



October 10, 2019

Mr. Keith Kurz
City of Grand Island
City Hall, 100 East First Street
Grand Island, Nebraska 68801

RE: Proposal for North Moore's Creek Wetland Mitigation Bank
Feasibility Study and USACE Preliminary Review and Prospectus

Dear Keith:

Thank you for the opportunity to submit this proposal for North Moore's Creek Wetland Bank project. Based on our understanding of the project, Felsburg, Holt and Ullevig (FHU) will prepare a feasibility study for the proposed mitigation bank and, if acceptable to the City, move forward with the development of a project Prospectus for the US Army Corps of Engineers (USACE) and their preliminary review of the project as a wetland and stream mitigation bank.

The proposed project is located on the City's 80-acre site (approximately 1200 linear feet west of North Broadwell Avenue on the north side of Hwy 281. The information used to prepare this proposal is based on our conversation during a scoping meeting September 11, 2019 and a site visit following that meeting.

Based on the site visit, the property appears appropriate for development of a mitigation bank. Additional hydrology could be obtained by removal of two upstream weirs. Stream credits could be obtained by restoring stream meanders on site, increasing the length of the straightened channel, and developing stream bank habitat. Wetland credits could be obtained by creating overbank areas to retain water and expand existing wetlands. The existing borrow pit could be modified to create a more natural lacustrine area. With the removal of grazing and rubble piles, overall habitat quality can be improved.

DESCRIPTION OF SERVICES

Task I) Project Management and Meetings

Objectives: Provide for the overall project management, administration and project coordination.

Deliverables: Monthly invoices; monthly progress reports; monthly schedule updates; and progress meeting and other meeting minutes

Task I.1 Project Management and Administration

The ENGINEER shall monitor progress and schedule and facilitate coordination of the project design elements; prepare monthly invoicing with estimated percentage of work complete by contract task; prepare monthly progress reports; provide staffing management and contract administration; maintain communication with the City of Grand Island (CITY); and maintain Quality Control.

Task 1.2 Progress Meetings

ENGINEER will conduct progress meetings once a month (on average) with the CITY for the duration of the PROJECT to provide updates on project progress, budget and schedule status, and any project issues. Anticipated future activities and CITY needs will be discussed. ENGINEER will be responsible for arranging the meeting, preparing an agenda, conducting the meeting, and taking and distributing meeting notes. Six (6) progress meetings are assumed based on the preliminary schedule (five (5) of those will be by phone or Skype; one (1) of the meetings will be in Grand Island as part of the submittal of conceptual plans and the OPC). This task does not include coordination meetings with Utilities or Agencies.

Task 2) Data Collection

Objectives: Coordinate and collect available record drawings, reports, and studies from the CITY, Utility Providers, and other Agencies; and collect field data through site visits, obtain a limited amount of topographic survey, and a wetland delineation and stream assessment (per USACE methodology), and site visits.

Deliverables: Utility tracking log, topographic survey, wetland delineation and NeSCAP stream assessment report, and drone imagery.

Task 2.1 Miscellaneous Data Collection and Desktop Review

The ENGINEER will work the CITY to obtain and then review available GIS information, record drawings, hydrologic and hydraulic models, and previous studies from the CITY. FHU would also like the City to provide any title information on the project site.

Task 2.2 Site Visit

The ENGINEER has allotted time for one (1) site visit to evaluate any changes in site conditions, compare site conditions against topographic survey, and aid in design.

Task 2.3 Utilities Coordination

The ENGINEER will coordinate with utility providers in the project area to notify them of the project and requests information on any utilities they may have in the area. Known transmission lines in the area will likely require more intensive coordination. The ENGINEER has allotted time for one (1) phone or Skype meeting with Nebraska Public Power District (NPPD) under this task. The ENGINEER will be responsible for setting up and updating a utility tracking log throughout the project.

Task 2.4 Topographic Survey

FHU will have Miller and Associates, Consulting Engineers, P.C. (Miller and Associates) perform topographic survey for the project area as shown in Exhibit A and noted herein. Topographic survey under this task shall include culverts and roadway crossings on Moore's Creek along the north property line, a crossing near the center of the site, and along the south property line (Hwy 281). Survey shall be performed in accordance with City of Grand Island standards, as applicable.

Task 2.5 Wetland Delineation and NeSCAP Stream Assessment

Wetland Delineation: The ENGINEER shall complete the wetland delineation for the project area. Initial field services were included in a previous contract with the City. This task will include a review of existing data such as National Wetland Inventory maps, NHD streams, NRCS soil survey

data, and aerial photographs; supplemental field work for the delineation; processing of the delineated boundary; and preparation of a wetland delineation report.

The field investigation will follow methodology outlined in the USACE Wetlands Delineation Manual (1987) and Regional Supplement to the USACE Wetland Delineation Manual: Midwest Region (2010). The wetland delineation report will include photographs of the site, wetland determination data sheets, mapping, and if required, a discussion of permitting and mitigation requirements.

Nebraska Stream Condition Assessment Procedure (NeSCAP): The ENGINEER shall complete the stream assessment for the project area. Initial field services were included in a previous contract with the City. A score for existing site conditions will be applied and included in the assessment. Proposed channel improvements will also be scored using the same assessment procedure. The results will be included in a NeSCAP Report that will be submitted to USACE with the wetland delineation as part of the Prospectus. Coordination with the USACE and preparation of the Prospectus is included in Task 4 of the scoping document.

The ENGINEER will conduct the stream assessment according to the USACE Nebraska Stream Condition Assessment Procedure (NeSCAP [USACE 2016]).

Task 2.6 Drone Flight and Post-Processing

The ENGINEER shall conduct a drone flight to capture real-time orthomosaics over the project study area. This information will be processed to develop a surface and checked/calibrated against topographic survey obtained. This information will be more current than available LIDAR and used in development of conceptual design plans. Drone imagery will also be used to map existing vegetation for the Prospectus.

Task 3) Conceptual Design

Objectives: To provide conceptual design documents based on data collected and preliminary analysis to enhance the channel, make improvements to culvert and weir structures, construct wetlands and restore habitat on the site.

Deliverables: Conceptual design plan sheets, cost estimate, hydraulic analysis, and feasibility memo for the project.

Task 3.1 Preliminary Hydrologic Analysis and Geomorphic Parameter Assessment

The ENGINEER will review hydrology used in FEMA's Regulatory hydraulic model and updated hydrology associated with the Moore's Creek Watershed Master Plan (May 2019). Smaller, more frequent storm events in Moore's Creek will be interpolated from the models and checked against field parameters. A range of flow rates from these various sources will be documented and used to refine geomorphic parameters for channel design. FHU will also evaluate local drainage potential for the site (particularly from the west), consider adjacent agricultural processes and potential impacts, and evaluate available groundwater data.

Task 3.2 Preliminary Channel/Basin/Wetlands Design

The ENGINEER will use the data collected and the geomorphic parameters developed to create the typical channel cross section, alignments, and profiles. A rough grading surface will then be

created to illustrate the overbank area, basin design and wetlands locations; generate volumes; and approximate grading quantities. Control points within the basin and the weirs upstream of the basin will be evaluated with hydrologic and hydraulic (H&H) modeling tasks but reflected in the overall design of the basin. The design will consider the need for any hard armoring and bioengineering features.

Task 3.3 Preliminary Hydraulic Analysis

Preliminary hydraulic modeling will include a cursory review of the model developed for the Moore's Creek Watershed Master Plan (May 2019) which will be used as the base model; the incorporation of the surface generated from the drone flight into the base model; and the evaluation of a proposed conditions model based on the proposed design. The proposed conditions model will be evaluated for the potential to remove two upstream weirs based on available data. The ENGINEER will use hydrology from the Moore's Creek Watershed Master Plan (May 2019) and attempt to achieve a "no-rise condition" with proposed improvements (with and without the removal of the upstream weirs).

This task includes coordination with the CITY, it's Floodplain Administrator, and the Nebraska Department of Natural Resources (NDNR).

Task 3.4 Conceptual Plans

The following plan sheets will be developed as part of the Conceptual Design submittal:

- Title Sheet and Vicinity Map
- Grading Plan and Profile Sheets - showing instream features and plan view site features
- Channel Stabilization Sheets - showing limits of rock riprap (if needed), bioengineering features, and seeding
- Wetland Construction Sheets – showing extents of wetland types and upland buffer
- Preliminary Details Sheets - showing typical channel/basin sections, details of in stream and wetland features, and control features

Task 3.5 Opinion of Probable Cost

The ENGINEER will prepare an opinion of probable costs (OPC) based on concept-level design.

Task 3.6 Feasibility Study Memo

The ENGINEER will prepare a memo summarizing site conditions, design approach, H&H analysis, and anticipated stream and wetland credits. Costs will be summarized and include the cost per acre of wetland credit and cost per linear foot of channel credits. Supporting documentation will be included in an Appendix.

Task 4) Prospectus and Coordination with USACE

Objectives: If the City determines the project to be feasible, USACE will be notified and a Prospectus developed for their review to inform them and an Interagency Review Team (IRT) of the function and management of the proposed wetland bank.

Deliverables: Draft and Final Prospectus for USACE

Task 4.1 Notice of Intent

FHU will prepare a draft letter/Notice of Intent for the City to submit to USACE. The letter will cover the City's intention to submit a Prospectus for a mitigation bank at the proposed site. Following any revisions from the City, the letter will be submitted to USACE.

Task 4.2 Draft Prospectus and Site Visit with USACE

A Draft Prospectus document will be prepared for submittal to the USACE. The document will include the *12 Components from 'The Rule'* which are:

1. Objectives of the Mitigation Bank
2. Site Selection Process
3. Site Protection Instrument
4. Baseline Information
5. Determination of Credits
6. Mitigation Work Plan
7. Maintenance Plan
8. Performance Standards
9. Monitoring Requirements
10. Long-term management Plan
11. Adaptive Management Plan
12. Financial Assurances

FHU will offer to take USACE to the site to review the Draft Prospectus and will work with USACE to address comments and provide any additional requested information, including a response to comment form. A revised document will be submitted for the 30-day Public Notice.

Task 4.3 Final Prospectus

Following receipt of comments from the IRT and public, USACE will provide the City with an initial evaluation letter regarding any information still required, or if the City may proceed with preparation of a Draft Instrument. If a revised Prospectus is requested to address further comments, the document will be updated and a response to comment form will be prepared.

ASSUMPTIONS

The following assumptions or exclusions have been made in preparing this scope of work:

- The CITY will provide relevant and available GIS data and record drawings in the study area along with any other pertinent and available background information.
- The CITY will provide the latest hydrologic and hydraulic models prepared as part of the Moore's Creek Watershed Master Plan (May 2019). The models will be used for assessing stormwater detention and the potential to remove two weirs from Moore's Creek at a preliminary level to help determine feasibility of the project.
- Full topographic survey of the site is not included in this scope. It is expected that this would be completed under a separate scope once the Prospectus has been submitted to USACE.
- A geotechnical engineer has not been retained to provide a Geotechnical Exploration Report at this time. The site design will be based on visual observation of soil types and site conditions and USGS Soil Survey data at this time.
- A title search on the property will be provided by the City.

PROJECT SCHEDULE

A general schedule has been provided for the project as follows:

<i>Notice to Proceed</i>	Early November 2019
<i>Complete Field Data Collection and Desktop Review</i>	End of November 2019
<i>Complete Conceptual Plans and OPC</i>	January 2020
<i>Notice of Intent Letter to USACE</i>	February 2020
<i>Preliminary Prospectus</i>	April 2020
<i>Final Prospectus</i>	August 2020

A review meeting with the USACE and development of the Prospectus will not begin without approval from the City of Grand Island after development of conceptual plans and the OPC.

PROJECT FEES

FHU proposes to conduct the tasks on a time and expense basis. Our fees for Tasks 1 - 4, listed above, are as follows:

<i>Task 1) Project Management and Progress Meetings</i>	\$ 8,210.00
<i>Task 2) Data Collection</i>	\$26,710.00
<i>Task 3) Conceptual Design</i>	\$33,950.00
<i>Task 4) Prospectus and Coordination with USACE</i>	\$27,450.00
<i>Total Fees</i>	<u>\$96,320.00</u>

This amount would be established as a "not to exceed" limit beyond which no charges could be made without your prior approval.

A breakdown of fees with standard hourly billing rates for the personnel expected to be involved in this project is shown in the fee estimate (**Attachment A**). Under such an agreement, we are compensated on an hourly basis for all labor.

Additional services that are required outside the Scope of Work, such as additional meetings or design revisions would be performed on a time and materials basis using the attached hourly rates. Additional work would not be performed without written authorization from the client.

Direct expenses incurred on this project will be charged at cost. These may include items such as reproduction charges, postage, telephone, etc. Vehicle usage will be charged at the current Federal rate at the time of the usage.

We have also attached FHU's Standard Provisions (**Attachment B**). If the terms of this contract and the attached Standard Provisions are acceptable, please sign this letter proposal in the space below and return a copy of the signed document for our files. A scanned pdf file is acceptable.

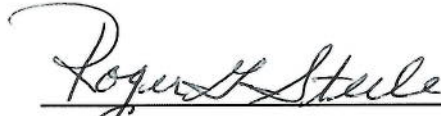
If you have any questions about this proposal, please call me at (402) 445-4405.

Sincerely,

FELSBURG HOLT & ULLEVIG



David G. Lampe, PE
Principal and Sr Water Resources Engineer



Accepted By

Title

Date

Interim City Attorney

Attachment A

CITY OF GRAND ISLAND North Moore's Creek Wetland Mitigation Bank - Feasibility Study and USACE Preliminary Review and Prospectus		Feasibility Study and USACE											BIRN and Associates											
PRIME #1 - BIRN and Associates SUB #1 - SUB #2 - SUB #3 -	TASK TOTAL	TASK TOTAL	PRIME TASK TOTAL	PRIME TASK TOTAL	Project Manager	Engineer	Engineer	Engineer	Sr Envrn Scientist	Envrn Specialist	Envrn Specialist	Admin	Direct Expenses	SUB #1 TASK TOTAL	SUB #1 TASK TOTAL	Project Principal	Project Mgr/PLS	Project Engineer	3rd Party	CAO	CAO	Admin	Direct Expenses	
	\$	HRS	\$	HRS	\$210	\$170	\$130	\$110	\$210	\$120	\$100	\$90		\$	HRS									
TASK 1 Project Management & Meetings																								
1.1 Project Management	\$2,520	12	\$2,520	12	12								200	\$0										
1.2 Progress Meetings	\$3,680	36	\$3,680	36	6		12	6	6	6				\$0										
Task Hours	\$6,200	48	\$6,200	48	18	0	12	6	6	6	0	0	0	\$0		0	0	0	0	0	0	0	0	0
Task Fee					\$3,780	\$70	\$1,680	\$630	\$1,260	\$780	\$0	\$0	\$200	\$0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TASK 2 Data Collection																								
2.1 Miscellaneous Data Collection and Desktop Review	\$1,410	11	\$1,410	11	1		5	4					200	\$0										
2.2 Site Visit	\$880	4	\$880	4	1		6							\$0										
2.3 Utilities Coordination	\$990	7	\$990	7	1		6							\$0										
2.4 Topographic Survey	\$550	2	\$550	2	1		2							\$200										100
2.5 Wetland Delineation and NASCAP Method Stream Assessment	\$16,870	137	\$16,870	137	1				16	90	40			\$80										
2.6 Drone Flight, Post-Processing and Vegetation Mapping	\$3,800	28	\$3,800	28	1		2			12	12			\$300										
Task Hours	\$26,710	191	\$26,710	191	7	0	22	4	18	92	52	0	0	\$900		0	0	0	0	0	0	0	0	\$300
Task Fee					\$6,000	\$70	\$4,080	\$420	\$3,780	\$11,000	\$4,400	\$0	\$1,200	\$0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300
TASK 3 Conceptual Design																								
3.1 Preliminary Hydrologic Analysis and Geomorphic Parameter Assessment	\$2,700	38	\$2,700	38	2		16	12						\$0										
3.2 Preliminary Channel/Basin/Wetland Design	\$6,080	78	\$6,080	78	2		20	40	4	4				\$0										
3.3 Preliminary Hydraulic Analysis	\$4,900	38	\$4,900	38	2		28	4						\$0										
3.4 Concept Plans	\$800	5	\$800	5	1		4							\$0										
3.4a Title Sheet and Vicinity Map	\$2,500	26	\$2,500	26	2		8	20						\$0										
3.4b Site Subdivision Sheets	\$2,000	38	\$2,000	38	2		12	18						\$0										
3.4c Detail Sheets	\$4,500	35	\$4,500	35	1		8	18	2	4				\$0										
3.5 Preliminary O&M	\$1,300	11	\$1,300	11	1		4	6						\$0										
3.6 Feasibility Study Memo	\$2,500	26	\$2,500	26	2		12	4	2	2				\$0										
Task Hours	\$23,800	272	\$23,800	272	15	0	109	130	8	10	0	0	0	\$0		0	0	0	0	0	0	0	0	0
Task Fee					\$3,100	\$70	\$14,700	\$13,650	\$1,640	\$1,800	\$0	\$0	\$0	\$0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TASK 4 Prospectus and Coordination with USACE																								
4.1 USACE Notice of Intent Letter	\$1,480	10	\$1,480	10			20	12	2	8			400	\$0										
4.2 USACE Draft Prospectus and Review Meeting with USACE	\$16,140	126	\$16,140	126	6		4	4	8	21	8			\$0										
4.3 Final Prospectus	\$7,830	57	\$7,830	57	1									\$0										
Task Hours	\$25,450	193	\$25,450	193	7	0	24	16	10	30	37	24	0	\$0		0	0	0	0	0	0	0	0	0
Task Fee					\$1,470	\$0	\$3,120	\$1,680	\$4,300	\$11,050	\$2,520	\$0	\$400	\$0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL																								
Hours	\$96,220	911	\$96,220	911	43	0	167	196	32	200	10	0	\$1,900	\$0		0	0	0	0	0	0	0	0	\$300
Fee					\$9,000	\$70	\$21,710	\$19,280	\$3,020	\$28,010	\$7,880	\$0	\$1,900	\$0		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$300

Letter Agreement Standard Provisions

A. SERVICES BY THE CONSULTANT

The **CONSULTANT** agrees to perform all services, hereunder, using reasonable skill and judgment in accordance with applicable professional standards. **CONSULTANT** agrees to keep the **CLIENT** informed on its progress through periodic reports, and to maintain accurate records relating to its services for this project.

The **CONSULTANT** agrees to provide, directly or by association with such other Consultants or Contractors as it may deem necessary to further the interest of the **CLIENT**, the basic services as described in the Scope of Work provided in the signed Letter Proposal or Letter Agreement.

B. RESPONSIBILITIES OF THE CLIENT

The **CLIENT** shall provide and make available to the **CONSULTANT**, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder. Data so furnished to the **CONSULTANT** shall remain the property of the **CLIENT** and will be returned upon completion of its services.

The **CLIENT** shall make provisions for the **CONSULTANT** to enter upon public and private properties as required for the **CONSULTANT** to perform its services hereunder.

C. EXTRA WORK

The **CLIENT** may desire to have the **CONSULTANT** perform work or render services other than those provided in Scope of Work. This will be Extra Work. Work shall not proceed until so authorized by the **CLIENT**. Payment for all work under this Agreement shall be on an hourly basis plus expenses in accordance with the attached rate schedule. Charges for outside services, expenses, and subconsultant work will be billed at 1.10 times the invoice amount.

D. TIME OF BEGINNING AND COMPLETION

Execution of the Letter Proposal is authorization by the **CLIENT** for the **CONSULTANT** to proceed with the work (Time of Beginning). The original Time of Completion is as noted in the Letter Agreement.

E. PAYMENT

Unless otherwise provided herein, **CONSULTANT** shall submit monthly invoices for Basic, Additional or Special Services and for Reimbursable Expenses each month for work that has been performed. If hourly, invoices will be based on labor and expenses incurred. If lump sum, invoices will be based on the percentage of work completed.

Payments not made within 60 days of the billing date shall bear interest at the rate of 1% per month which is an annual interest rate of 12%. If any portion of, or an entire account remains unpaid 90 days after billing, the **CLIENT** shall pay all costs of collection, including reasonable attorney's fees.

F. DELAYS

If the **CONSULTANT** is delayed at any time in the progress of work by any act or neglect of the **CLIENT** or its agents, employees or contractors, or by changes in the work, or by

extended reviews by the **CLIENT**, fire, unavoidable casualties, or by any causes beyond the **CONSULTANT'S** control, the time schedule shall be extended for a reasonable length of time, and **CONSULTANT'S** compensation may be subject to renegotiation for increased expenses due to escalation of prices, extended services, rework, and/or other expenses incidental to such delays.

G. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the **CONSULTANT** associated with this project are instruments of service for this project only and shall remain the property of the **CONSULTANT** whether the project is completed or not. The **CONSULTANT** shall furnish originals or copies of such work product to the **CLIENT** in accordance with the services required hereunder. Reuse of any of the work product of the **CONSULTANT** by the **CLIENT** on an extension of this project or on any other project without the written permission of the **CONSULTANT** shall be at the **CLIENT'S** risk and the **CLIENT** agrees to defend, indemnify, and hold harmless the **CONSULTANT** from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse by the **CLIENT** or by others acting through the **CLIENT**. Any reuse or adaptation of the **CONSULTANT'S** work product shall entitle the **CONSULTANT** to equitable compensation.

H. INSURANCE

During the course of the services, the **CONSULTANT** shall maintain Workmen's Compensation Insurance in accordance with the Workmen's Compensation laws of the State of Nebraska Professional Liability Insurance with a minimum coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate; Automobile Liability with a combined single limit coverage of \$1,000,000; and Commercial General Liability of \$1,000,000 per occurrence, \$2,000,000 aggregate. Upon request, the **CONSULTANT** shall provide certificates of insurance to the **CLIENT** indicating compliance with this paragraph.

I. TERMINATION

Either the **CLIENT** or the **CONSULTANT** may terminate this Agreement at any time with or without cause upon giving the other party fourteen (14) calendar days prior written notice. The **CLIENT** shall within sixty (60) calendar days of termination pay the **CONSULTANT** for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

J. DISPUTES

Any claim, dispute, or other matter in question between the **CLIENT** and the **CONSULTANT**, arising out of or relating to either's obligations to the other under this Agreement, shall, if possible, be resolved by negotiation between the **CLIENT'S** representative and the **CONSULTANT** Principal-in-Charge for the Project. **CLIENT** and **CONSULTANT** each commit to seeking resolution of such matters in an amicable, professional, and expeditious manner. If a matter cannot be resolved by these parties, no later than thirty (30) calendar days after either party submits an issue in writing for resolution,

representatives from executive management of the **CLIENT** and **CONSULTANT** shall attempt to resolve the matter through additional good faith negotiations. If resolution cannot be reached within an additional thirty (30) calendar days, the **CLIENT** and **CONSULTANT** agree that all such unresolved disputes shall be submitted to nonbinding mediation.

Pending final resolution of the dispute, the **CONSULTANT** shall proceed diligently with the performance of the Basic Services as described in Article A, as directed by the **CLIENT**, and the **CLIENT** shall continue to pay the undisputed payments due to the **CONSULTANT** for such services in accordance with the payment provisions of this Agreement.

K. GOVERNING LAW

Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the law of the State of Nebraska.

L. SUCCESSORS AND ASSIGNS

The **CLIENT** and the **CONSULTANT** each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement without the written consent of the other.

M. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the **CONSULTANT** and any other consulting business, or contractor, or material supplier on the project, nor obligate it to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

N. NOTICES

All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party at the address in the Letter Proposal or Letter Agreement. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

O. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY

The **CONSULTANT** shall use reasonable professional skill and judgment in providing the services, hereunder, but does not warrant that such services are without errors and/or omissions. If, during the authorized use and prudent interpretation of documents or advice furnished by the **CONSULTANT**, an error or omission is discovered within a reasonable time, the **CONSULTANT** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **CONSULTANT** is given a

reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The **CONSULTANT** will not be liable for the cost of procurement of work or services performed in correcting such errors and/or omissions where such work or services result in a value to the Project over and above that which the original work or services provided.

In providing opinions of probable construction cost, the **CLIENT** understands that the **CONSULTANT** has no control over costs or the price of labor, equipment, or materials, or the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made based on the **CONSULTANT'S** qualifications, and experience. The **CONSULTANT** makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

The **CONSULTANT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CLIENT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CONSULTANT'S** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the **CONSULTANT** is legally liable.

The **CLIENT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CONSULTANT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CLIENT'S** negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the **CLIENT** is legally liable, and arising from the project that is the subject of this Agreement. **CLIENT'S** amount of indemnity or costs incurred in providing the indemnity shall be limited to the same amount as the **CONSULTANT'S** liability is listed below.

As negotiated as a part of this Agreement, to the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the **CONSULTANT** and the **CONSULTANT'S** officers, directors, partners, employees, agents and subconsultants, to the **CLIENT** and anyone claiming by, through or under the **CLIENT**, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the **CONSULTANT** or the **CONSULTANT'S** officers, directors, employees, agents or subconsultants, or any of them, shall not exceed the total amount of \$100,000.

Upon execution of the Letter Agreement or Letter Proposal, the **CLIENT** thereby agrees to the terms of these Special Provisions.