

# **SAPULPA MUNICIPAL AUTHORITY MEETING**

CITY HALL - 425 EAST DEWEY AVENUE

COUNCIL CHAMBERS, 2ND FLOOR

7:00 P.M., MONDAY, SEPTEMBER 17, 2018

MEETING PROCEDURE: Comments from the public are welcome at two different times during the course of the meeting. A Sign in Sheet is located at the back of the room. Those wishing to address the Municipal Authority are to sign in prior to the start of the meeting and identify the item(s) they wish to address. Comments concerning items scheduled on the Agenda will be heard immediately following the presentation by staff or petitioner and Comments concerning items not scheduled on the Agenda will only be heard under the Public Comments section. The Municipal Authority will act on an Item after all comments have been heard.

**PLEASE COME TO THE PODIUM WHEN THE CHAIRMAN CALLS YOUR NAME**

## **- AGENDA -**

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **MINUTES.**
  - A. Consider approving the minutes of the September 4, 2018, regular municipal authority meeting.
4. **APPOINTMENTS, AWARDS, PRESENTATIONS, AND PROCLAMATIONS.**
5. **CONSENT ITEMS:** All matters under “Consent” are considered by the Municipal Authority to be routine and will be enacted by one motion. Any Municipal Authority Trustee may, however, remove an item from consent by request.
  - A. Consider approving Claims in the amount of \$540,626.51.  
(Refer to: Purchase Order Claim Register with City Agenda.)
6. **PUBLIC HEARINGS.**
7. **ADMINISTRATION.**
  - A. Discussion and possible action regarding Professional Services Agreement for Engineering Services with Tetra Tech for the Wastewater Treatment Plant Improvements Project in the amount of \$607,500.00.
8. **NEW BUSINESS.**

9. **INFORMATIONAL ITEMS FROM CHAIRMAN, BOARD OF TRUSTEES, TRUST MANAGER, OR TRUST ATTORNEY.**

10. **PUBLIC COMMENTS:** The purpose of the Public Comments Section of the Agenda is for members of the public to speak to the Municipal Authority on any subject not scheduled on the Regular Agenda. The Municipal Authority shall make no decision or action, except to direct the Trust Manager to take action, or to schedule the matter for Municipal Authority discussion at a later date.

*Please come to the podium when the Chairman calls your name and keep your comments as brief as possible.*

11. **ADJOURNMENT.**

Posted this 14th day of September, 2018 at or before 5:00 p.m., at the Sapulpa City Hall, 425 East Dewey Avenue, Sapulpa, Oklahoma.

Name: *Amy Hoehner*

Title: *Legal Assistant*



**AGENDA ITEM**

**Municipal Authority Regular**

**3.A.**

**Meeting Date:** September 17, 2018

**Submitted By:** Shirley Burzio, City Clerk

**Department:** City Clerk

**Presented By:**

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**SUBJECT:**

Consider approving the minutes of the September 4, 2018, regular municipal authority meeting.

**BACKGROUND:**

**RECOMMENDATION:**

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**Attachments**

minutes.09-04-2018 sma

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**SAPULPA MUNICIPAL AUTHORITY**  
TRUST PROCEEDINGS  
Meeting of September 4, 2018

The Board of Trustees of the Sapulpa Municipal Trust Authority met in regular session Monday, September 4, 2018, at 7:00 o'clock P.M. in the City Hall Council Chambers, 425 East Dewey Avenue, Sapulpa, Oklahoma.

Present: Reg Green, Chairman  
Louis Martin, Jr., Vice-Chairman  
John Anderson, Trustee  
Bruce Bledsoe, Trustee  
Marty Cummins, Trustee  
Craig Henderson, Trustee  
Hugo Naifeh, Trustee

Absent: Wes Galloway, Trustee  
Charles Stephens, Trustee  
Carla Stinnett, Trustee

Staff Present: Joan Riley, Trust Manager; Rick Rumsey, Assistant Trust Manager; Pam Vann, Trust Treasurer; David Widdoes, Trust Attorney; Shirley Burzio, Secretary

**1. MINUTES, CONSENT ITEMS AND ADMINISTRATION.**

Motion was made by Vice-Chairman Louis Martin, seconded by Trustee Hugo Naifeh, to approve the following items of business:

- A.** Approve the minutes of the August 20, 2018, regular municipal authority meeting;
- B.** Approve claims in the amount of \$158,660.79;
- C.** Approve the close-out of the South Hickory Street Storm Water Project with Cherokee Pride Construction, Inc., including approval of payment of final pay request of \$20,000.00, approval of close-out documents, and establishing the applicable warranty date through June 15, 2019.

ROLL CALL: AYE-John Anderson, Bruce Bledsoe, Marty Cummins, Reg Green, Craig Henderson, Louis Martin, Hugo Naifeh. NAY-None. Motion carried 7-0.

2. **INFORMATIONAL ITEMS FROM CHAIRMAN, BOARD OF TRUSTEES, TRUST MANAGER, OR TRUST ATTORNEY.**

- A. Status report from Tetra Tech regarding various city and trust authority projects was presented for discussion. There was no action taken by the board.

3. **PUBLIC COMMENTS:**

There were no comments made to the board.

4. **ADJOURNMENT.**

There being no further business to consider, motion was made by Trustee John Anderson, seconded by Trustee Craig Henderson, to adjourn the meeting. Motion carried unanimously.

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Chairman

Attest:

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Secretary



**Consent Agenda 5.A.**

**Municipal Authority Regular**

**Meeting Date:** September 17, 2018

**Submitted By:** Amber Fisher, Accounts Payable Clerk

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**SUBJECT:**

Consider approving Claims in the amount of \$540,626.51.

(Refer to: Purchase Order Claim Register with City Agenda.)

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**AGENDA ITEM**

**Administration 7.A.**

**Municipal Authority Regular**

**Meeting Date:** September 17, 2018

**Submitted For:** Rick Rumsey, Assistant City Manager

**Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Public Works

**Presented By:** Rick Rumsey

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**SUBJECT:**

Discussion and possible action regarding Professional Services Agreement for Engineering Services with Tetra Tech for the Wastewater Treatment Plant Improvements Project in the amount of \$607,500.00.

**BACKGROUND:**

This agreement with Tetra Tech is for the engineering services needed for the Sapulpa Wastewater Treatment Plant Improvements project. This project consists of the addition of two new blowers and the extension of the existing blower shelter, rehabilitation of the existing U system including new ballasts and a backup generator and 2-ton crane, new metal sludge dewatering building, and replacement of existing submersible pumps. The scope of services includes design, bidding, development, project management, resident project representation, preparation of operations manual, and inspections on an as needed basis. For additional information regarding this item, please refer to the attachment.

**RECOMMENDATION:**

Staff recommends Council/Trustees approve Agreement and authorize the Mayor/Chairman to execute same.

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**Fiscal Impact**

**Amount:** \$607,500.00

**To be paid from:** Sewer System Development & Extension Fee Fund

**Account number:** 49-526-311

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**Attachments**

Agreement - Tetra Tech

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**Tetra Tech, Inc.**  
**Professional Services Agreement for Engineering Services**

This Agreement is made and becomes effective this 10th day of September, 2018, between **Sapulpa Municipal Authority** (Client) and **Tetra Tech, Inc.** (Consultant), a Delaware corporation.

Client hereby retains Consultant to perform engineering services in connection with a Project described as **Sapulpa Wastewater Treatment Plant Improvements** and as further described in Attachment A. Consultant agrees to perform the services in consideration of the compensation described in Attachment A and in accordance with the terms described in the attached Standard Terms and Conditions.

This Agreement consists of this document together with Attachment A - Project Requirements and the attached Standard Terms and Conditions. This Agreement between the Client and Consultant supersedes all prior written and oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument. Signature by facsimile or e-mail shall be deemed original.

In executing this Agreement, the undersigned also acknowledge their authority to bind the parties to all terms and conditions.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first written.

**Sapulpa Municipal Authority**  
P.O. Box 1130  
Sapulpa, Oklahoma 74067

**Tetra Tech, Inc.**  
7645 East 63rd Street, Suite 301  
Tulsa, Oklahoma 74133  
918.249.3909

By \_\_\_\_\_  
*Client's Authorized Signature*

By \_\_\_\_\_  
*Consultant's Authorized Signature*

\_\_\_\_\_  
*Printed Name*

Felix R. Belanger, P.E.  
Vice President

\_\_\_\_\_  
*Title*

**Professional Services Agreement**  
**Attachment A – Project Requirements**

**Client:** Sapulpa Municipal Authority

**Project Description**

Sapulpa Wastewater Treatment Plant Improvements

**Scope of Services**

Consultant shall provide the services as detailed in the Scope of Services attached hereto.

**Special Assumptions**

**Project Schedule**

Task A - Design Report, 150 Days after Notice to Proceed

Task B - Preliminary Design, 90 Days after approval of Task A

Task C – Final Design, 60 Days after receiving review comments from Task B

Task D – Bidding, 60 Days after Client authorization

Tasks E & F – Construction Phase Services, 12 months after construction contract award by Client

Task G – Preparation of O&M Manual, 60 days after construction completion

**Method of Compensation**

**Lump Sum** Compensation for these services shall be a lump sum of \$607,500.

**Supplemental Terms and Conditions**

## ATTACHMENT A

### SCOPE OF SERVICES

#### WASTEWATER TREATMENT PLANT IMPROVEMENTS SAPULPA REGIONAL WASTEWATER TREATMENT PLANT CITY OF SAPULPA, OKLAHOMA

##### I. SCOPE OF PROJECT:

City of Sapulpa (Sapulpa) owns and operates the Regional Wastewater Treatment Plant (WWTP) under Oklahoma Department of Environmental Quality (DEQ) permit OK0043974. The plant is a Sequential Batch Reactor (SBR) activated sludge process that became operational around 2002. The permitted annual average day design capacity for the plant is 3.5 million gallons per day (MGD).

In 2017, Sapulpa retained Tetra Tech (Engineer) to prepare the report titled *West Side/SeneGence Sewer Plan*, to address the anticipated growth to the west side of the City from the proposed SeneGence complex. This report recommended interim and long-term solutions to meet the anticipated growth. Sapulpa desires to implement the interim solutions as outlined in the report and has requested Tetra Tech to provide professional engineering services to accomplish these objectives which is the purpose of this project. These objectives are further described as seen below and as listed under the scope of work.

The goal of the interim solution is to implement necessary improvements at the wastewater treatment plant to meet the projected growth from SeneGence and the west side developments. The interim solution does not increase the current permitted design hydraulic capacity of 3.5 MGD. However, it does increase the aeration capacity to meet current and projected biological waste load and provides mechanical sludge dewatering facility. Specifically, the interim solutions included the following:

- Increased aeration capacity with the addition of two new blowers, air piping and valves and the extension of the existing blower shelter to accommodate the two new blowers.
- Rehabilitation of the existing UV system to include new ballasts and a backup generator and a new 1-TON jib crane.
- A new metal pre-engineered sludge dewatering building (approximately 1,000 SF) with space for two new belt filter presses, sludge conveyor, sludge feed pumps and a loading area. For the interim improvements, only one belt press was included. The existing sludge drying beds will be used to meet DEQ redundancy requirements. A second belt filter press is included under the long-term solution, but is not included as part of the scope of work for the interim solution.

- Electrical and controls modifications to incorporate the proposed improvements which include running power to the new blowers, power requirements for the new pre-engineering metal building, new lights for the new blower shelter extension, power for the new UV system, and integration of the new I/Os into the existing SCADA system.
- NPW Improvements. Replace existing submersible NPW pumps and associated piping and valves.
- Sludge Disposal. Sapulpa currently disposes sludge in a municipal landfill as approved by DEQ. The City has indicated some interest in investigating the possibility of land application. As part of the design efforts for the interim improvements, an evaluation of the sludge disposal methods is recommended.
- The estimated budgetary cost for the interim solutions was \$4,547,050 (Year 2017) for engineering and construction.

The long-term solution (not part of this project scope) will increase the permit design capacity of the plant from 3.5 MGD to 4.25 MGD and the long-term solution was intended to meet the projected needs over the next 30 years, or through year 2050.

In the meantime, Sapulpa desires to implement the interim solutions and has secured funding from the Oklahoma Water Resources Board (OWRB). Sapulpa requested engineering proposal to provide professional engineering services to implement the interim solutions, which is the purpose of this project. The project detailed scope of work is provided below.

## II. SCOPE OF WORK

The scope of the project includes the following distinctive phases:

- A. Design Report
- B. Preliminary Design (60%)
- C. Final Design
- D. Bidding
- E. Construction Administration
- F. Resident Project Representation (20 hrs/week is estimated)
- G. Preparation of Operation and Maintenance (O&M) Manual

A detailed scope of services associated with each phase is described below.

- A. Design Report

The proposed project will require a permit from the DEQ for construction and must comply with the guidelines established by the OWRB as the funding agency. The

purpose of the design report is to develop and finalize the design decisions and to document in a design report for formal submission to DEQ and OWRB for their approval.

1. Design Concepts. As part of developing and finalizing the design concepts, Engineer will conduct a brainstorming session with Sapulpa's staff and the design team. The preferences of the Sapulpa's staff will be discussed and considered along with the ideas of the design team.
  - Coordinate and arrange field visit for Owner's staff to visit other plants using comparable dewatering technology. Travel costs for city staff will be born by the Owner. Field visits to likely include up to 2 plants in Oklahoma and 1-out of state plant (to be decided) for centrifuge system.
2. SBR Aeration Capacity Improvement. Develop preliminary layout for the additional diffusers in each of the four basins and air pipe extensions.
3. Rehabilitation of the UV System. Develop plans to replace the existing ballast and develop new backup generator design. The existing UV system is more than 17 years old; as part of the evaluation, determine the cost benefit of replacing the entire UV system versus rehabilitation.
4. Sludge Dewatering Building. The 2017 report recommended belt filter presses as the mechanical sludge dewatering process. As part of this evaluation, engineer will evaluate the cost benefit of centrifuge as well as the belt filter press for Owner consideration. This task will also develop the design for a new pre-engineered metal building (1,000 SF), layout to accommodate the mechanical dewatering units, sludge feed pumps, polymer feed facility and appurtenances.
5. Non-Potable Water (NPW) System. The existing NPW water system that uses effluent has not been in operation for many years. Engineer will evaluate and design rehabilitation to provide NPW for the mechanical dewatering facility.
6. Sludge Disposal Evaluation. Sapulpa currently disposes sludge in a municipal landfill as approved by DEQ. The City has indicated some interest in investigating the possibility of land application. This task will complete an evaluation of the sludge disposal methods to provide a cost benefit comparison of landfill disposal versus beneficial land use and make recommendation for Owner's considerations.
  - Coordinate and arrange field visit for Owner's staff to cities (Tulsa and Ponca City) practicing land application. Travel cost for City staff will be borne by the Owner.
7. Electrical and Controls Modifications. Develop new electrical feed concepts and modification to existing electrical and controls systems to accommodate the proposed improvements.
8. Geotechnical Investigation. Engineer will complete a geotechnical report necessary for the detailed design phase. The geotechnical report shall document subsurface conditions based on field drilling at the site. The report shall provide the geotechnical information necessary to perform the complete design of the

facilities and provide characterization of the subsurface conditions for use in the design phase. The following is an estimate of number of bore holes:

- Approximately three bore holes at the proposed dewatering building location
- Approximately two bore holes at the blower shelter extension.

9. Report Format. The design report will follow the OWRB guidelines and format.
10. Categorical Exclusion. Sapulpa has already secured Categorical Exclusion determination from the OWRB and therefore, detailed environmental review and the environmental information documents are not necessary for the project and are not included in the basic scope.
11. Design Report. The Engineer shall prepare the design report documenting the finalized design decision and specific design criteria and address the DEQ standards and compliance requirements for the proposed improvements. The report will also include an updated cost estimate. Engineer will prepare three copies of the design report for Owner's review and comments. Engineer shall coordinate with the DEQ and OWRB to solicit comments and approval for the proposed design concepts. The finalized design report will serve as the design document for final submission to the DEQ for securing the permit to construct.

B. Preliminary Design Phase (60%)

The preliminary design phase will result in a preliminary set of plans and specifications suitable for owner review and acceptance. The detailed scope of services for each category is outlined below. The detailed scope of services for each category is outlined below.

1. Preliminary Design. The preliminary design shall consist of the following tasks
  - a. Project Management. Project management of the preliminary design shall include the following:
    - i. Project Initialization and setup, project accounting
    - ii. Project team coordination
    - iii. Preparation of Progress Report to Owner. In addition, Engineer shall also conduct a monthly progress review meeting with the Owner.
    - iv. General project communications with the owner and other regulatory agencies for project approval.
    - v. Engineer's senior design and construction staff shall review the results of certain design activities and the deliverables prior to submission
  - b. DEQ and OWRB Coordination. Engineer will assist Sapulpa in providing project information required by the funding guidelines and provide project coordination through the project preliminary design phase.
  - c. Surveying.

- i. Design Survey. Engineer shall provide all surveying required to produce the necessary design documents. The survey will include 1-foot topographic mapping of the existing site area necessary for design of the new dewatering building and the blower shelter extension.
      - ii. Legal/Easement Survey. All improvements are within the existing boundary of the WWTP and therefore, new easements are not required.
- d. Preliminary Design Documents. The preliminary design shall result in approximately 60% of the total design efforts and include the following:
  - i. Design Criteria. List the design criteria, standards, and codes which are applicable to the design.
  - ii. Permits. List the permits required to complete the Project and their estimated costs
  - iii. Process Design and Evaluations. Complete the detailed process design and summarize the results. Summarize critical evaluations and calculations made to determine type of equipment or processes recommended for use in the project.
  - iv. Drawings and Sketches. Prepare preliminary drawings and/or sketches of the planned improvements, which will exhibit the concept for the proposed improvements including:
    - 1. A schematic of the proposed improvements.
    - 2. A proposed plan view layout of the improvements, which would exhibit both the proposed layout of the unit processes and the general site improvements planned.
    - 3. Plan views, sections, and elevations of the various unit processes as appropriate.
  - v. Equipment and Materials. Prepare preliminary specifications and/or summaries of the equipment and materials recommended for use in the final design.
  - vi. Mechanical. Summarize the mechanical requirements of the Project including unit piping systems, ventilation, heating, and air conditioning. Prepare 60% level mechanical drawings.
  - vii. Structural. Develop structural plans and sketches for the proposed improvements. Prepare 60% level structural drawings
  - viii. Civil. Develop civil plans and 60% level civil drawings.
  - ix. Electrical, Instrumentation, and Controls. Summarize the intended design of the electrical, instrumentation, and control facilities proposed for the Project. This work shall include coordination with the electric utility. Prepare 60% level electrical and instrumentation drawings.

- x. Preliminary Specifications. Prepare preliminary specification outlines, manufacturer information for critical equipment.
- xi. Project Schedule. Prepare a composite schedule of activities required to complete the Project as required.
- xii. Opinion of Probable Cost. Prepare an opinion of probable cost based on the preliminary design.
- e. Deliverables. Engineer shall submit Three (3) copies of the preliminary design documents for review by the Owner.
- f. Preliminary Design Workshop. Engineer shall conduct preliminary design workshop with the Owner to solicit comments.
- g. Presentations. Engineer shall make a presentation of the preliminary design to the governing body if requested by the Owner.

C. Final Design.

The final design phase will result in a complete set of plans and specifications suitable for submission to the ODEQ and OWRB for formal approval to construct the facility. The final design will commence upon written authorization by the Owner. The final design will include the tasks outlined below.

1. Final Design. The final design shall consist of the following tasks:

- a. Project Management. Project management of the final design shall include the following:
  - i. Project coordination, project accounting
  - ii. Project team coordination
  - iii. Preparation of Progress Report to Owner. In addition, Engineer shall also conduct a monthly progress review meeting with the Owner as directed by the Owner.
  - iv. General project communications with the owner and other regulatory agencies for project approval.
- b. Agency Coordination. Engineer will assist Sapulpa in the coordination with DEQ/OWRB as required in the funding guidelines.
- c. Quality Control Review. Engineer's senior design and construction staff shall review the results of certain design activities and the deliverables prior to submission.
- d. Final Surveying. Engineer shall provide all surveying to supplement the preliminary design surveying as required to complete the final design.
- e. Plans and Specifications. Complete the design of all Project elements and finalize all plans and specifications as follows:
  - v. Unit Process Design. Finalize the design of improvements to all unit processes presented in the preliminary design.
  - vi. Structural Design. Complete the design of all structures.

- vii. Sitework. Prepare the design of all site-related improvements including, but not limited to roadways, drainage facilities, grade structures, fencing, and miscellaneous earth work.
- viii. Piping. Prepare the final design of all associated yard piping.
- ix. Mechanical Design. Provide and coordinate the final mechanical design of the required improvements.
- x. Electrical, Instrumentation, and Controls Design. Provide and coordinate the final electrical design of the required improvements. This shall include coordination with the electric utility to supply the electrical service to the plant site.
- xi. Contract and Bidding Documents. Prepare the contract and bidding documents.
- xii. Prepare the final estimate of probable construction cost.
- f. Design Review. Engineer shall conduct one design review at approximately 90%. Three copies of the 90% plans shall be provided to the Owner for review one week in advance of the review session.
- g. Permit Applications. Prepare the necessary applications for construction permits and provide the associated sketches, plans, specifications, and other information. Assist the Owner in the submission of each application. All permit fees which may be required shall be the responsibility of the Owner.
- h. Deliverables. Submit five sealed copies of the final plans and specifications. Three copies are for ODEQ Application for Permit to Construct, and two copies are for the owner.
- i. Final Review and Revision. Engineer will incorporate any final comments from the final review by the Owner and DEQ by formal revision.
- j. Presentation. Engineer shall make a presentation of the final plans and specifications to the Owner's governing body if requested by owner.
- k. Bid Set of Plans and Specifications. Engineer shall issue up to 10 copies of plans and specifications for contractor use during bidding.

D. Bidding: The bidding phase will commence after the approval of the detailed design phase and upon issuance of Owner's written notice to proceed. The scope for the bidding phase will include the following:

1. Advertisement. Coordinate the bid advertisement with the Owner's staff.
2. Pre-Bid Conference. Conduct a pre-bid conference for the Project to address critical Project matters with potential bidders.
3. Addenda. Prepare and issue all addenda determined necessary throughout the bidding phase.
4. Bid Opening. Attend and assist the Owner at the bid opening.

5. Bid Tabulations and Review. Review all bids, prepare a bid tabulation and investigate the qualifications of the apparent low bidder.
  6. Contract Award. Prepare a recommendation for award of the construction contract based on the bid tabulation and investigation of the apparent low bidder.
  7. Contract Preparation. Coordinate the preparation and execution of construction contract documents.
- E. Construction Administration: In preparation of this scope of work, Engineer estimated the total construction contract period to be approximately 12 calendar months. Engineer shall provide the construction administration and resident project representative services for the construction period which may be extended, if required, by mutual consent as identified in the construction contract documents and summarized below:
1. Conformed Plans and Specifications. Engineer shall develop a conformed set of construction documents that are to be issued to the Owner and Contractor prior to start of construction. These documents will consist of plans and specifications that shall incorporate addendum (if issued) during the bidding period and shall be used for construction of the project.
  2. Pre-Construction Conference. Conduct the pre-construction conference and issue the necessary memorandum. The conference shall initialize the construction administration services. The duration of the construction phase is anticipated to be 12 calendar months.
  3. Construction Progress Meetings. All progress and coordination meetings necessary during the Project shall be coordinated by the Engineer. Chairing of said meetings shall be as appropriate to the meeting being held but shall generally be conducted by the Contractor. In general, progress meetings shall be conducted a minimum of monthly during the Project and as often as weekly during critical phases of any work.
  4. Submittal Review. Engineer shall review Contractor's material submittals, equipment shop drawings, and material test certifications for compliance with the approved plans and specifications. This Agreement assumes that each Contractor submittal requires one original review and only one revision review by Engineer for a maximum of two (2) times for general conformance with Contract Documents. This agreement assumes that a maximum of 40 submittals will be reviewed by the Engineer during the contract period.
  5. Request for Information. Engineer shall track the request and responses, along with the dates of request and response. Engineer shall respond to all RFIs in a timely manner and provide Owner with a copy of all responses for concurrence prior to submission to Contractor.

6. Pay Estimates. Prepare and process construction pay estimates and make recommendations for each based upon details provided by the Resident Project Representatives.
  7. Contractor's Schedule. Review and make comments on the contractor's proposed construction schedules. Monitor the progress of each contractor relative to the approved schedule throughout the construction Project and report problems, concerns, and proposed remedies to Owner.
  8. Contractor's Claims. Evaluate to present options and opinions for consideration by the Owner on claims submitted by the contractors.
  9. Change Orders. Evaluate and prepare change orders necessary for the Project and make recommendation to Owner.
  10. Resident Project Representative(s). Supervise the Resident Project Representative(s). Reports of the daily construction activities shall be prepared by the Resident Project Representative.
  11. Clarifications. Engineer shall provide clarifications and decisions in accordance with the contract documents on question regarding the work or intent of the project requirements.
  12. Visual Documentation. Compile pre-construction and construction photographic and video documentation of the Project.
  13. Pre-Final Inspections. Conduct pre-final inspections with the contractor and prepare the necessary punch lists for distribution.
  14. Final Inspections. Conduct the final inspections after completion of the punch lists by the contractors.
  15. Acceptance. Prior to final acceptance of the project, Engineer shall review the contractual requirements of the Contractor and, only upon receipt and satisfaction of those requirements, recommend acceptance of the project by the Owner. Review shall include acceptable performance tests of equipment and sequencing required by the construction contract.
  16. Record Drawings. Update electronic files (ACAD) of construction drawings to reflect the "as-constructed" configuration of the Project. Submit to Owner 1 set of reproducible record drawings at completion of the Project.
- F. Resident Project Representation. A portion of the construction inspection and onsite services will be performed by the Owner. As such, part-time resident project representation will be provided by the Engineer and/or representative. The basic scope is based on a 12-calendar-month construction period and approximately 20-hours per week of onsite service. See paragraph (o) below for construction services contingency.

The RPR services shall be provided as required in the construction contract documents by reference to the "Resident Project Representative." These services would be

provided in accordance with part II.B.1 of this attachment (below) which is a modified version of "Duties, Limitations, and Responsibilities of the Resident Project Representative," derived from the Standard General Conditions of the Construction Contract, prepared by the Engineer's Joint Contract Documents Committee, 1990 edition, also known as the "Joint Committee Documents." The duties, responsibilities and limitations of authority of the Resident Project Representative shall be as outlined in Section E, Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative. Engineer shall submit resumes of proposed Resident Project Representatives for review and approval by the Owner if requested.

1. Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative. The Resident Project Representative is the Owner's and the Engineer's agent at the site, will act as directed by and under the guidance of the Engineer, and will confer with the Engineer regarding the Resident Project Representative's actions. The Resident Project Representative's dealings in matters pertaining to the on-site work shall in general be with the Engineer and Contractor, keeping Owner advised as necessary. The Resident Project Representative's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with Owner with the knowledge of and under the direction of Engineer. The Resident Project Representative shall conduct duties pertaining to the Project in accordance with the procedures and policies of the Engineer with guidelines to be provided by the Engineer to the Resident Project Representative. The duties and responsibilities of the Resident Project Representative are as follows:
  - a. Schedules. The Resident Project Representative shall review the progress schedule, schedule of shop drawing submittals and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
  - b. Conferences and Meetings. The Resident Project Representative shall attend meetings with Contractor, such as pre-construction conferences, progress meetings, job conferences, and other Project-related meetings, and ensure copies of the meeting minutes are generated by the responsible party and appropriately distributed.
  - c. Liaison. The Resident Project Representative shall serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, and assist in understanding the intent of the Contract documents; and assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
  - d. Shop Drawings and Samples. The Resident Project Representative shall record date of receipt of shop drawings and samples. The Resident

- Project Representative shall receive samples which are furnished at the site by Contractor and notify Engineer of availability of samples for examination. The Resident Project Representative shall advise Engineer and Contractor of the commencement of any work requiring a shop drawing or sample if the submittal has not been approved by Engineer.
- e. Review of Work, Rejection of Defective Work, Inspections and Tests. The Resident Project Representative shall conduct on-site observations of the work in progress to assist Engineer in determining if the work is, in general, proceeding in accordance with the Contract documents. The Resident Project Representative shall report to Engineer whenever Resident Project Representative believes that any work is unsatisfactory, faulty, or defective, or does not conform to the contract documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of work that Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval. The Resident Project Representative shall verify that tests, equipment and system start-ups, and operating and maintenance training are conducted in the presence of appropriate personnel and that Contractor maintains adequate records thereof; and observe, record, and report to Engineer appropriate details relative to the test procedures and start-ups. The Resident Project Representative shall accompany visiting inspectors representing public or other agencies having jurisdiction over the Project; record the results of these inspections and report to Engineer.
  - f. Interpretations of Contract Documents. The Resident Project Representative shall report to Engineer in writing when clarifications and interpretations of the Contract documents are needed.
  - g. Modifications. The Resident Project Representative shall consider and evaluate Contractor's suggestions for modifications in drawings or specifications and report with Resident Project Representative's recommendations to Engineer.
  - h. Records. The Resident Project Representative shall maintain at the job-site orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents including all work directive changes, addenda, change orders, field orders, additional drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the contract documents, progress reports, and other Project-related documents. The Resident Project Representative shall keep a diary and log book, recording Contractor hours on the job site, weather conditions,

data relative to questions of work directive changes, change orders or changed conditions, list of job-site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer. The Resident Project Representative shall keep a current log book of acceptable pay items, recording the location and quantity of all pay items delivered, used, or completed on a day-to-day basis including any necessary substantiating computations. The Resident Project Representative shall record names, addresses, and telephone numbers of all contractors, subcontractors, and major suppliers of materials and equipment. The Resident Project Representative shall record all pertinent information regarding equipment and materials delivered to Project site. The Resident Project Representative shall evaluate and note compliance of delivered equipment and materials with respect to approved submittals. The Resident Project Representative shall maintain an updated "red-line" record drawing set of construction plans, reflecting all addenda and changes to the Project during the construction, and submit to Engineer upon Project completion.

- i. Reports. The Resident Project Representative shall:
  - 1) Furnish Engineer periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of shop drawing and sample submittals.
  - 2) Consult with Engineer in advance of scheduled major tests, inspections, or start of important phases of the work.
  - 3) Draft proposed change orders and work directive changes, obtaining backup material from Contractor and recommend to the Engineer change orders, work directive changes, and field orders.
- j. Report immediately to Engineer and Owner upon the occurrence of any accident.
- k. Payment Requests. The Resident Project Representative shall review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, work completed, and material and equipment delivered at the site but not incorporated in the work.
- l. Certificates, Operation and Maintenance Manuals. During the course of the work, The Resident Project Representative shall verify that certificates, operation and maintenance manuals, and other data

- required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the contract documents, and have this material delivered to Engineer for review and forwarding to Owner prior to final payment for the work.
- m. Completion. Before substantial completion, The Resident Project Representative shall submit to Contractor a list of observed items requiring completion or correction. The Resident Project Representative shall conduct a final inspection in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed or corrected. The Resident Project Representative shall observe that all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance.
  - n. Limitations of Authority.
    - 1) The Resident Project Representative shall not exceed limitations of Engineer's authority as set forth in the Agreement or the Contract documents.
    - 2) The Resident Project Representative shall not undertake any of the responsibilities of the Contractor, subcontractor, or Contractor's superintendent.
    - 3) The Resident Project Representative shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the contract documents.
    - 4) The Resident Project Representative shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the work.
    - 5) The Resident Project Representative shall not authorize Owner to occupy the Project in whole or in part.
    - 6) The Resident Project Representative shall not participate in specialized field or laboratory tests or inspections conducted by others except specifically authorized by Engineer in writing.
  - o. Construction Services Contingency. Should the Contractor fail to complete the Project in the contracted construction period (as identified in the bid documents of the Project and as formally adjusted for weather considerations and additional work not associated with Owner-requested scope changes), the Engineer shall provide continuing construction services. The services to be provided shall be identical in nature to the services identified in previous sections of this detailed scope of services and shall be considered as additional services or as

justification for budgetary extension, if so required, to compensate Engineer for all additional duties performed.

- G. Preparation of Operation and Maintenance (O&M) Manual. The O&M manual will be prepared based on the recommendation of the Environmental Protection Agency (EPA) publication "Consideration for Preparation of Operation and Maintenance Manual" (EPA-430/9-764-001). The scope of this task is to update the existing O&M manual to include the proposed improvements and any specific modifications to the existing process. The update will 12 chapters in the existing O&M manual as detailed below.

***Chapter 1 — Introduction. This chapter will cover the following:***

Description and Purpose of Manual  
Manual User Guide  
References and Updating of the Manual  
Management's Responsibility  
Operating Personnel's Responsibility  
Description of Plant Type and Flow Pattern  
Training and Publications

***Chapter 2 — Permits and Standards. This chapter will cover the following:***

OPDES Permit  
Effluent Requirements/Parameter Limitations  
Discharge Monitoring Reports  
Operating Records and Report  
ODEQ Rules and Regulations  
Noncompliance and Bypass Reporting Requirements  
Penalties for Permit Violations  
Water Quality Standards  
Oklahoma Hazard Communication Standard  
State Permits

***Chapter 3 — Description, Operation and Control of Wastewater Treatment Facilities:***

This chapter will, for each major unit processes both existing and new, provide a descriptive summary, relationship to adjacent units, description of major component, common operating problems, control strategy, normal/alternative/emergency operating procedures, and start-up techniques.

***Chapter 4 — Description, Operation and Control of Sludge Processing Facility:***

This chapter will, for each major unit processes both existing and new, provide a descriptive summary, relationship to adjacent units, description of major component, common operating problems, control strategy, normal/alternative/emergency operating procedures, and start-up techniques. The following unit process will be included:

SBR Waste Activated Sludge (WAS) Pumps  
Aerobic Digesters  
Sludge Pumping  
Mechanical Dewatering facility to include sludge feed pumps, polymer feed system and sludge storage.

***Chapter 5 — Personnel. This chapter will cover the following:***

Staffing Requirements Personnel Qualifications

Operator Certification Training

Training Sources

Personnel Records

Job Description

**Chapter 6 — Laboratory. This chapter will cover the following:**

General

Sampling Procedures

Standard Laboratory Procedures

OPDES Compliance Testing Process Control Testing Laboratory Safety

Laboratory Records Laboratory Operations.

**Chapter 7— Record. This chapter will cover the following:**

Importance of Records

Records of Plant Operations

Daily Records

Monthly Records

Annual Report

Operation and Maintenance Records

Personnel Records

Emergency Conditions Records

Special Reports.

**Chapter 8 — Maintenance.** Development of a computerized maintenance system or the software is not included in the basic scope and will be provided as additional services, if requested and approved by the Owner. This chapter will cover the following:

General

Equipment Record System

Equipment Number System

Use of Maintenance System

Summary of Reference to Manufacturer's Preventive Maintenance Schedules

Planning and Scheduling Procedures

Stockroom and Inventory Procedures

Costs and Budgets for the Maintenance Operation

Housekeeping Procedures

Summary of Special Tools and Equipment

Summary of Warranties

Contract Maintenance

Maintenance Training Description

Basic Training and Special Training

**Chapter 9 — Emergency Operating and Response Program. This chapter will address the following:**

General Vulnerability Analyses and Emergency Response Procedures

Methods to Reduce Vulnerability

Mutual Aid Agreements

Emergency Equipment Inventory

Preserving Treatment System Records

Coordinating Instructions with Police and Fire Departments  
Personnel Responsibilities  
Emergency Response Center  
Sources of Auxiliary Personnel  
Emergency Telephone Numbers List

***Chapter 10 — Safety. This chapter will cover the following:***

General Management's Safety Responsibilities  
Safety Problems Unique to the Owner's Facilities  
Sewer Maintenance Hazards  
Electrical System Hazards  
Mechanical Equipment Hazards  
Explosion and Fire Hazards  
Physical Injury Hazards  
Bacterial Infections and Health Hazards  
Oxygen Deficiencies and Noxious Gas Hazards  
Laboratory Hazards  
Process Chemicals  
Properties of Common Wastewater Gases  
Safety Equipment  
General Safety Practices  
Safety Program  
Safety References in O&M Library  
Safety Training  
Emergency Telephone Numbers

***Chapter 11 — Utilities. This chapter will summarize the information for the following utilities:***

Electrical System  
Natural Gas System  
Telephone System  
Water System

***Chapter 12 — Electrical System. This chapter will summarize the electrical system information:***

Power Source  
Power Distribution System Process Monitoring  
Alternate/Backup Power

***Chapter 13 — Appendixes***

Plant Design Criteria, OPDES Permit, DEQ standards  
NPDES Reporting Requirements Handbook  
Sewer Use Ordinance and User Charge Ordinance, Sample Forms  
OWRB Rules, Chapter 45, Oklahoma's Water Quality Standards

## Tetra Tech, Inc.

### Engineering Services Standard Terms & Conditions

**Services** Consultant will perform services for the Project as set forth in Attachment A and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

**Compensation** In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

**Fee Definitions** The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

**Payment Terms** Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

**Additional Services** The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

**Site Access** The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

**Underground Facilities** Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

**Regulated Wastes** Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

**Contractor Selection** Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

**Ownership of Documents** Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement

are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

**Standard of Care** Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

**Period of Service** This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule in Attachment A. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

**Insurance and Liability** Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute  
Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate  
Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage  
Professional Liability (E&O) - \$1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

**Indemnification** Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

**Dispute Resolution** The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

**Suspension of Work** The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

**Termination** The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices, together with all costs arising out of such termination, within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

**Authorized Representative** The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute

contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

**Project Requirements** The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

**Independent Consultant** Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

**Compliance with Laws** Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

**Permits and Approvals** Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

**Limitation of Liability** In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed \$50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

**Consequential Damages** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

**Waiver of Subrogation** Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

**Environmental Matters** The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

**Cost Opinions** Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

**Contingency Fund** The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

**Safety** Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

**Information from Other Parties** The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

**Force Majeure** Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

**Waiver of Rights** The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

**Warranty** Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

**Severability** Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

**Survival** All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

**Assignments** Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

**Governing Law** The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

**Collection Costs** In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

**Equal Employment Opportunity** Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

**Attorney Fees** Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

**Third Party Beneficiaries** Nothing 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 entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

**Lien Rights** Consultant may file a lien against the Client's property in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by Consultant are considered property improvements and the Client waives the right to any legal defense to the contrary.

**Captions** The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.