



## MEMORANDUM

TO: Kabetogama Town Board Members

FROM: Sara Christenson & Colin Marcusen  
Project Engineers

DATE: January 5, 2016

RE: Puck's Point SSD Engineering Updates  
SEH No. KABET 119468 14

This memo shall serve to provide you with updates on the PPSSD engineering items for the Township meeting on January 5, 2016.

### **Funding:**

- **Legacy Funds:**
  - Application has been submitted to Mike Kennedy at MPCA
  - Approval is anticipated within 2 weeks
  - Contracts will need to be signed following approval
  - Submit invoices for reimbursement
- **MN Rural Water Loan:**
  - PFA recommended delaying loan application until funds are needed to prevent unnecessary financing charges

### **Schedule:**

- Contracts have been secured with all 3 contractors
- Winter, 2015/2016:
  - Easement documents will be prepared – joint effort between SEH and the Township's attorneys. Easements will be mailed to District members for signature.
  - Work with DNR to secure capital contribution and determine schedule for hookup
- May – July, 2016: Construction of pretreatment and dispersal systems
- September – November 2016: Construction of collection system and completion of pretreatment and dispersal systems

### **EDU Calculations:**

- District Members were given the opportunity to comment on the EDU calculations for their property
- Final EDU calculations were developed based on comments received. Changes were verified by the Board.
- Resolution approving the final EDU assignments is attached (prepared by Township's attorney).

**SEH Construction Administration Contract:**

- Contract for engineering services related to Construction Administration is attached. A portion of the work described in the contract has already begun. Contract amount is the same as that listed in the Sources and Uses and Financial Analysis, so monthly costs will not be affected by agreeing to the contract.

Cc: Mary Manninen, Township Clerk  
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**RESOLUTION APPROVING EDU ASSIGNMENTS  
FOR PUCKS POINT SUBORDINATE SERVICE DISTRICT**

WHEREAS, the Town of Kabetogama (the “Town”) is constructing a wastewater collection and treatment system within the Pucks Point Subordinate Service District (the “District”).

WHEREAS, the Town calculated the Equivalent Domestic Unit (“EDU”) for each structure within the District based on the estimated quantity and characteristics of the wastewater discharged from each structure.

WHEREAS, the EDU assignments are used for engineering design purposes and for establishing user rates and charges in the District.

BE IT RESOLVED, by the Town Board (the “Board”) of the Town of Kabetogama, Minnesota, that the EDU assignments for structures located in the District as listed on Exhibit A to this Resolution are approved.

Adopted: January 5, 2016.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_

Kabetogama Township - Pucks Point Subordinate Service District Member List

1/4/16

PRCL_NBR	OWNAME	EDU used in Rate Calcs	1.00	0.60	0.70	0.80	0.80	0.70	0.00	0.50	1.00	0.200	TOTAL	ADDITIONAL FUTURE
			PRIMARY DWELLING	1 BD/1 BA CABIN (ADD'L TO PRIMARY DWELLING)	2 BD/1 BA CABIN (ADD'L TO PRIMARY DWELLING)	3 BD/1 BA CABIN (ADD'L TO PRIMARY DWELLING)	3 BD/2 BA CABIN (ADD'L TO PRIMARY DWELLING)	RV w/ SEWER & WATER HOOKUP	RV w/o SEWER & WATER HOOKUP	ROOM (MOTEL / LODGE)	RESTROOM (ADD'L)	RESTAURANT = 1/9. RESTROOM ALLOCATED SEPARATELY		
402-0060-00170	BACON MERRILL	1.0	1										1.0	0.0
	ADDITIONAL FUTURE													0.0
402-0060-00110	BRATTEBO CRAIG L	2.0	1										1.0	
402-0060-00120	BRATTEBO CRAIG L		1										1.0	0.0
	ADDITIONAL FUTURE													0.0
402-0010-00670	BURCHELL ALAN E JR ETAL	1.0	1										1.0	0.0
	ADDITIONAL FUTURE													0.0
402-0060-00060	DYRSTAD WILLIAM M - Bills'	5.4	1	1									1.6	
402-0060-00070	DYRSTAD WILLIAM M - Bills'				1								0.7	
	ADDITIONAL FUTURE													
402-0060-00040	DYRSTAD WILLIAM M - Mary's		1		3								3.1	
402-0060-00050	DYRSTAD WILLIAM M - Mary's												0.0	
	ADDITIONAL FUTURE													0.0
402-0010-00680	P.D.G.G. LLP	9.7	1	4	2	4							8.0	
402-0010-00684	P.D.G.G. LLP					1							0.8	
	ADDITIONAL FUTURE			-3	-1	-4	8				1			0.9
402-0010-00683	J & B FAMILY LIMITED PARTNERSHIP	1.0	1										1.0	
	ADDITIONAL FUTURE													0.0
402-0060-00080	JOHNSON DENNIS O	1.0	1										1.0	0.0
	ADDITIONAL FUTURE													0.0
402-0060-00250	LITWILLER DEAN R ETUX (GV)	4.7	1		3	2							4.7	0.0
	ADDITIONAL FUTURE													0.0
402-0060-00130	MCMAHON JOHN W JR	6.0	1	1									1.6	
402-0060-00140	MCMAHON JOHN W JR				4								2.8	
402-0060-00150	MCMAHON JOHN W JR					1							0.8	
402-0060-00160	MCMAHON JOHN W JR					1							0.8	
	ADDITIONAL FUTURE													0.0
402-0010-00671	MOOSEHORN ADVENTURES INC	11.3	1	4	3	1	1	6					11.3	
	ADDITIONAL FUTURE													0.0

PRCL_NBR	OWNAME	EDU used in Rate Calcs	1.00	0.60	0.70	0.80	0.80	0.70	0.00	0.50	1.00	0.200	TOTAL	ADDITIONAL FUTURE
			PRIMARY DWELLING	1 BD/1 BA CABIN (ADD'L TO PRIMARY DWELLING)	2 BD/1 BA CABIN (ADD'L TO PRIMARY DWELLING)	3 BD/1 BA CABIN (ADD'L TO PRIMARY DWELLING)	3 BD/2 BA CABIN (ADD'L TO PRIMARY DWELLING)	RV w/ SEWER & WATER HOOKUP	RV w/o SEWER & WATER HOOKUP	ROOM (MOTEL / LODGE)	RESTROOM (ADD'L)	RESTAURANT = 1/9, RESTROOM ALLOCATED SEPARATELY		
402-0060-00190	NICHOLS MARY E (was Lippet)	1.0	1										1.0	
402-0060-00200	NICHOLS MARY E												0.0	
	ADDITIONAL FUTURE													0.0
402-0060-00010	GOODRUM ELAINE L	7.0	1		2			1					3.1	
402-0060-00020	GOODRUM ELAINE L				2	1			3		1		3.2	
402-0060-00030	GOODRUM ELAINE L				1								0.7	
	ADDITIONAL FUTURE													0.0
402-0025-00350	PUTIKKA DUANE A ETUX	1.0	1										1.0	
	ADDITIONAL FUTURE													0.0
402-0060-00210	SEAVEY RICHARD G	6.9		1	2								2.0	
402-0060-00220	SEAVEY RICHARD G		1										1.0	
402-0060-00230	SEAVEY RICHARD G		1		1								1.7	
402-0060-00240	SEAVEY RICHARD G				2	1							2.2	
	ADDITIONAL FUTURE													0.0
402-0060-00090	THOMPSON PETER J	2.6	1										1.0	
402-0060-00100	THOMPSON PETER J		1	1									1.6	
	ADDITIONAL FUTURE													0.0
402-0010-00610	WARRINGTON LARRY D	12.0	1							6		1	4.2	
402-0010-00615	WARRINGTON LARRY D				1								0.6	
402-0010-00662	WARRINGTON LARRY D				3	1							2.9	
402-0060-00280	WARRINGTON LARRY D				1	2	1						2.8	
402-0060-00290	WARRINGTON LARRY D					1	1						1.5	
	ADDITIONAL FUTURE													0.0
402-0060-00180	YARITZ ROBERT A ETAL	1.6	1	1									1.6	
	ADDITIONAL FUTURE													0.0
402-0010-00630	ST OF MN	10.0									10		10.0	
	ADDITIONAL FUTURE													0.0
TOTAL		85.2											84.3	0.9

## Agreement for Professional Services

This Agreement is effective as of January 5, 2016, between Kabetogama Township (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **Wastewater Collection, Pretreatment, and Dispersal Projects – Construction Administration.**

Client's Authorized Representative: John Stegmeir

Address: PO Box 191  
Kabetogama, MN 56669-0191

Telephone: 218.875.2082 email: kabtown@frontier.com

Project Manager: Colin Marcusen, PE

Address: PO Box 1717  
St. Cloud, MN 56302-1717

Telephone: 320.229.4359 email: cmarcusen@sehinc.com

**Scope:** The Basic Services to be provided by Consultant as set forth herein is provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 12.07.15), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

Our services will consist of the following tasks:

### **Task 1 – Project Management**

### **Task 2 – Construction Administration**

- Distribute and review contract documents.
- Conduct Preconstruction Conference.
- Attend six (6) construction Progress Meetings. Contractors to organize meeting and take and publish meeting minutes.
- Maintain and prepare project record drawings.
- Review contractor's applications for payment.
- Review shop drawings.
- Conduct six (6) miscellaneous site visits during construction.
- Respond to contractor requests for information (RFIs) and questions.
- Prepare change order and field orders as necessary.
- Create easement drawings to be delivered to the Township's attorney for final easement preparation.
- Prepare punch lists.
- Prepare project close-out documents.

### **Task 3 – Resident Project Representative (RPR)**

- Provide qualified staff on site during construction work to monitor progress and adherence to project plans and specifications. RPR will be on site two to three days per week in July and August during construction of the Pretreatment and Dispersal Systems, and then full time from September 1, 2016 to the completion of the project on November 23, 2016. Budgeted hours for RPR services are up to 840 hours. Hours spent by RPR beyond this amount will be considered additional services.
- RPR services will be provided in accordance with attached Exhibit B.

#### **Task 4 – Subconsultant**

- SEH will utilize the services of Matrix Soils and Systems, Inc. of Duluth, MN for oversight of construction of the Dispersal systems. Matrix is reasonably close in proximity to the project site and the sole proprietor is a registered soil scientist and is certified in on-site system design and inspection.

#### **Task 5 – Construction Staking**

Construction stakes will be provided as follows and as laid out in the Project Manual, Section 01 71 23 Field Engineering for each project.

- Pretreatment System:
  - Structure and pad corners, once
  - Septic, pump, and treatment tanks, two sets – one preliminary and one final
- Dispersal System:
  - Top and edge of dispersal bed media for mound/at-grade systems, once
- Collection System:
  - Sanitary sewer offset stakes on 50-foot intervals – one set, once
  - Septic, pump, and treatment tanks, two sets – one preliminary and one final
- Additional staking beyond the scope identified or re-staking due to Contractor's operation shall be at the Contractor's expense.

#### **Assumptions:**

- Client will work with residents to obtain easement and provide access to sites and structures in order to accommodate construction and connection to owners' electrical systems.
- Consultant's scope of services does not include review of payroll or wage compliance services as required by the funding agencies for this project.
- Construction administration and RPR services have been budgeted based on construction activities beginning in July, 2016 and ending November 23, 2016, which is the Substantial Completion date. Final Completion is anticipated to occur in December, 2016. Construction administration services beyond 2016 will be considered additional services.
- Additional services requested and approved will be provided on an hourly basis.
- This construction administration contract does not include the preparation of an operation and maintenance manual or one year certification documents as required by MPCA for the wastewater treatment system. These documents will need to be prepared well after construction and will be completed under separate contract.

**Schedule:** Construction administration work has already begun and will continue after the execution of the Contract.

#### **Payment:**

The lump sum fee is \$212,400 including expenses and equipment (mileage, per diem, and surveying equipment).

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-2.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

**Other Terms and Conditions:** Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:  
None.

Short Elliott Hendrickson Inc.

Kabetogama Township

By: *Colin Marcusen*

By: \_\_\_\_\_

Title: Colin Marcusen  
Project Manager

Title: \_\_\_\_\_



Exhibit A-2  
to Agreement for Professional Services  
Between Kabetogama Township (Client)  
and  
Short Elliott Hendrickson Inc. (Consultant)  
Dated January 5, 2016

**Payments to Consultant for Services and Expenses  
Using the Lump Sum Basis Option**

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

**A. Lump Sum Basis Option**

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the lump sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially.

**B. Expenses Not Included in the Lump Sum**

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.
3. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses not included in the Lump Sum amount.

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**Exhibit B**  
**to Agreement for Professional Services**  
**Between Kabetogame Township (Client)**  
**and**  
**Short Elliott Hendrickson Inc. (Consultant)**  
**Dated January 5, 2016**

**A Listing of the Duties, Responsibilities and**  
**Limitations of Authority of the Resident Project Representative**

Through more extensive on site observations of the construction work in progress and field checks of materials and equipment by the Resident Project Representative (RPR), Consultant shall endeavor to provide further protection for Client against defects and deficiencies in the work of Contractor (Work); but, the furnishing of such services will not make Consultant responsible for or give Consultant control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for Contractor's failure to perform the Work in accordance with the Contract Documents. Contract Documents are the documents that govern or are pertinent to Contractor's Work including but not limited to the agreement between Client and Contractor, the Contractor's bid, the bonds, specs, Drawings\*, Field Orders\*, Addenda\*, clarifications, interpretations, approved Shop Drawings\* and reports collectively called the Contract Documents. The duties and responsibilities of the RPR are further defined as follows:

**A. General**

RPR is an agent of Consultant at the site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the on site work shall in general be with Consultant and Contractor keeping the Client 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 Client with the knowledge of and under the direction of Consultant.

**B. Duties and Responsibilities of RPR**

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with Consultant concerning acceptability.
2. 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.
3. Liaison:
  - (a) Serve as Consultant's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents; and assist Consultant in serving as Client's liaison with Contractor when Contractor's operations affect Client's on-site operations.
  - (b) Assist in obtaining from Client additional information, when required for proper execution of the Work.
4. Shop Drawings and Samples\*:
  - (a) Record date of receipt of Shop Drawings and Samples.
  - (b) Receive Samples furnished at the site by Contractor, and notify Consultant of availability of Samples.
  - (c) Advise Consultant and Contractor of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by Consultant.
5. Review of Work, Observations and Tests:
  - (a) Conduct on-site observations of the Work in progress to assist Consultant in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - (b) Report to Consultant whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to 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 Consultant of

- Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- (c) Determine if tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to Consultant appropriate details relative to the test procedures and 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 Consultant.
6. Interpretation of Contract Documents: Report to Consultant when clarification and interpretations of the Contract Documents are requested by Contractor and transmit to Contractor clarifications and interpretations as issued by Consultant.
  7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications\* and report with RPR's recommendations to Consultant. Transmit to Contractor decisions as issued by Consultant.
  8. Records:
    - (a) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original Contract Documents including all Work Change Directive\*, Addenda, Change Orders\*, Field Orders, additional Drawings\* issued subsequent to the execution of the Contract, Consultant's clarifications and interpretations of the Contract Documents, progress reports, and other related documents.
    - (b) Keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions of Work Change Directive Change Orders or changed conditions, list of job 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 Consultant.
    - (c) Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
  9. Reports:
    - (a) Furnish Consultant 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) Consult with Consultant in advance of scheduled major tests, inspections or start of important phases of the Work.
    - (c) Draft proposed Change Orders and Work Change Directive, obtaining backup material from Contractor and recommend to Consultant Change Orders, Work Change Directive, and Field Orders.
    - (d) Report immediately to Consultant and Client upon the occurrence of any accident.
  10. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Consultant, 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.
  11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Consultant for review and forwarding to Client prior to final payment for the Work.
  12. Completion:
    - (a) Before Consultant issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
    - (b) Conduct final inspection in the company of Consultant, Client, and Contractor and prepare a final list of items to be completed or corrected.
    - (c) Observe that all items on final list have been completed or corrected and make recommendations to Consultant concerning acceptance.

### **C. Limitations of Authority**

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by Client.
2. Shall not exceed limitations of Consultant's authority as set forth in the Agreement for Professional Services.
3. Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent.
4. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
5. Shall not accept Shop Drawing or sample submittals from anyone other than Contractor.
6. Shall not authorize Client to occupy the Project in whole or in part.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Consultant.

\*All instances in this Exhibit of this capitalized term are as defined in the EJCDC form C-700, copyrighted in 2013.

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# General Conditions of the Agreement for Professional Services

## SECTION I – SERVICES OF CONSULTANT

### A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement (“Basic Services”). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant’s services under this Agreement are being performed solely for the Client’s benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

### B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant’s obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If Client has requested changes in the scope, extent, or character of the Project or the services to be provided by Consultant, the time of performance and compensation for Consultant’s services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant’s control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

### C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant’s effort required to perform its services under this Agreement exceeds the stated fee for Basic Services, then Consultant shall promptly notify the Client regarding the need for additional services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional services, and to an extension of time for completion of additional services absent written objection by Client.
2. Additional services shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant’s standard rates.

### D. Suspension and Termination

1. If Consultant’s services are delayed or suspended in whole or in part by Client, or if Consultant’s services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon 7 days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days’ written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

## SECTION II – CLIENT RESPONSIBILITIES

### A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client’s requirements for the services provided by Consultant and access to all public and private lands required for Consultant to perform its services.
2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant’s services, including but not limited to, previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning, deed and other land use restrictions; as-built drawings, electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant’s services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide services in a timely manner.
4. Client shall require all utilities with facilities within the Client’s Project site to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant’s reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

## SECTION III – PAYMENTS

### A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney’s fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant’s agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

## SECTION IV – GENERAL CONSIDERATIONS

### A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. If requested in the scope of a Supplemental Letter Agreement, then Consultant may provide an Opinion of Probable Construction Cost. Consultant's Opinions of Probable Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Construction Cost prepared by Consultant. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator or negotiate additional services and fees with Consultant.

### B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter or disposer of hazardous or toxic substances, therefore the Client agrees to hold harmless, indemnify and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

### C. Limitations on Consultant's Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed one million dollars (\$1,000,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional million dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including, without limitation, lost rentals, increased rental expenses, loss of use, loss of income, lost profit, financing, business and reputation and for loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.
3. It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole

and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

### D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

## SECTION V – DISPUTE RESOLUTION

### A. Mediation

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or services provided under this Agreement, (except for unpaid invoices which are governed by Section III), shall be submitted to nonbinding mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.

### B. Litigation – Choice of Venue and Jurisdiction

1. Any dispute not settled through mediation shall be settled through litigation in the state where the Project at issue is located.

## SECTION VI – INTELLECTUAL PROPERTY

### A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service") and Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Consultant shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work for Hire and Consultant shall not be restricted in any way with respect thereto.

### B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its services, Client shall have the right in the form of a license to use Instruments of Service resulting from Consultant's efforts on the Project. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of services are available to Client subject to Consultant's current rate schedule.

### C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.