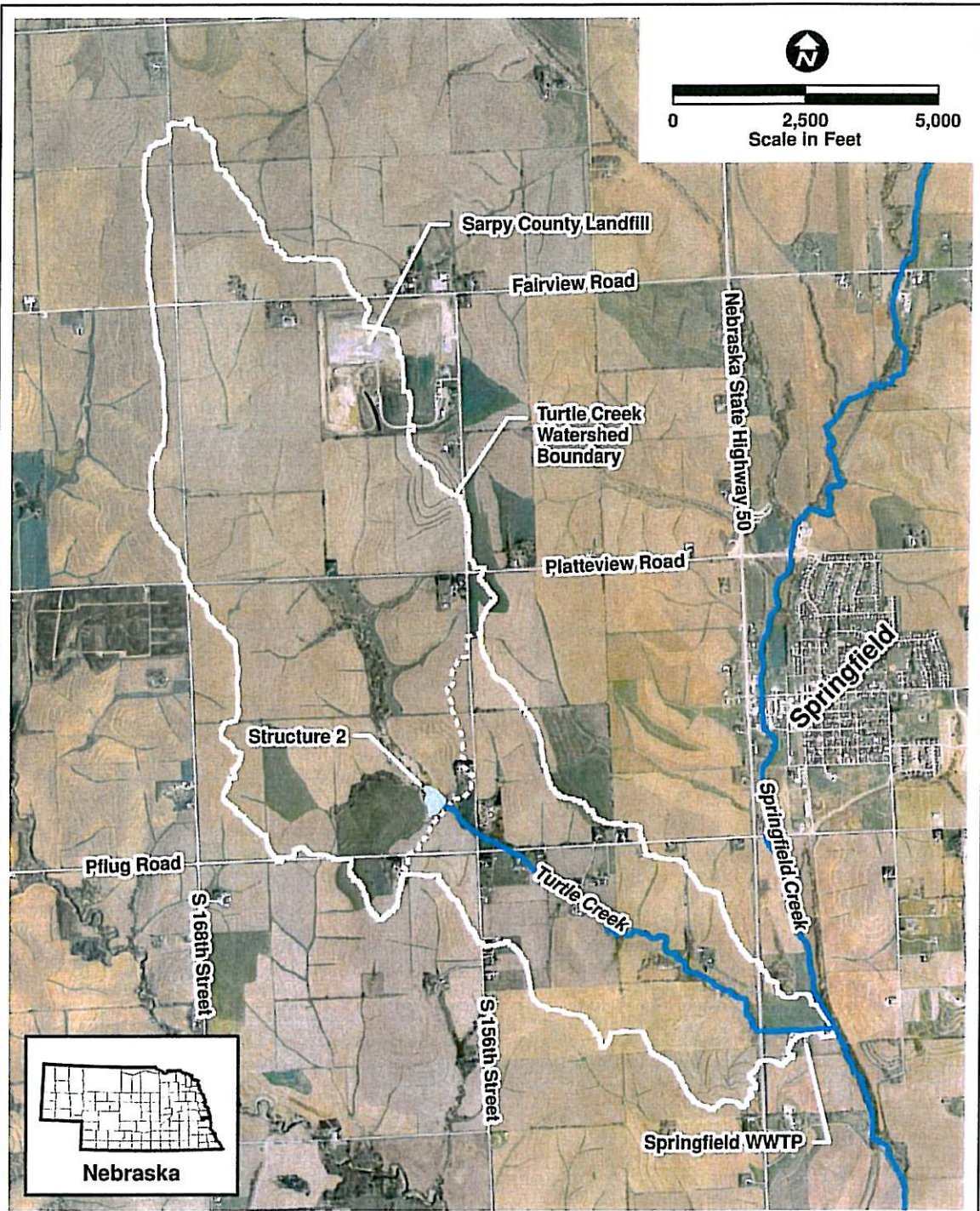
Management proposes to hire HDR Engineering to assist in preparing, submitting and supporting permit applications (Corps of Engineers 404 permit, Nebraska Department of Natural Resources water storage permit, Nebraska Department of Environmental Quality NPDES permit, and Sarpy County permits (erosion control, grading)). In addition HDR would prepare bidding documents.

HDR is well qualified to handle these tasks, having done the same tasks for Papio Creek Watershed Structures S-27, S-31 and S-32 Rehabilitation Project in 2006 and 2007. In addition, HDR prepared the preliminary design, planning and wetland evaluation for Turtle #2 for NRCS, so they are very familiar with the site. Attached is a proposed agreement with maximum not to exceed \$55,500.

This work will be funded via Project Maintenance Professional Services Account (No. 0103-12 4400) and as of January 10, 2008, there is \$54,193.00 left in this account. At the December 13, 2007 Board meeting expenditures for this account were authorized to exceed 110% of budgeted amount.

**It is Management's recommendation that the Subcommittee recommend to the Board that the Professional Services Policy No. 15.2 be waived and that the General Manager be authorized to execute the proposed Turtle Creek Watershed Structure #2 engineering services agreement with HDR Engineering with a maximum not to exceed of \$55,500, subject to changes deemed necessary by the General Manager and approved to as to form by District Legal Counsel.**

Z:\NRCS\28686\_Dam\_Rehab\_Task\_Order\_2\map\_docs\arcmap\Turtle\_Creek\_Project\_Location\_Map.mxd



Source: Aerial Photography, Metropolitan Area Planning Agency, flown by Horizons Inc. in April 2004.



# **Project Location Map** **Turtle Creek Watershed Structure 2**

NRCS Watershed Rehabilitation Program

DATE  
JUN 2006

FIGURE  
S-1





**Turtle Creek Watershed Structure #2 – looking southwest at structure**

February 4, 2008

Mr. Martin Cleveland, P.E. , Construction Engineer  
Papio-Missouri River Natural Resources District  
8901 South 154th Street  
Omaha, NE 68138-3621

RE: Construction Permitting and Bidding Document Preparation in Association with  
Construction of Turtle 2  
Agreement and Scope of Services

Dear Martin:

We have prepared the attached scope of services to provide engineering services to the P-MRNRD on the construction permitting including the development of NPDES Stormwater Pollution Prevention Plans (SWPPP) and preparation of bidding documents for Turtle 2.

We have prepared a cost estimate of services totaling \$55,500. Please sign and date both copies of the Agreement. Return a signed copy to me. Our receipt of your signed acceptance will constitute our Notice to Proceed.

We appreciate the opportunity to work with the District on this project. If you have any questions do not hesitate to contact me at (402) 399-1078.

Very truly yours,  
HDR ENGINEERING, INC.

Laurie Carrette Zook, P.E.  
Project Manager

Enclosures

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

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the Papio-Missouri River Natural Resources District ("OWNER") a governmental organization with principal offices at 8901 South 154th Street, Omaha, NE 68138-3621, and HDR Engineering, Inc., ("ENGINEER") a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as permitting and bidding preparation services for Turtle 2 ("Project");

**WHEREAS**, OWNER desires to engage ENGINEER to provide professional engineering, consulting and related services ("Services") in connection with the Project; and

**WHEREAS**, ENGINEER desires to render these Services as described in SECTION I, Scope of Services.

**NOW, THEREFORE**, OWNER and ENGINEER in consideration of the mutual covenants contained herein, agree as follows:

**SECTION I. SCOPE OF SERVICES**

ENGINEER will provide Services for the Project, which consist of the Scope of Services as outlined on the attached Exhibit A.

**SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES**

The "HDR Engineering, Inc. Terms and Conditions for Professional Services," which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

**SECTION III. RESPONSIBILITIES OF OWNER**

The OWNER shall provide the information set forth in paragraph 6 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services."

**SECTION IV. COMPENSATION**

Compensation for ENGINEER'S services under this Agreement shall be on the basis of per diem with a not to exceed \$55,500 as shown in Attachment A.

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER'S compensation as Reimbursable Expenses.



Compensation terms are defined as follows:

Per Diem shall mean an hourly rate equal to Direct Labor Cost times a multiplier of three and fifteen hundredths (3.15) to be paid as total compensation for each hour an employee works on the project, plus Reimbursable Expense.

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, computer usage (technology fee), telephone, telex, shipping and express, and other incurred expense. ENGINEER will add ten percent (10%) to invoices received by ENGINEER from subconsultants and subcontractors to cover supervision, administrative, and insurance expenses and on all reimbursable expenses, except the technology fee.

#### **SECTION V. PERIOD OF SERVICE**

Upon receipt of written authorization to proceed, ENGINEER shall perform the services within the time period described in Exhibit A.

Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER'S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER'S compensation shall be equitably adjusted.

**SECTION VI. SPECIAL PROVISIONS**

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

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

“OWNER”

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

NAME: John Winkler

TITLE: General Manager

ADDRESS: 8901 S. 154th Street  
Omaha, NE 68138-3621

HDR ENGINEERING, INC.

“ENGINEER”

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

NAME: Matthew Tondl, P.E.

TITLE: Senior Vice President

ADDRESS: 8404 Indian Hills Drive  
Omaha, NE 68114

**EXHIBIT A**

**SCOPE OF SERVICES**



**For Papio-Missouri River Natural Resources District (P-MRNRD)  
For Permitting and Bid Document Preparation  
in Association with the Construction of Turtle 2  
Springfield Creek Subwatershed  
Sarpy County, NE**



## **BACKGROUND AND BASIS OF PROPOSAL**

The purpose of this effort is to prepare permits related to the design and construction of Turtle 2. The Natural Resources Conservation Service (NRCS) is providing technical assistance to the P-MRNRD [Sponsoring Local Organization (SLO)] in the development of preliminary and final design documents. NRCS developed the contract documents for the rehabilitation of the grade stabilization structure. P-MRNRD is responsible for the permitting requirements of the project. This scope of services defines the permitting requirements and the steps necessary to secure the permits and the preparation of bidding documents.

## **SCOPE OF SERVICES**

The basic objectives of this Project are:

- Prepare NDNR and USACE Permits
- Prepare NPDES permit application including the development of Storm Water Pollution Prevention Plan (SWPPP) for each structure
- Prepare Engineers Joint Contract Documents Committee (EJCDC) based specification for the Contract Forms, and Contract Conditions and General Requirements sections of the specifications
- Prepare Emergency Action Plan

The HDR Team proposes to provide the following professional services over an anticipated two (2) – month project period.

### **TASK SERIES 100 – PROJECT MANAGEMENT**

**Task Objective:** Confirm that Project elements are being completed.

**HDR Activities:** **Task 110 Project Management.** Conduct general project management tasks. Includes development of project initiation forms including the development of a project guide, monthly invoicing, progress report, project close out activities and other administration project activities.

**Task 120 Coordination Meetings.** Coordination meeting will be conducted with the P-MRNRD and NRCS and other invited representatives to review and discuss Project elements. An agenda will be prepared prior to the meeting and meeting minutes prepared after the meeting. Two meetings are planned.

**Task Deliverables:**

- Monthly invoices and progress reports
- Meeting agenda and minutes

**Key Understandings:**

- The duration of the project is 2 months.
- The meetings will be held at the offices of the P-MRNRD and attended by 2 HDR professionals.
- No other meetings with agencies or jurisdictions are planned.

### **TASK SERIES 200 PERMITTING**

**Task Objectives:** To coordinate with permitting agencies, and prepare, submit and support appropriate permit applications.

**HDR Activities:**

**Task 210 Permit Coordination and Consultation.** Review project plans. HDR will coordinate with Nebraska Department of Natural Resources (DNR) and US Army Corps of Engineers (USACE) on permit application requirements.

**Task 220 Section 404 Permit Application Preparation.** Prepare and obtain Section 404 permit from USACE. Incorporate NRCS wetland delineation data into permit application. Respond to USACE questions on applications and provide support needed to obtain permit.

**Task 230 DNR Permit Application Preparation.** Prepare documentation to obtain a DNR Application for a "Permit to Impound Water" and "Application for Approval of Plans for Dams". Technical questions will need to be coordinated with NRCS, the designer. Respond to DNR questions on applications and provide support needed to obtain permits.

**Task Deliverables:**

- Meeting minutes
- Nebraska DNR "Permit to Impound Water" and "Application for Approval of Plans for Dams" Applications and respond to questions..
- USACE Section 404 Permit Applications and respond to questions

**Key Understandings:**

- It is assumed the project would be authorized under Section 404 - Nationwide Permit #43, Stormwater Management Facilities. This assumes the project would not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S. (including wetlands) or greater than 100 linear feet of streambed. It is also assumed that a 50-foot wide vegetative buffer strip would be installed along any channel modifications. Assuming the listed criteria are satisfied, HDR assumes that no individual permit will be required.
- It is assumed that no SHPO or U.S. Fish & Wildlife Service coordination is required.
- Mitigation requirements are not included in this scope of work. Should wetlands be impacted as a result of the project, mitigation requirements would be handled by the P-MRNRD, presumably within the P-MRNRD mitigation banks.
- It is assumed that the provided NRCS wetland delineation is acceptable by USACE. Consequently, no HDR wetland delineation or determination activities are included as part of this scope of services.
- Any technical issues on the DNR permit will need to be coordinated with NRCS, the project designer.
- P-MRNRD is responsible for payment of permit application fees.

**TASK SERIES 300 NPDES PERMITTING****Task Objectives:**

To coordinate with permitting agencies, and prepare, submit and support appropriate permit applications.

**HDR Activities:**

**Task 310 Permit Coordination and Consultation.** HDR will coordinate with NDEQ and Sarpy County on permit application requirements.

**Task 320 Permit Application Preparation.** Prepare narrative (SWPPP-N) documentation and site map (SWPPP-SM) in accordance with the Papillion Creek Watershed Partnership (PCWP) Grading Permit. These Grading Permits fulfills NDEQ's General NPDES Permit Authorizing Storm Water Discharges from Construction Sites to Waters of the State of Nebraska.

The site map will include the following sheets for each structure:

- Cover Sheet, includes general notes, maintenance schedule, site information and certification
- Grading Plan
- Grading and Erosion Control Plan
- Erosion Control Notes and Details
- Latitude-Longitude Grid

**Task Deliverables:**

- PCWP Grading Permits – Narrative and Site Maps
- NDEQ Notice of Intent

**Key Understandings:**

- P-MRNRD is responsible for submitting Grading Permits and for payment of permit application fees.
- Notice of Intent forms will also be completed by HDR and submitted by P-MRNRD.
- NPDES permit for construction activity is currently being revised by NDEQ and is anticipated to be effective after the Grading permit is issued. The effective General NPDES permit for storm water discharge from construction sites to waters of the state of Nebraska is dated August 1, 2002. Any revisions to the SWPPP to comply with a new NPDES permit are not included.
- It is assumed that a maximum of 16 hours of effort will be necessary to complete the Grading Permit upon Sarpy County's initial review.
- Site inspection and monitoring of the erosion and sediment control Best Management Practices (BMPs) are not included in the scope of services. These services are provided within HDR's Construction Quality Assurance task order with the NRCS.
- Implementation of the SWPPPs will be the responsibility of the construction contractor.

**TASK SERIES 400 – BIDDING ASSISTANCE**

**Task Objectives:**

Prepare bidding documents based on EJCDC specifications and provide interpretations.

**HDR Activities:**

**Task 410 Bidding Document Preparation.** Prepare draft and final Bidding Requirements, Contract Forms, and Contract Conditions for P-MRNRD review and approval, using Engineers Joint Contract Documents Committee (EJCDC) based documents. This includes invitation to bid, instruction to bidders, bid form, bid bond, agreement, General Requirements, performance and payment contract bonds, EJCDC general conditions, and supplementary conditions. Also include HDR specifications for special conditions, submittals, and environmental protection and special controls. Coordinate with NRCS on its requirements for the non-technical specification sections. Incorporate NPDES Stormwater permit conditions into the specifications.

**Task 420 Bid Modifications.** Receive and respond to questions from plan holders concerning interpretations of the bidding procedure. NRCS will provide technical interpretations on their design. Inquires that can be addressed by referring to information in the Bidding Documents will be recorded in telephone conversation records. Address inquiries that require a modification of the Bidding Documents by preparing an addendum item. Coordinate and prepare appropriate addenda.

**Task 430 Pre-Bid/Site Showing Meeting.** Attend pre-bid/site showing meeting with prospective bidders. Prepare agenda and minutes for the pre-bid portion of the meeting. Address inquiries that require a modification of the Bidding Documents by preparing an addendum item.

**Task 440 Bid Opening.** Attend the Bid Opening to assist in the initial screening of bids regarding Bidder's use of required Bid Forms, inclusion of Bid Security and inclusion of other qualifying information to accompany the Bid.

**Task Deliverables:**

- Draft and final Bidding and General Requirements for contract specifications (non-technical sections)
- Electronic copy of addenda(um) to be distributed by P-MRNRD to all plan holders.

**Key Understandings:**

- The EJCDC documents used for the bidding of Papillion Structures S-27 and S-32 will be modified. These documents are based on EJCDC's C-710 (Funding Agency Addition).
- P-MRNRD to provide opinion of probable construction cost, technical specifications and design drawings.
- P-MRNRD is responsible for bid solicitation, document distribution (including addendum), bid opening, and tabulation of bids.
- P-MRNRD is responsible for advertising the project and payment of any fees.
- P-MRNRD and NRCS will coordinate, conduct, and document a pre-bid/site showing with prospective bidders.

**TASK SERIES 500 EMERGENCY OPERATIONS PLAN**

Emergency operations plan will be prepared and supported.

**Task Objectives:** To develop a plan for emergency purposes.

**HDR Activities:** **Task 510 Emergency Operations Plan.** HDR will develop an emergency operations plan, which is acceptable to DNR. Contact information will be updated to include the city of Springfield.

**Task Deliverables:**

- Draft and Final Emergency Operations Plan

**Key Understandings:** Emergency Operations Plan is similar to Papillion Creek Watershed Structures S-27, S-31, and S-32.



**ATTACHMENT "A"**  
**PAPIO - MISSOURI RIVER NATURAL RESOURCES DISTRICT**  
**PERMITTING AND BIDDING PREPARATION SERVICES ON TURTLE 2**  
**FEE ESTIMATE - FEBRUARY 2008**

TASKS														
Project Manager		Sr Engr/ Technical	Engineer	Mid-Level Support	Technical Support	Clerical	Total Hours	Total Labor Cost	Tech. Fee	Printing	Travel	Misc.	Total Expenses	
TASK SERIES 100 – PROJECT MANAGEMENT														
Task 110		Project Management	24			4			6	34	\$4,934	\$126		\$126
Task 120		Coordination Meetings	8		8				2	18	\$2,548	\$67		\$67
Estimated Task Hours Subtotal			32	0	12	0			8					
Estimated Task Cost Subtotal			\$6,276	\$0	\$1,625	\$0	\$0	\$640	\$0	\$192	\$0	\$56	\$710	\$358
TASK SERIES 200 – PERMITTING														
Task 210		Permit Coordination and Consultation				12	8	2		22	\$2,622	\$81		\$81
Task 220		Section 404 Permit Application Preparation		2	2	16	8			28	\$2,925	\$104	\$110	\$100
Task 230		NONR Permit Application Preparation		2	8	8		2	2	20	\$2,405	\$74	\$110	
Estimated Task Hours Subtotal			0	4	22	32	10	2	70					
Estimated Task Cost Subtotal			\$0	\$660	\$2,980	\$3,326	\$825	\$160		\$7,952	\$259	\$110	\$166	\$745
TASK SERIES 300 – NPDES PERMITTING														
Task 310		Permit Coordination and Consultation		2	10			2	14	\$1,845	\$52		\$100	\$152
Task 320		Permit Application Preparation	4	4	40	32	24	4	108	\$12,358	\$400		\$110	\$610
Estimated Task Hours Subtotal			4	6	50	32	24	6	122					
Estimated Task Cost Subtotal			\$652	\$991	\$6,773	\$3,326	\$1,981	\$480		\$14,202	\$451	\$0	\$110	\$200
TASK SERIES 400 – BIDDING ASSISTANCE														
Task 410		Bidding Document Preparation	40	16	20		20	8	104	\$14,162	\$385		\$110	\$495
Task 420		Bid Modifications	2		10	8	4	2	26	\$3,002	\$96			\$206
Task 430		Pre-Bid/Site Showing Meeting			8		8	2	10	\$1,249	\$37	\$55	\$110	\$202
Task 440		Bid Opening			6		6		8	\$973	\$30	\$55	\$110	\$195
Estimated Task Hours Subtotal			42	16	44	8	26	12	148					
Estimated Task Cost Subtotal			\$6,847	\$2,641	\$5,960	\$832	\$2,146	\$960		\$19,385	\$548	\$110	\$440	\$7,098
TASK SERIES 500 – EMERGENCY ACTION PLAN														
Task 510		Emergency Action Plan	8		8		8	4	28	\$3,368	\$104	\$30		\$134
Estimated Task Hours Subtotal			8	0	8	0	8	4	28					
Estimated Task Cost Subtotal			\$1,304	\$0	\$1,084	\$0	\$660	\$320		\$3,368	\$104	\$30	\$0	\$134
TOTAL HOURS			86	26	136	72	68	32	420					
TOTAL COST			\$ 14,019	\$ 4,292	\$ 18,421	\$ 7,484	\$ 5,612	\$ 2,560		\$ 52,389	\$ 1,554	\$ 250	\$ 331	\$ 3,095
														\$ 55,485

10%

Reimbursable Expenses Markup (excludes Tech. Fee)

**HDR Engineering, Inc.**  
**Terms and Conditions for Professional Services**

**1. STANDARD OF PERFORMANCE**

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

**2. INSURANCE**

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. Upon request, OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER's insurance.

**3. OPINIONS OF PROBABLE COST (COST ESTIMATES)**

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

**4. CONSTRUCTION PROCEDURES**

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

**5. CONTROLLING LAW**

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

**6. SERVICES AND INFORMATION**

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

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

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

**7. SUCCESSORS AND ASSIGNS**

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

**8. RE-USE OF DOCUMENTS**

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

**9. TERMINATION OF AGREEMENT**

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

**10. SEVERABILITY**

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

#### 11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

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

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

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within forty-five (45) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

#### 12. CHANGES

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

#### 13. CONTROLLING AGREEMENT

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

#### 14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

#### 15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is

acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

#### 16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

#### 17. LIMITATION OF LIABILITY

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

#### 18. LITIGATION SUPPORT

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