

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

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of October, 2022, between City of Seguin, Texas (“OWNER”) a municipal corporation, with principal offices at 205 N. River St., Seguin, TX 78155, and HDR ENGINEERING, INC., (“ENGINEER” or “CONSULTANT”) for services in connection with the project known as Strategic Water Supply Plan (“Project”);

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

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

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

**SECTION I. SCOPE OF SERVICES**

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

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

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

**SECTION III. RESPONSIBILITIES OF OWNER**

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

**SECTION IV. COMPENSATION**

Compensation for ENGINEER’S services under this Agreement shall be on the basis of Direct Labor Costs times a factor of 3.26 for the services of ENGINEER’S personnel engaged on the Project, plus Reimbursable Expenses, estimated to be \$159,800.

Compensation terms are defined as follows:

Direct Labor Cost shall mean salaries and wages, (basic and overtime) paid to all personnel engaged directly on the Project. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually as of the first of every year to reflect equitable changes to the compensation payable to Engineer.

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, technology charges, telephone, telex, shipping and express, and other incurred expense. ENGINEER will add ten percent (10%) to invoices received by ENGINEER from subconsultants and subcontractors to cover administrative expenses and vicarious liability.

**SECTION V. PERIOD OF SERVICE**

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

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

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

\_\_\_\_\_  
"OWNER"

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

HDR ENGINEERING, INC.

"ENGINEER"

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

NAME: Todd Warrix

TITLE: Associate Vice President

ADDRESS: 613 NW Loop 410, Suite 700  
San Antonio, TX 78216

**EXHIBIT A**

**SCOPE OF SERVICES**

**Scope of Services**  
**Strategic Water Supply Plan**  
**City of Seguin, Texas**

**Background**

The City of Seguin (City) obtains water supply from the Carrizo-Wilcox Aquifer in Gonzales County through the Schertz-Seguin Local Government Corporation (SSLGC) and surface water from Canyon Lake supplied by the Guadalupe-Blanco River Authority (GBRA). The City also owns run-of-the-river water rights authorizing up to 7,200 acre-feet per year (acft/yr) for municipal purposes. In addition to the existing water supplies, Seguin will begin receiving water from Guadalupe County in 2023 through SSLGC. Note that the 2021 South-Central Texas (Region L) Regional Water Plan does not consider the City-owned water rights when determining supplies available to the City.

The City has requested HDR Engineering, Inc. (HDR) to assist the City in developing a water supply plan focusing on the development of water supplies to meet the future needs of the City's municipal, commercial, and industrial customers.

**Scope of Services**

Task 1. Project Management and QA/QC

HDR will establish a project within HDR's financial and project management system, prepare project updates, plan for resources, and manage the ongoing work of the project. Financial accounting, internal project reviews and quality control reviews of work products will be completed under this task.

**Meetings and Deliverables:**

Within 2 weeks of receiving Notice to Proceed from the City, HDR will host a virtual kickoff meeting (Meeting No. 1) with City staff, review the scope of services and schedule, discuss data needs, and discuss financial/invoicing expectations. All meetings will include agendas, meeting materials, and capture of meeting minutes.

Task 2. Data Collection and Evaluation of Recent Water Demand Patterns

HDR will review relevant available data from the City along with the following:

- 2020 Census
- 2021 South-Central Texas Water Plan (2021 Region L)
- 2026 South-Central Texas Water Plan development (2026 Region L)
- Gonzales Underground Water Conservation District (UWCD)
- GBRA
- SSLGC
- Texas Center for Environmental Quality (TCEQ) Drinking Water Watch
- Texas Water Development Board (TWDB) Water Use Surveys

From this review, population, water demands, per capita use, per connection use, and peaking patterns will be assessed to establish baseline conditions.

After receipt of Notice to Proceed, HDR will submit a data request to the City. HDR assumes that the City will be able to provide the requested information within 3 weeks of receiving the request. HDR anticipates requesting the following information:

1. Historical water use and production data for the last 5 years
  - a. Daily and annual production volumes by source, including reclaimed water
  - b. Monthly billed volumes of water to its customers by customer class
2. Number of customer accounts by class per month for last 5 years, to include multifamily with number of units
3. Most recent drought and water conservation plans and ordinances
4. Water supply contracts and/or agreements with the GBRA and the SSLGC
5. Known plans of developments that would be served by the City within the existing Certificate of Convenience and Necessity (CCN) and identified future expansion sites, e.g., numbers of units, types of units (residential, multifamily, commercial, institutional), and estimated timing of the developments
6. Sizes and capacities of major components of the City's water system infrastructure, including well capacities; ground, elevated, and hydropneumatics storage; pump station capacities; intake and treatment capacities; and pipeline sizes/capacities for primary water transmission lines
7. Last 5 years of wastewater effluent discharges from City-owned wastewater treatment facilities
8. A copy of the City's Texas Pollution Discharge Elimination System (TPDES) permit
9. A copy of the most recent water system master plan

#### **Meetings and Deliverables:**

Within 3 weeks of receiving the information requested, HDR will prepare a summary of the information provided by the City and host a virtual meeting (Meeting No. 2) with City staff to review data and discuss the following:

- Missing data
- Available data to be considered in the development of the assessment of population and water demands
- Population, per capita, and per connection water use estimates
- Review of water losses for the system, based on the differences between water produced/purchased and water billed
- Review of existing water supplies and system capacities
- Review of future development
- Discussion of appropriate growth rates for projecting water demands
- Identification of the anticipated volumes and timing of large commercial or industrial water service requests

HDR will summarize this task as a section in the final report of the water supply plan

#### Task 3. Formulate Future Water Demand Projections

HDR will formulate future water demand projections based on the information provided in Task 2. HDR will review the City's past water use patterns and demographic trends and compare these to water demand projections made by others, such as those prepared by the TWDB for regional and state water planning. HDR will review the City's drought and water conservation plans to determine what effects those ordinances may have on water demands. HDR, in coordination with City staff, will establish three

future water demand scenarios to serve as the basis for planning. The water demand scenarios are anticipated to correspond with a “High Demand” scenario reflecting an aggressive growth in water demands resulting from accelerated population growth and/or new large commercial/industrial demands, an “Expected Demand” scenario reflecting recent growth and water use patterns and a more modest growth in large commercial/industrial demands, and a “Low Demand” scenario reflecting slower growth and aggressive efforts to conserve water and reduce maximum-day demands. The future water demand scenarios will include annual and maximum-day water demands. Future water demand scenarios will include annual projections for years 2025 through 2080.

**Meetings and Deliverables:**

HDR will provide draft water demand scenarios within 3 weeks of the Meeting No. 2 (Task 2) with the City. HDR will provide the draft scenarios in an Excel spreadsheet delivered via email. HDR will host a virtual meeting (Meeting No. 3) with City staff to review and finalize the projections.

HDR will summarize this task as a section in the final report of the water supply plan.

Task 4. Establish Current Water Supplies

HDR will collect data from the City, GBRA, TCEQ, TWDB, the SSLGC, the Gonzales County UWCD, Guadalupe County GCD, TWDB, and Region L regarding the City’s water supply sources. HDR will use these data to determine current and future supply availability on both an annual volume and maximum-day basis. HDR will also assess the vulnerability of the City’s supplies to drought, diminishing regional groundwater levels and infrastructure failure. This analysis will account for the Desired Future Conditions adopted by Groundwater Management Area 13 (GMA 13).

The reliability of the groundwater supplies available to the City will be based on analyses performed by GMA 13, the SSLGC, and the South-Central Texas (Region L) Regional Water Planning Group. Groundwater modeling analyses are considered Additional Services and are not included in this scope of services. If HDR determines that additional groundwater evaluation is necessary, such as application of the TWDB’s groundwater availability models (GAMs), HDR will notify the City and request an amendment to this scope of services to accommodate the groundwater modeling analyses.

The reliability of the City’s surface water supplies (GBRA and City-owned water rights) will be based on analyses performed for the South-Central Texas (Region L) Regional Water Planning Group. Application of the TCEQ Water Availability Model (WAM) of the Guadalupe-San Antonio River Basin is considered Additional Services and is not included in this scope of services. If HDR determines that WAM modeling

of the City's surface water supplies is necessary to evaluate their reliability, HDR will notify the City and request an amendment to this scope of services to accommodate the WAM modeling required.

HDR will utilize the City's wastewater flow data to estimate current and future available wastewater effluent as a source of reclaimed water supply.

**Meetings and Deliverables:**

HDR will prepare a brief memorandum summarizing the City's available supplies. This memorandum will be provided within 6 weeks after completion of Task 2. The information in this memorandum will form the basis for a section in the final report of the water supply plan.

HDR will host a virtual meeting (Meeting No. 4) with City staff to discuss HDR's findings regarding the City's water supplies.

Task 5. Determine Future Water Supply Needs and Identify Supply Alternatives

HDR will utilize the information developed during Tasks 3 and 4 to determine the capability of the City to meet future annual volume and maximum-day water demands. HDR will estimate future water supply needs for the three water demand scenarios developed during Task 3.

Based on the water supply needs identified, HDR will, in conjunction with City staff, identify up to five potential water supply alternatives. The water supply alternatives can include the 2021 South-Central Texas (Region L) Water Plan recommended strategies along with additional alternatives such as potable or non-potable reuse of wastewater effluent and projects to increase the reliability of the City's existing water rights. Current water supply alternatives to consider include:

- Aquifer Storage and Recovery (ASR)
- Expanded Brackish Groundwater Development from the Carrizo Aquifer through the SSLGC – Region L recommendation.
- Expanded Carrizo Aquifer development through the SSLGC – Region L recommendation.
- Expansion of the City's surface water supply system to more fully utilize the City's water rights
- Potable or non-potable reuse of the City's wastewater effluent
- Water Conservation – The City might be able to increase efforts to reduce water use through modifications of the City's Water Conservation Plan - Region L recommendation.

**Meetings and Deliverables:**

HDR will summarize this task as a section in the final report of the water supply plan.

Within 3 weeks of completing Task 4 HDR will host a virtual meeting (Meeting No. 5) to discuss the water supply needs of the City under the three water demand scenarios and identify potential water supply alternatives to evaluate.

HDR will summarize this task as a section in the final report of the water supply plan.

Task 6. Evaluate Supply Alternatives

HDR will formulate planning level (conceptual) evaluations for up to five water supply alternatives based on the City staff preferences and HDR's recommendations from Task 5.

HDR will develop configurations and sizing of the five alternatives and will utilize the TWDB's Uniform Costing Model to estimate the capital, total project and annual costs of the alternatives.

**Deliverables:**

HDR will summarize this task as a section in the final report of the water supply plan.

Task 7. Formulate Water Supply Plan

In conjunction with City staff, HDR will recommend a water supply plan for the City to pursue to meet anticipated future water demands, considering the three water demand scenarios developed under Task 3. This plan may include alternative strategies to provide the City with flexibility should one or more supply strategies prove unfeasible or future demands develop differently than anticipated by the water demand scenarios.

HDR will coordinate with City staff via a virtual meeting to receive input on the appropriate combinations of water supplies to meet future water supply needs. The intent of the coordination will be to jointly select a preferred plan with alternatives.

Required from the City:

1. City staff to provide feedback to HDR of the City's priorities with regard to various evaluation factors.

**Meetings and Deliverables:**

HDR will summarize this task as a section in the final report of the water supply plan.

HDR will coordinate up to three virtual meetings (Meeting Nos. 6A, 6B, and 6C) to discuss the water supply plan as it is formulated.

Task 8. Develop Implementation Plan

HDR will identify specific conditions such as: water demands, changes in population growth and increases in large industrial users that would serve as triggers for the City to begin implementing the water supply options in the preferred plan. These triggers and associated actions will serve as a "roadmap" to assist the City in the timing of decisions.

**Deliverables:**

A section in the final report of the water supply plan will describe and summarize the targets and actions necessary to implement the water supply plan.

Task 9. Report and Presentation

HDR will perform the following tasks as requested by the City to facilitate communication of the planning process to the City's stakeholders and leadership:

1. Prepare final water supply plan.
2. Present the results of the plan at a city council briefing.
3. Develop a downloadable fact sheet summarizing the final water supply plan for posting to the City's web site.

**Meetings and Deliverables:**

HDR will prepare the final water supply plan under this task. HDR will submit a draft plan for City staff review within 8 weeks of completion of Task 5 (Water Supply Needs). The City will provide review comments within 2 weeks of receiving the draft plan from HDR. HDR will provide the final plan in PDF format within 2 weeks of receipt of the City's comments. The plan will be provided in PDF format only.

HDR will prepare a presentation and present the recommended water supply plan to the city council. HDR anticipates that this presentation will be scheduled within 6 weeks following submission of the final water supply plan.

HDR will prepare a downloadable fact sheet summarizing the final water supply plan. A draft of the fact sheet will be provided for City review within 3 weeks following submittal of the final water supply plan. The City will provide review comments within 2 weeks of receiving the draft fact sheet. HDR will provide a final fact sheet in PDF form within 2 weeks of receiving the City's comments.

**Schedule and Estimated Fee**

HDR will perform the tasks enumerated above on a time and materials basis for a not-to-exceed fee of \$159,800, per the estimated cost per task shown below. This total amount will not be exceeded without a contract amendment. As estimated fees for each task are estimates only, City and HDR agree to allow redistribution of funds between tasks as appropriate to allow flexibility in providing the needed services within the total estimate not-to-exceed fee. Fees will be billed as direct labor times a multiplier of 3.26 plus direct expenses.

HDR will complete Tasks 1 through 9 within 36 weeks of receiving Notice to Proceed. Should HDR identify additional time and/or effort needed than is contemplated in this scope of services, HDR will notify the City and request an amendment to this scope of services.

<b>Task</b>	<b>Estimated Fee</b>
1 – PM and QA/QC	\$ 15,900
2 – Data Collection and Summary of Base Information	\$ 14,800
3 – Formulate Future Water Demand Projections	\$ 13,300
4 – Establish Current Water Supplies	\$ 13,100
5 – Determine Needs and Identify Alternatives	\$ 12,100
6 – Evaluate Supply Alternatives	\$ 14,500
7 – Formulate Water Supply Plan	\$ 14,200
8 – Develop Implementation Plan	\$ 5,800
9 – Report and Presentation	\$ 56,100
<b>Total Estimated Fee</b>	<b>\$ 159,800</b>

**EXHIBIT B**

**TERMS AND CONDITIONS**

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

## 1. STANDARD OF PERFORMANCE

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

## 2. INSURANCE/INDEMNITY

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

## 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.

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

## 7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

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

## 8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, upon completion are the property of the Owner. Engineer may retain copies of the documents for its information and reference in connection with the project. Documents produced by this project shall be suitable for use, without limitation, by Owner for the specific means of this project.

## 9. TERMINATION OF AGREEMENT

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

## 10. SEVERABILITY

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

## 11. INVOICES

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

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

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

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

## 12. CHANGES

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

## 13. CONTROLLING AGREEMENT

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

## 14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

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

## 15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site.

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

## 16. EXECUTION

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

## 17. ALLOCATION OF RISK

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

**18. LITIGATION SUPPORT**

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

**19. NO THIRD PARTY BENEFICIARIES**

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

**20. UTILITY LOCATION**

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

**21. UNMANNED AERIAL SYSTEMS**

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

**22. OPERATIONAL TECHNOLOGY SYSTEMS**

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

**23. FORCE MAJEURE**

ENGINEER shall not be responsible for delays caused by factors beyond ENGINEER's reasonable control, including but not limited to

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