

Meeting Date 2/18/2026 Item _____

Agenda Item Summary:

**NEW WELL 9- PLANNING & DESIGN PROFESSIONAL SERVICES AGREEMENT
WITH SHORT ELLIOTT HENDRICKSON**

Summary: To ensure the long-term reliability and capacity of the municipal water supply, the City is initiating the development of Well 9. This project involves the construction of a new groundwater well to supplement current production and provide necessary redundancy for the distribution system. We have officially applied for a State Revolving Fund (SRF) loan to provide the necessary financing for this infrastructure improvement.

Issue: To move the project into the next phase, formal approval is required to begin the professional planning and design process. Short-Elliott-Hendrickson Inc. (SEH) has submitted a proposal to provide the engineering services required for the design, permitting, and SRF loan coordination. This step is critical to maintain the project timeline and remain compliant with SRF funding requirements.

Budget: The costs for planning and design are anticipated to be covered through the SRF loan program. While this is a major capital expenditure, the favorable terms of the SRF loan will minimize the immediate impact on the city's water utility budget.

Final: We respectfully request the City Council approve the proposal from SEH for the planning and design of Well 9 and authorize staff to move forward with the project as part of the SRF loan process.

Agreement for Professional Services

This Agreement is effective as of February 18, 2026, between City of Charles City (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: **New Public Water Supply Well Design and Permitting**

Client's Authorized Representative: Cory Spieker, Water Superintendent

Address: 900 Clark Street, Charles City, Iowa 50616

Telephone: 641.257.6315

Email: cory@cityofcharlescity.org

Project Manager: Rustin Lingbeek, PE (Lic IA, MN, KY, KS)

Address: 10 N Washington Ave., Suite 110, Mason City, IA 50401

Telephone: 641.243.3797

Email: rlingbeek@sehinc.com

Project Description: The project shall consist of construction of all improvements recommended as described in the "New Public Water Supply Well Preliminary Engineering Report" dated September 17, 2025, prepared by Short Elliott Hendrickson Inc. The proposed improvements are further described as new Devonian public water supply well, backup generator and well house.

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 01.01.26), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

A. Basic Services:

1. Planning and Project Management – Throughout the Project

The project manager will be responsible for the development and tracking of the project plan for the project development. This includes task identification, staff scheduling and coordination, project communications, invoicing and other essential elements of the project.

- a. *Planning:* Work with the City to develop planning documents for application to State and CDBG. This includes IUP, SRF planning and design, SRF environmental documents, SRF loan, coordination with CDBG administrator, etc.
- b. *Project Team Meetings:* Maintain communications with the Project Team and various other designated representatives. The Project Team will include representatives of the Client and the Consultant. Meet to review progress and discuss specific elements of the project planning and design. The meetings will also serve to establish schedules, develop project goals, establish initial design parameters, promote a dialog between the various entities, improve the decision-making process, and expedite design development. The Consultant shall prepare minutes of meetings and keep documentation of other communications.
- c. *Quality Control Plan:* Establish review and checking procedures for project deliverables. Designate responsibility for implementation of the plan.
- d. *Coordination of Geotechnical Services:* Consultant shall coordinate with a geotechnical firm to be contracted directly by the Client. Geotechnical services will include obtaining soil borings and report necessary to proceed with installation of new watermain. Client shall be responsible for paying for geotechnical services under a separate contract with the geotechnical firm.

2. Preliminary Design

- a. Review proposed improvements and desired location with Client prior to commencing subsequent work. Includes final evaluation of requirements to meet existing and future design year needs.
- b. *Control Survey: Establish* horizontal and vertical control for the Project area. Each permanent control point or benchmark shall have horizontal coordinates or elevation, recovery information and monument description. Accurate descriptions of the horizontal control points and benchmarks will be created and recorded on the plan sheets. Horizontal control shall be in state-plane coordinates and vertical control per local datum.
- c. *Design Survey:* The Consultant shall perform field and office tasks required to collect topographic information deemed necessary to complete the project. The specific supplemental survey tasks to be performed include the following:
 1. *Topographic Survey: Perform* topographic surveys required for the development of the project and to supplement any existing topographic mapping provided by the Client. This task also includes verification of the existing topographic mapping. Horizontal and vertical accuracies shall be adequate to produce a map that is compatible with the topographic data for incorporation into the existing base mapping.
 2. *Utility Surveys: Perform* utility surveys required for the development of the project. Contact utility owners of record or the "one call" representative, request that buried utilities be marked in the field and obtain existing utility map. Establish coordinates and elevations (if possible) for utilities that fall within the limits of the project and are visible or have been marked on the ground by the utility owner. Show utility name and describe the utility on the plans.
 3. *Office Processing:* Complete processing of the data obtained in the field as necessary to incorporate into the project.
- d. *Prepare Preliminary Plans:* Prepare Preliminary Design Phase drawings of adequate content to present the general nature of construction of the project for review and approval by Client.
- e. *Prepare Preliminary Project Manual:* Prepare Preliminary Design Phase specifications in outline format for review and approval by Client. It is anticipated that the Preliminary Project Manual shall include:
 - 1) EJCDC Contract Documents for Construction front-end documents and Technical Specifications based on the CSI Master Format
- f. *Preliminary Opinion of Probable Cost:* Based on the information contained in the Preliminary Design Phase documents, prepare an Opinion of Probable Construction Cost, and assist Client in collating the various cost categories which comprise Total Project Costs.
- g. *Permits Determination:* Provide assistance in determining the permits from governmental authorities having jurisdiction to review or approve the final design of the Project.
- h. *Furnish Preliminary Design Documents to Client:* Furnish review copies of the Preliminary Design Phase documents and any other deliverables to Client and review them with Client. Client shall submit to Consultant any comments regarding the Preliminary Design Phase documents and any other deliverables.
- i. *Right-of-Way/Easements Determination:* Provide assistance in determining extents of additional Right-of-Way or easements that will be necessary for construction and maintenance of the project. Legal/Property Surveys and preparation of acquisition plats or easements, if required, shall be included in Additional Services.
- j. *Utility Company Coordination:* The Consultant will coordinate with utility companies that have utilities in the project area to determine if any potential conflicts with existing utilities exist, and to determine if any measures will be necessary to relocate existing utilities or revise locations of proposed improvements. The Consultant will rely on maps and other information provided by utility companies and is not responsible for the accuracy of the information provided by the utility companies. Excavation to expose buried utilities is not a responsibility of the Consultant.
- k. *Review Meeting(s):* Meet with representatives of the Client to discuss elements of the preliminary design. Consultant will prepare and disperse minutes of the meeting. Anticipated number of meetings during the preliminary design phase is one (1).

- l. *Field Review of Preliminary Drawings*: A Field Exam will be conducted by the Project Team to discuss key issues and design concepts and to determine completeness of the preliminary drawings. The review will identify needed adjustments to minimize potential project construction issues. Revisions will be noted for incorporation into the final Preliminary Design Phase drawings.
- m. *Revise Preliminary Design Documents*: Revise the Preliminary Design Phase documents and any other deliverables in response to Client's comments, as appropriate, and furnish to Client copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables after receipt of Client's comments.
- n. *Deliverables*: Deliverables to the Client from the Consultant during the Preliminary Design Phase shall be as follows:
 - 1) Review copies of Preliminary Design Documents (plans and specifications): one (1) electronic copy in .pdf format. Drawings shall be in 11" X 17" size.
 - 2) Final Preliminary Design Documents (plans and specifications): Two (2) hard copies and one (1) electronic copy in .pdf format. Drawings shall be in 11" X 17" size.
 - 3) Minutes of meeting(s).

3. Final Design

The number of prime contracts for Work designed or specified by Consultant upon which the Consultant's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Consultant shall be entitled to an equitable increase in its compensation under this Agreement.

- a. *Prepare Final Drawings*: Prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
- b. *Prepare Final Project Manual*: Prepare Final Design Phase specifications (Project Manual) for review and approval by Client. The Project Manual shall include:
 - 1) EJCDC Contract Documents for Construction front-end documents and Technical Specifications based on the CSI Master Format
- c. *Permits*: Provide technical criteria, written descriptions, and design data for use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Client in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities. Consultant shall provide assistance in obtaining the following permits:
 - 1) Iowa Department of Natural Resources (IDNR) Water Construction Permit (Included in Basic Services)(fee paid by client)
- d. *Final Opinion of Probable Cost*: Advise Client of any adjustments to the Opinion of Probable Construction Cost known to Consultant. Provide updated Opinion of Probable Construction Cost to Client, if revisions are necessary.
- e. *Review Meeting(s)*: Meet with representatives of the Client to discuss elements of the final design. Consultant will prepare and disperse minutes of the meeting. Anticipated number of meetings during the final design phase is one (1).
- f. *Bid Documents Packaging*: Prepare and furnish bidding documents for review by Client, its legal counsel, and other advisors, and assist Client in the preparation of other related documents. Client shall submit to Consultant any comments and instructions for revisions.
 - 1) Revise the bidding documents in accordance with comments and instructions from the Client, as appropriate, and submit final copies of the bidding documents, and any other deliverables to Client after receipt of Client's comments and instructions.
- g. *City Presentation*: Make a presentation of the Final Design Phase documents to the Council at a Council or Workshop meeting. Provide presentation materials as deemed necessary to adequately inform the Council.
- h. *Deliverables*: Deliverables to the Client from the Consultant during the Final Design Phase shall be as follows:

- 1) Review copies of Final Design Documents (plans and specifications): One (1) electronic copy in .pdf format. Drawings shall be in 11" X 17" size.
- 2) Final Bid Documents (plans and project manual): Four (4) hard copies and one (1) electronic copy in .pdf format. Drawings shall be in 11" X 17" size.
- 3) Minutes of meeting(s).

4. Bidding Services

- a. *Bidding*: Once it is known if a grant has been awarded, or such time Client wants to move forward, a proposal for these services will be presented.

5. Contract Administration Services:

- a. *Contract Administration*: Once a contractor has been determined, a proposal for these services will be presented based on the contractor schedule and amount of effort desired by City after bidding. Each contractor has their own means and methods, creating wide degrees in time for completing the work.

6. Construction Observation (RPR) Services:

- a. *RPR services*: Like Contract Administration, the level of effort can vary between contractors. This contract will be presented after bidding.

7. Construction Survey (Staking) Services:

- a. *Survey*: Like Contract Administration, the level of effort can vary between contractors. This contract will be presented after bidding.

B. Additional Services:

Additional services will be provided by the Consultant at the request of the Client. These services may include:

1. Services resulting from significant changes in the scope, extent, or character of the portions of the project designed or specified by the Consultant including, but not limited to, changes in size, complexity, Client's schedule, character of construction, or method of financing. These services may also be as a result of changes in laws or regulations or other causes beyond the Consultant's control.
2. Property/legal surveys, acquisition plats and preparation of easements needed for the transfer of interests in real property.
3. Serving as a consultant or witness for the Client in any litigation, arbitration, or other dispute resolution process related to the project.
4. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
5. Other services performed by the Consultant not otherwise provided for in this Agreement, examples of which are listed below:
 - a. Environmental Assessment/NEPA Compliance Services
 - b. Wetland Assessment/Mitigation Services
 - c. Services associated with obtaining flood plain permitting.

C. Schedule: In consideration of the services, SEH is prepared to immediately assist with this project. SEH proposes to begin gathering survey information as soon as possible and preparing the design.

1. Schedule will be flexible and can be moved accordingly with authorization from City.
2. Anticipate having project ready for fall CDBG application.

D. **Payment:** In consideration of the services, work, equipment, supplies, or materials provided herein, the Client agrees to pay the Consultant the following fees:

1. Compensation for Basic Services – Lump Sum Method of Payment

Client shall pay Consultant for Basic Services items A.1 through A.3 as described above, as set forth in Exhibit A-2, excluding Printing and Distribution of Bidding Documents as follows:

a. A total Lump Sum amount of \$115,400.00, based on the following estimated distribution of compensation:

Planning and PM	\$9,400.00
Preliminary Design	\$39,900.00
Final Design	\$66,100.00

b. Consultant may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered but shall not exceed the total Lump Sum amount unless approved in writing by the Client.

c. The portion of the Lump Sum amount billed for Consultant's services will be based upon Consultant's estimate of the percentage of the total services actually completed during the billing period.

Should conditions arise, or a change in scope be requested such that the above fee would be exceeded, a revised proposal will be submitted for approval. No additional work will begin without authorization.

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.

City of Charles City

By:



By:

Full Name:

Rustin Lingbeek, PE

Full Name:

Title:

Project Manager

Title:

Exhibit A-2

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.

General Conditions

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement ("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 the 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 the Services in accordance with professional skill and care, then Consultant shall be entitled to an 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 the 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, including delivery of documents, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, no less than Consultant's standard rates.
3. The Consultant shall not be required to sign any documents, no matter by whom requested, that require a certification, guarantee, or warranty of conditions not fully known to be true or accurate by the Consultant, or that would impose liability beyond the scope of this Agreement. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification, guarantee, or warranty.

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 seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect 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. 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, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deeds; and other land use restrictions; as-built drawings; and electronic databases 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 written notice to Consultant within seven (7) days of when the Client observes or otherwise becomes aware of any changes in the Project or any defect or alleged defect in Consultant's Services. Client shall examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant within ten (10) business days of receipt and render the necessary decisions and instructions in writing so that Consultant may provide Services in a timely manner. Client's failure to provide timely notice of defects or timely review and approval shall constitute a waiver of any claims related to such defects or delays caused by late review.
4. Client shall require all utilities with facilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities 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 directed or hired 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. Consultant shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client or others directed or hired by the Client.
6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant's employees related to inappropriate or unwelcomed actions regarding the Project. This shall include, but not be limited to, providing access to Client's employees for Consultant's investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant's employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client's facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client's employees.

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 suspend performance of Services and to retain deliverables and 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 suspending Services or withholding deliverables or Instruments of Service until all invoices are paid in full, and Client shall be responsible for any additional costs incurred by Consultant due to such suspension and subsequent remobilization. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, 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. Site Safety is the responsibility of the contractor.

3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. 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 Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. 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.
2. Client agrees that it will waive any claim against Consultant related to severe weather events that exceed those addressed by existing codes and standards. Consultant's sole liability will be based on actual damages to the extent caused by Consultant's failure to meet applicable codes. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from Consultant's original interpretation through no fault of Consultant and that additional costs necessary to conform to such changes or interpretations after execution of this Agreement may be subject to an equitable adjustment in Consultant's compensation and schedule.
3. If hazardous substances are found on the project site, then Consultant may stop work until Client has remediated the site.

C. Limitations on Liability

1. To the fullest extent permitted by law, Consultant's total liability to Client for any and all claims, losses, or damages arising out of or related to this Agreement or the Project, whether based on negligence, errors, omissions, strict liability, breach of contract, or warranty, shall not exceed the lesser of (i) the total compensation paid to Consultant under this Agreement or (ii) \$500,000. If Client requests higher limits, such change must be agreed to in writing, and Consultant's fee shall increase by at least 1% for each additional \$500,000 of liability, up to a maximum limit of \$5,000,000.
2. To the extent permitted by applicable law, 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, or reputation; and 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 unforeseen severe weather events, breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
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.
4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than the earliest of: (a) the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion; (b) the date of issuance of Consultant's final invoice for acts or failures to act occurring after Substantial Completion; or (c) the date when Consultant's Services are substantially completed. The parties acknowledge that this provision may shorten the time period otherwise available under applicable law for bringing claims, and each party knowingly and voluntarily agrees to this shortened limitations period. This provision shall not apply to claims for fraud, willful misconduct, or intentional misrepresentation. Notwithstanding the foregoing, in no event shall any claim be brought more than two (2) years after the cause of action has accrued as defined herein, regardless of when the injury or damage is discovered.
5. The parties agree, to the fullest extent permitted by law, to waive any and all rights against each other and any of their contractors, subcontractors, consultants, subconsultants, construction managers, owner's representatives, employees, directors, officers, agents and assigns for any and all damages, including without limitation bodily injury, death, damage to real and personal property, and all consequential damages including delay and lost profits covered by any insurance applicable to the Project or the site upon which the Project is located.

D. Assignment

1. Aside from Consultant's assignment of amounts owed under this Agreement, 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.

2. Parties acknowledge that Consultant has subsidiaries or affiliates that hold necessary registrations, certifications or special skills or resources that may be needed for the proper performance of the Services. Consultant may subcontract or assign all or part of the Services to any of its subsidiaries or affiliates; provided, however, that Consultant shall remain liable for the performance, obligations and responsibilities of such services under this Agreement.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise in writing.
2. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the State in which the Project is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care.
3. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computer software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, 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. 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.

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 nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. 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, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CADD files or documents unless specifically agreed to in writing as part of this Agreement.

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. To the extent permitted by law, 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.