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Doucetengineers.com

November 3, 2020

Mr. David Rabago, P.E.
City of Seguin
205 North River Street
Seguin, Texas 78255

Phone: (830) 401-2776
E-Mail: drabago@seguintexas.gov

Re: Proposal for Professional Engineering Services
Mesquite Street Extension Project
Seguin, Guadalupe County, Texas

Proposal: KS-2134-003

Dear Mr. Rabago,

Doucet & Associates, Inc. (D&A) is pleased to submit this proposal for surveying and engineering services for the above referenced project. Please review this proposal and its attachments and, if acceptable to you, sign it and return it to the undersigned.

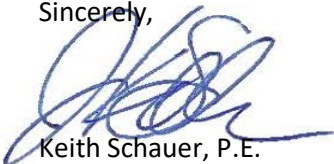
PROJECT

It is our understanding the City of Seguin desires to extend Mesquite Street to the west from Austin Street to approximately 150 feet west of Starcke Street. The total street extension will be approximately 773 feet. In addition, a waterline will also be extended within the Mesquite Street extension and looped into waterlines in Hays Street and Starcke Street.

Attached to this letter proposal are the Scope of Services and Compensation, a fee schedule (A) and general terms and conditions (B). If you agree to the terms set forth in the proposal and the attachments, please sign the proposal below and return one (1) copy to D&A for our files. If you have any questions regarding this proposal and the attachments, please feel free to contact me.

We appreciate the opportunity to provide this proposal and look forward to working with you and the rest of your team.

Sincerely,



Keith Schauer, P.E.
Vice President



Keith E. Young, P.E.
Vice President/Director of Engineering Services

TBPE Firm# 3937
TBPLS Firm# 10105800

COMMITMENT YOU EXPECT.
EXPERIENCE YOU NEED.
PEOPLE YOU TRUST.



APPROVAL

Terms and Conditions of Letter Proposal and Attachments
Agreed to this _____ day of _____, 2020.

City of Seguin

By: _____

Name: _____

Title: _____



SCOPE OF SERVICES

Based on our understanding of your needs at this time and the current status of this project, we propose to provide the following specific services:

I. Survey

1. Topographic Survey – Doucet will perform a topographic survey of the area to be within the existing and proposed right-of-way of Mesquite Street east of Austin Street. This includes locating curb & gutter, sidewalk, inlets, utilities and other features within the intersection of Austin Street and Mesquite Street and curb & gutter, street, and utilities within Starcke Street and Hays Street as needed for design of Mesquite Street.
2. Legal Descriptions – Doucet will establish boundaries of properties along the proposed route of Mesquite Street sufficient to prepare parcel descriptions for proposed right of way for the new alignment of Mesquite Street. The fee below includes establishing the boundaries of the affected properties and preparing up to four (4) metes and bounds descriptions with exhibits for the new right-of-way for Mesquite Street. Any additional metes and bounds descriptions will be prepared at \$1,200 each.

II. Utility and Location Coordination

Doucet will communicate and coordinate with utility companies for the location and/or relocation of utilities along the proposed alignment of Mesquite Street.

III. TxDOT Driveway Permit

D&A will coordinate with TxDOT for approval of a driveway permit and the approval of drainage to TxDOT right-of-way. The price to perform this task includes preparing applications, writing letters, and other correspondence and exhibit preparation in order to assist Client in obtaining approval from TxDOT for this project.

IV. TxDOT Utility Installation Review (UIR) Permit

Doucet will coordinate with City staff to make the UIR submittal to TxDOT. The fee listed below includes preparation of applications and exhibits necessary to assist the City in obtaining approval from TxDOT for utility installations.

V. Sub-Consultant Services – Geotechnical Investigation

Doucet & Associates will contract with a geotechnical engineering firm to perform geotechnical investigation of the Mesquite Street extension route, and provide recommendations for soil and subgrade treatment, and pavement sections for the street.

VI. Public Improvement Construction Documents

The proposed project involves the planning, design and construction of a city street and associated storm sewer systems, as well as a public waterline extension which will be owned operated and maintained by the City of Seguin.

1. We will prepare Engineering Construction Documents for this street and associated drainage system for review and approval by the City. The design cross section of the street will be 30 feet from face of curb to face of curb within a 50-foot-wide right-of-way and will include a 4-foot-wide sidewalk on both sides. The exact length of street will be defined once the surveys are completed; however, it is anticipated the street will be approximately 773 feet in length. The pavement section will be based on recommendations from our geotechnical subconsultant based on the geotechnical investigation included as part of this contract. These documents will include plan/profile, details, and other City required items for review and approval.
2. We will prepare drainage and storm sewer plan and profiles, if required, as part of the overall street design. It is anticipated this storm sewer system will connect to an existing TxDOT system within Austin Street.
3. We will prepare Engineering Construction Documents for a waterline extension within Mesquite Street. This line will connect to an existing line in Austin Street and will be looped into existing waterlines in Hays Street and Starcke Street.
4. We will prepare an Erosion and Sedimentation Control Plan, which meets the current City design criteria.
5. We will include detail sheets with City of Seguin standard details for street, drainage and utility installations.
6. We will prepare an engineer's summary letter and drainage calculations with respect to roadway design and hydraulics and submit the Public Improvement Construction Plans to City staff for review.
7. Coordinate with City staff for the purposes of clearing staff comments and seek final approval.



VII. Project Meetings

Depending on your needs and nature of the project, the amount of project meeting times can vary. We have budgeted one (1) project meeting two (2) hours in length per month, for a 6-month design and approval time period, for a total of approximately twelve (12) hours.

VIII. Bidding and Award Services

1. We will assist the Client in preparing the bid package including the Project Manuals.
2. Assist the Client in advertising for bids; maintain a record of prospective bidders to whom bidding documents have been issued.
3. Doucet & Associates will attend the pre-bid conference and prepare minutes of the meeting.
4. Issue addenda as necessary to clarify the bidding documents.
5. Prepare the bid sheets, attend the bid opening, prepare the bid tabulations and assist the Client in the evaluation of the bids.
6. After the award of the bid, assist in assembling and distributing the contract documents for the work.

IX. Public Works Construction Phase Services

1. We will assist the Client in completing the construction document package and assist in distribution to the Contractors. As part of the pre-bid phase, we will answer questions pertaining to civil work.
2. Attend the pre-construction conference required by the City prior to construction.
3. Provide periodic on-site construction observation services, as requested by the Owner.
4. Once construction has been substantially completed, complete a final site observation visit and prepare a punch list as required. Once the punch list has been significantly completed, prepare an Engineer's Letter of Concurrence required by the City prior to issuance of a Certificate of Occupancy.
5. The above items will be performed on a 1-time basis. Services performed outside of the above will be provided at our standard hourly rates as additional services.

X. Reimbursables/Reproduction

1. Direct non-salary expenses incurred and not applicable to general overhead are billed at cost plus 15% for administrative and handling charges. Please note that physical backup for reimbursable expenses will not be included with invoices unless a written request to do so is submitted to D&A's accounting department.

Reimbursable Expenses include, but are not limited to, the following:

Travel and lodging, including out of town transportation by D&A's vehicles at standard rates; mail, delivery, courier and express charges; legal and accounting fees (including attorney's fees charged by D&A's attorney for review or negotiation of any certificates or similar documents requested by Client or a lender doing business with Client); in-house reproduction costs (to be charged at prevailing commercial rates); subconsultants; photographs; environmental fees; late fees caused by Client; charges incurred in stopping or resuming work in accordance with this Agreement; use or rental of special equipment or instruments and other direct non-salary expenses necessary to complete the contract.

COMPENSATION

Client will pay D&A for the Services in accordance with the Fee Schedule and General Terms and Conditions attached hereto. **If this agreement is not executed by Client within 30 days of the date of this proposal, D&A reserves the right to renegotiate the estimated fees.** The estimated cost of the Services and basis of payment is as follows:

Item	Fee Basis	Fee	Task
I. Survey			
1. Topographic Survey	Lump Sum	\$ 5,000	
2. Legal Descriptions	Lump Sum	\$ 6,000	
II. Utility Coordination			
	Lump Sum	\$ 1,000	200
III. TxDOT Driveway Permit			
	Lump Sum	\$ 3,500	201
IV. TxDOT Utility Installation Review (UIR) Permit			
	Lump Sum	\$ 1,500	202
V. Site Related Sub-Consultant Services			
	At Cost	\$ 5,375	800
VI. Public Improvement Construction Documents			
1-7	Lump Sum	\$ 17,500	203
VII. Project Meetings			
	Hourly*	\$ 3,500	300

Item	Fee Basis	Fee	Task
VIII. Bidding and Award Services			
1-6	Lump Sum	\$ 5,000	206
IX. Public Works Construction Phase Services			
1-5	Hourly*	\$ 9,200	207
Total		\$ 57,575	
X. Reimbursables/Reproduction			
1	At Cost	\$ 500	900

* Preliminary budget amount, in accordance with our Standard Labor Schedule.

Please note that the above fees are based on a smooth project implementation and have assumed no major changes to the project after we begin final design and preparation of the design drawings and application for this project. Fees shown for the hourly basis elements are provided as an estimate based on currently available information and understanding of the scope of service. Invoices will reflect the actual time and material costs incurred up to the maximum amount authorized. The maximum budgeted cost will not be exceeded without the Client's prior approval and executed Change Order. Work provided outside the above scope of services will be billed as an additional service once approved in writing by your office.

ASSUMPTIONS

In preparing this proposal, we have made the following assumptions:

- All boundary monumentation is recoverable and in good condition and we will be entitled to rely upon such marking.
- There are no boundary problems, disputes or lawsuits associated with the tract, which would affect completion of the survey.
- No construction phase surveying services are included.
- No off-site drainage, roadway or utility improvements are required and preparation of these surveys, easements and/or negotiations for these easements is an additional service.
- Soil boring stake out is not included.
- Any legal services will be provided by Client.

- No variance requests or waivers are required.
- The project will be developed as a single phase.
- This project will not encounter significant opposition from City, County, or State review agencies, neighborhood groups, environmental groups, etc.

The following services are excluded unless specifically included in this proposal:

- Structural design of retaining walls, stormwater splitter boxes or detention ponds, bridges, culverts and similar structures.
- Environmental site assessments, wetlands, endangered species and KARST feature investigations.
- Preparation of traffic safety, sign or signalization plans.
- Traffic Impact Analysis.
- Geotechnical Construction Materials Testing.
- Design franchise utility services for electricity, gas, cable, telephone, etc.



Schedule A

Doucet & Associates 2020 Fee Schedule (effective 3/30/2020)

Personnel	Hourly Fee		Personnel	Hourly Fee
Principal Engineer (PE)	\$250.00		Principal Surveyor (RPLS)	\$250.00
Senior Project Manager	\$230.00		Project Manager (RPLS)	\$210.00
Project Manager	\$200.00		Project Coordinator	\$140.00
Senior Project Engineer (PE)	\$185.00		Survey Specialist	\$130.00
Project Engineer III	\$170.00		Survey Technician	\$105.00
Project Engineer II	\$160.00		GIS Specialist	\$130.00
Project Engineer I	\$145.00		GIS Technician	\$100.00
Engineer Associate II	\$130.00		LiDAR Specialist	\$130.00
Engineer Associate I	\$115.00		LiDAR Technician	\$100.00
Sr. Construction Manager	\$150.00		Aerial Mapping Specialist	\$130.00
Construction Manager	\$110.00		Aerial Mapping Technician	\$100.00
Program Manager	\$110.00		Utility Specialist	\$130.00
Sr. Civil Technician	\$140.00		Utility Technician	\$100.00
Civil Technician	\$125.00		Field Coordinator	\$140.00
Assistant Civil Technician	\$115.00		Field Specialist	\$110.00
			Crew of 1	\$115.00
Senior Planner (AICP)	\$170.00		Crew of 2	\$160.00
Project Planner	\$155.00		Crew of 3	\$210.00
Staff Planner	\$115.00		Division Administrator	\$100.00
Planning Technician	\$105.00		LiDAR Scanner	\$100.00/hr
			Drone	\$600.00/hr
Sr. Operations Assistant	\$100.00		Ground Targets	\$25/ea
Operations Assistant	\$ 75.00		Concrete Monuments	\$250/ea
			ATV/Boat/Sonar	\$100/day
Expert Witness	\$525.00		Mileage	Current IRS rate

D&A reserves the right to periodically adjust our fee schedule.



General Terms and Conditions

These General Terms and Conditions are a part of the letter proposal KS-2134-003 dated November 3, 2020, from Doucet & Associates, Inc. ("D&A") to City of Seguin ("Client") and shall govern all services described in the letter proposal ("Basic Services") or any other services rendered by Engineer to Client ("Additional Services") (the Basic Services and Additional Services are referred to collectively as the "Services").

Article 1. Compensation

1.1 **Agreement to Hire.** Client hires D&A to perform the Services on the Property described in the Letter Proposal (the "Property") pursuant to the terms of this Agreement. This Agreement is comprised of the Letter Proposal, Fee Schedule and these General Terms and Conditions. The term of the Agreement shall commence on the date Client signs the Letter Proposal and terminate on the date the Services are completed or the date this Agreement is otherwise terminated in accordance with its terms.

1.2 **Agreement to Pay.** Client agrees to pay D&A for the Basic Services, Additional Services and Reimbursable Expenses in accordance with this Agreement. The charge for Additional Services shall be based on actual hours expended and quantities used. The amounts set forth in the Letter Proposal are estimates only and actual charges may vary. D&A reserves the right to periodically adjust our fee schedule. In addition to all fees for services, Client agrees to pay all collection charges if D&A is compelled to seek collection of the fees charged for Basic and Additional Services and Reimbursable Expenses through a collection agency or through an attorney. Collection charges includes all fees paid to any professional for collection of delinquent Fees, all court costs, travel expenses, and other costs incurred by D&A in collection of delinquent fees and expenses due to D&A under this Agreement.

1.3 **Change Orders.** Client, without invalidating this Agreement, may request changes to the scope of Services by altering or adding to the Services to be performed and any such changes shall be performed subject to this Agreement. Unless D&A specifies otherwise, the charges for such changed Services shall be based on actual hours expended and quantities used in accordance with the Fee Schedule. Client, by requesting a change order, agrees to pay such additional or changed charges.

1.4 **Invoices.** D&A will submit invoices to Client on a monthly basis or upon completion of the Services. Client agrees to pay D&A upon receipt of invoice. Client agrees to pay a charge of 1.5% per month on all invoiced amounts after thirty days, retroactive to the date of invoice. Interest on unpaid invoices shall not exceed the maximum amount of interest allowed by law and any interest in excess of this amount shall be credited to unpaid invoices or, if they have been paid, refunded.

1.5 **Suspension of Work.** If Client does not pay any invoiced amount within thirty days from the date of invoice, or otherwise fails to perform any obligation under this Agreement, D&A shall have the right, upon three days written notice to Client, to stop performance of the Services.

Article 2. Duties

2.1 **Access.** Client will provide D&A with access to the Property or to any other site as required by Client for performance of the Services.

2.2 **Client-furnished Data.** Client will provide to D&A all plans and other information in Client's possession that relates to D&A's performance of the Services. This information will include known site hazards, location of utilities, prior surveys, plats, any hazardous materials in or around the site, location of underground structures or storage tanks. Client acknowledges that D&A will rely on the accuracy, timeliness and completeness of the information provided by the Client or any of Client's contractors or consultants. Client agrees, to the fullest extent permitted by law, to waive all claims and causes of action against D&A and to indemnify, and hold harmless D&A, its directors, partners, employees and subcontractors from any damages, liabilities or costs, including attorneys' fees, experts' fees and defense costs, for any property damage, injury or economic loss arising or allegedly arising from inaccuracy of information provided to D&A by the Client.

2.3 **Other Information.** D&A will rely upon commonly used sources of data, including database searches and agency contacts. D&A does not warranty the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

2.4 **Permits.** Except as expressly provided in the Letter Proposal, Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Upon request, Client will provide D&A evidence satisfactory to D&A that all required permits or other approvals have been obtained and that all required notices have been given, including copies of such permits or notices.

2.5 **Ownership of Documents.** All designs, drawings, engineering reports, specifications and other documents generated or produced during the term of this Agreement, whether in electronic form, print, or any other fixed media, are work product of D&A and are the sole and exclusive property of D&A. The work product of D&A described in the preceding sentence is licensed to Client for the sole purposes of the Project, and may not be used by any third party for any purpose, nor by Client for any purpose other than as set out in this Agreement. Client may not modify, amend, change or alter any of D&A's work product. If Client makes any modification, alteration, addition or change to D&A's work product without the specific agreement of D&A, any warranty issued by D&A for work completed with the altered documents is withdrawn by D&A. Client acknowledges and agrees that if it modifies, alters, or changes the D&A work product without the consultation and written consent of D&A that D&A is relieved of any liability caused by that modification, change or alteration, and that Client will indemnify and hold D&A harmless from any claims, lawsuits, damages, losses and causes of action asserted by any third party against D&A, including costs of defense and attorney's fees.

2.6 **Lender Certificates.** In the event a third party, such as a lender or subsequent purchaser of the Property, seeks assignment of any instruments of service prepared by D&A, or requests that D&A make independent certifications in favor of such third party, then D&A, as a condition to such assignment or certification may require: (a) payment in full of all outstanding charges then due from Client, (b) reimbursement for all costs and fees incurred by D&A (including attorney's fees) in reviewing associated documents, (c) a reasonable administrative fee in an amount determined by D&A, (d) reasonable time to review any associated documents, but no less than seven (7) days, (e) D&A may limit its certification to such third party to a statement confirming that all certifications made on

the instruments of service, if any, remain true and correct and (f) any other assurances reasonably determined by D&A.

2.7 **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations, including but not limited to spill reporting. Nothing in the Agreement precludes D&A from providing any notices or reports that it may be required by law to give to governmental entities.

2.8 **Environmental and Compliance with Laws.** Client represents to D&A that the Property is and will remain in compliance with all-environmental, health and safety laws, regulations and ordinances (“Laws”). Client is solely responsible for all matters relating to soils testing, other subsurface investigations, the presence and disposal of any hazardous materials in, under or around the Property, and any other environmental conditions of the Property and any structures located on the Property. Client is the owner of and has responsibility for any waste materials on the Property or generated in the performance of the Services, including samples collected for testing. Client agrees to indemnify and hold harmless D&A, its officers, partners, employees, and subcontractors from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney’s fees, arising out of or related to the presence of any hazardous materials, petroleum, asbestos or contaminants on the Property or the failure of the Property to comply with all Laws.

2.9 **Cooperation.** Client will fully cooperate with D&A in the performance of this Agreement. Client is responsible for assuring that other contractors of Client cooperate with and do not interfere with D&A’s performance of the Services.

2.10 **Surveying.** Client understands that surveying, vehicles and other equipment may unavoidably cause some damage to the Property, including destruction of vegetation, the correction of which is not part of the Agreement.

2.11 **Changed Conditions.** The Client shall rely on D&A’s judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to D&A. Should D&A call for contract renegotiation, D&A shall identify the changed conditions necessitating renegotiation and D&A and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

2.12 **Opinions of Cost.** Should D&A provide any cost opinions, it is understood that those opinions are based on the experience and judgment of D&A and are merely opinions. D&A does not warrant that actual costs will not vary from those opinions because, among other things, D&A has no control over market conditions.

Article 3. Termination of Services

3.1 **Termination.** The Agreement may be terminated without cause at any time prior to completion of the Service by Client or D&A upon seven (7) days written notice to the other party.

3.2 **Compensation in Event of Termination.** If the Agreement is terminated in accordance with Paragraph 3.1, D&A shall be compensated for all Services performed prior to the termination date in accordance with the rates established in this Agreement, together with Reimbursable Expenses then due or incurred.

Article 4. Relationship of Parties

4.1 **Independent Contractor.** It is understood that the relationship of D&A to Client shall be that of an independent contractor. Neither D&A or employees of D&A shall be deemed to be employees of Client. There are no third party beneficiaries to this Agreement.

Article 5. Limitation on Warranties and Liability

5.1 D&A represents and warrants that the Services will be performed using that degree of care and skill customarily provided by an experienced professional organization providing similar services in the area during the same time period. **D&A makes no other warranties or representations, whether express or implied, whether in this Agreement or any subsequent reports provided by D&A.**

5.2 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF D&A AND ITS SUBCONSULTANTS AND SUBCONTRACTORS TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS (COLLECTIVELY "CLAIMS") SHALL NOT EXCEED \$50,000 OR D&A'S TOTAL FEE, WHICHEVER IS GREATER. IN NO EVENT WILL D&A, ITS SUBCONSULTANTS OR SUBCONTRACTORS BE LIABLE FOR PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. CLIENT, AS A MATERIAL INDUCEMENT TO D&A TO ENTER THIS AGREEMENT, WAIVES ALL CLAIMS AGAINST, FOREVER DISCHARGES AND PROMISES NOT TO SUE THE EMPLOYEES, OFFICERS AND DIRECTORS OF D&A FOR ALL CLAIMS, EXCEPT INTENTIONAL TORTS OCCURRING OUTSIDE THE COURSE AND SCOPE OF THEIR EMPLOYMENT. CLIENT AGREES TO LOOK SOLELY TO D&A FOR THE SATISFACTION OF ANY CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT THAT CLIENT WOULD OTHERWISE HAVE AGAINST THE EMPLOYEES, OFFICERS AND DIRECTORS OF D&A ABSENT THE WAIVER SET FORTH ABOVE.

Article 6. Miscellaneous

6.1 **Entire Agreement.** The Agreement (including any exhibits) contains the entire agreement between D&A and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by a written document executed by both parties.

6.2 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

6.3 **Arbitration.** Any controversy or claim arising from or relating to this Agreement, the Services or any other agreement between the parties shall be settled by binding arbitration administered by the American Arbitration

Association (AAA) under its commercial arbitration rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration, and all hearings in relation thereto, shall be held in Travis County, Texas. The arbitration panel shall consist of a single arbitrator who is either a licensed engineer or has extensive experience in the field of engineering. All aspects of the arbitration shall be confidential. The arbitrator shall have no authority to award punitive damages. Notwithstanding the foregoing, in the event D&A has a claim against Client for the collection of invoiced amounts then D&A may bring such claim in the courts of Travis County, Texas and Client hereby irrevocably consents to venue and jurisdiction of the courts of Travis County for such claims. In the event Client asserts a counterclaim against D&A, then D&A shall have thirty (30) days from receipt of such counterclaim to commence arbitration, in which case the entire cause of action shall be stayed in the Courts and arbitrated in accordance with this paragraph, or if D&A fails to commence arbitration within such thirty day period, the entire cause of action shall be litigated in the Courts of Travis County. Client acknowledges that all payments for the Services are due and payable in Travis County, Texas.

6.4 **Acceptance of Agreement.** If this Agreement is not executed by Client within 30 days of the date tendered, it shall become invalid unless: (1) D&A extends the time in writing; or (2) Client orally authorizes D&A to proceed with the work, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. D&A's performance of work under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization. A facsimile signature shall be effective to bind either party to this Agreement.

6.5 **Engineer Not Supervisor.** Unless specifically stated in the letter proposal defining the basic Services provided in this Agreement, Engineer has no responsibility or authority for the supervision of any phase of the work at the site of the Project, and no responsibility for the means, methods, techniques, sequences, and procedures used by the contractors and no responsibility for site safety. D&A shall have no responsibility to assure or certify that construction on the Property or any activity not supervised by D&A shall comply with applicable laws. D&A shall have no responsibility for or liability in relation to any employees of Client or other contractors of Client on the Property.

6.6 **Indemnity.** Client shall indemnify, defend and hold harmless D&A from and against any and all lawsuits, claims, liabilities, actions, causes of action, demands, losses, damages, forfeitures, penalties, fines, costs and expenses, including but not limited to, reasonable attorney's fees and expenses, by whomever asserted, including but not limited to, any government entity, agency or branch, any third party, an employee, contractor employed or retained by D&A, any third party or employee employed or retained by D&A, to the extent that such claim, property damage, injury or death resulted from (i) the negligence or willful misconduct of Client or an agent or contractor of Client, (ii) violation of federal, state or local statute, rule, regulation or ordinance by Client or an agent or contractor of Client, (iii) Client's alleged involvement or status as an owner, operator, arranger, generator or transporter of hazardous substances or constituents at the Property, (iv) any matter outside of D&A's scope of Services or (v) inaccurate information provided by Client to D&A.

6.7 **Suspension of Work/Force Majeure.** Client may require D&A to temporarily suspend work by delivery of written notice to D&A. D&A may also be required to suspend work due to circumstances beyond the control of D&A, including but not limited to strike, fire, inclement weather (including excessive rain or heat), act of God, governmental action, third party actions, casualty or acts of Client. Client understands that the suspension of work by D&A will



cause D&A to incur additional costs to suspend and resume work and Client agrees to reimburse D&A for such additional costs and to extend D&A's deadline for completion.

6.8 **No Assignment.** Client may not assign this Agreement without consent by D&A.

6.9 **Interpretation.** The parties acknowledge that each party, and if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

6.10 **Survival.** Termination of the Services for any reason whatsoever shall not affect the right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to such right or obligation shall be deemed to survive such termination of the Services or any continuing obligation, liability or responsibility of D&A or Client which would otherwise survive termination of the Services.

6.11 **Contractual Lien to Secure Payment:** Client hereby grants to D&A a contractual lien in addition to all constitutional, statutory and equitable liens that may exist on the Property and all improvements thereon, to secure payment for all debts owed, now or in the future, to D&A by Client including those arising as a result of D&A's services provided in accordance with this Agreement or any other agreement between Client and D&A. Client grants D&A the authority and right to file a copy of this Agreement in the Deed Records of the county or counties where the above project is located to give notice of D&A's lien rights.