

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, 2013 (“Effective Date”) between

The Norman Utilities Authority (“Owner”) and

HDR Engineering, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

North Water Reclamation Facility Engineering Report (“Project”).

Engineer's services under this Agreement are generally identified as follows:

Preparation of an Engineering Report to investigate treatment alternatives and costs of new facilities for wastewater treatment, disposal, and solids management at a new North Water Reclamation Facility.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services,

expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion. After a disputed item has been settled, Engineer shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 Reserved

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
1. Alan Plummer Associates, Inc., shall be employed by Engineer as a Consultant on this Project.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and regulations.
 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any

failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between

the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle

damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension:*

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
- 3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not

limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement. One or more waivers by either party of any provision, term, condition or covenant shall not be constructed as a waiver of a subsequent breach of the same by the other party.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **Not Included.**
- E. Exhibit E, Notice of Acceptability of Work. **Not Included.**
- F. Exhibit F, Reserved. **Not Included.**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. **Not Included.**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This

Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

The Norman Utilities Authority

By: _____

Name: _____

Title: _____

Date Signed: _____

Engineer:

HDR Engineering, Inc.

By: 

Name: Ramon F. Miguez

Title: Vice President

Date Signed: 12/31/12

Engineer Firm's Certificate No. C.A. 1446

State of: Oklahoma

Address for giving notices:

City of Norman, Department of Utilities

P.O. Box 370

Norman, OK 73070

Address for giving notices:

17111 Preston Road

Suite 200

Dallas, TX 75258-1232

Designated Representative (Paragraph 8.03.A):

Mark Daniels, P.E.

Title: Utilities Engineer

Phone: 405-366-5377

Facsimile: 405-366-5447

E-Mail: Mark.Daniels@NormanOK.gov

Designated Representative (Paragraph 8.03.A):

Joel Cantwell, P.E.

Title: Project Manager

Phone: 972-960-4440

Facsimile: 972-060-4471

E-Mail: Joel.Cantwell@hdrinc.com

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2013.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall perform and provide the following tasks and deliverables:

1. *Project Initiation and Baseline Review.*

a. *Review Available Data and Reports.* Obtain and review existing documents, reports or studies, identify baseline conditions and determine additional information that is needed.

1) Owner will provide the following relevant data and reports for review by the Engineer:

- Influent wastewater quality data for 3 years
- Existing discharge permit for the South WRF
- Conceptual parks and trails plans
- Land use plan and buildout information with expected wastewater flow for the current north sewer basin and potential additional land area
- Water master plan, including identification of reuse options – irrigation, industrial, etc
- Wastewater master plan
- Riparian Corridor Plan for North WRF site
- Rights of entry to explore possible outfall sites, if needed
- Other relevant information as determined by Engineer and Owner

2) Additional information to be gathered and reviewed by the Engineer will include:

- ODEQ's TMDL status for Canadian River and Little River
- North WRF Project Site physical elevation data and aerial digital photography

- Physical or man-made features that will require additional consideration at the North WRF site (geotechnical exploration will not be conducted)
 - Regulations affecting the North WRF Project (OWRB, ODEQ, FAA, Norman, FERM data)
 - Potential outfall sites for alternative scenarios
 - COMCD's current Lake Thunderbird study findings
- b. *Project Kickoff Workshop.* The meeting shall include key members of Owner and Engineer staff and shall focus on the scope of work, schedule, deliverables, communication protocols, and fieldwork and data collection coordination. The Engineer shall submit a written summary of the meeting for review by Owner.
- c. *Meetings with COMCD, ODEQ, OWRB.* Engineer will coordinate with Owner to conduct separate meetings with COMCD, ODEQ and OWRB. The meetings will serve to introduce the Project's goals and Owner's intentions to conduct a planning study and prepare an Engineering Report. Meetings will also include a request for information from the respective agency.

2. *Alternatives Screening.*

- a. *Develop Discharge Permit and Scenario Assumptions.* For the proposed 4.5-mgd North WRF, three sets of probable discharge permit limits and expected regulatory treatment requirements will be established, which may be similar to the following:
- 1) Discharge to the Canadian River approximately 7 miles west of the Project site;
 - 2) Discharge to the Little River as reuse flow assuming a moderate regulatory decision and/or a longer Little River flow path (10 miles); and
 - 3) Discharge to the Little River as indirect potable reuse flow assuming a strict regulatory decision and a shorter Little River flow path (5 miles).
- b. *Identify Feasible Treatment Alternatives/Technologies.* Feasible treatment processes will be determined to achieve the effluent quality needed for the scenarios previously developed. Each technology will be described and characterized to define the science behind the process, the pros and cons of the process, relative capital and O&M costs, O&M issues and considerations, etc. Feasible alternative treatment trains will be developed.
- c. *Screening Analysis.* The technologies developed above will be evaluated and screened for their usefulness and appropriateness for the North WRF and the Owner's short-term reuse goals and potential long-term reuse plans. A short list of the most feasible treatment trains will be developed based on possible scenarios for Canadian River discharge, Little River discharge, Norman's reuse

goals, plans for biosolids handling, inclusion of wetlands and parks/trails plans, public perception, etc. Other considerations include the following:

- 1) Pumping sludge to the South WRF versus treating it at the North WRF.
 - 2) Building the Canadian River outfall first and implementing a flexible treatment process to facilitate eventual Little River discharge.
 - 3) Retrofit or replacement of the existing Lift Station D pumps to pump wastewater to the treatment plant site.
 - 4) Coordination and integration with COMCD's planning for Lake Thunderbird supply augmentation.
 - 5) Potential conflicts with wetlands use at the site due to FAA's regulations requiring a five-mile buffer around airports and flight paths.
 - 6) Potential use of the 160-acre Ruby Grant Park, located on 36th/Franklin, as a wetland treatment site prior to Little River discharge.
 - 7) An alternate southern route to a Canadian River discharge site.
- d. *Screening Workshop.* Present the results of the screening analysis in a workshop setting. Discuss alternatives and agree with Owner on a short list of up to four alternatives that will be further evaluated in subsequent tasks. Submit a written workshop summary for Owner review.
- e. *Technical Memorandum #1: Planning Criteria and Alternatives Screening.* Prepare TM No. 1 to document the baseline review and alternatives screening tasks. The TM shall include a narrative of the methodology and results of the screening evaluation, including exhibits. Three copies of the draft TM shall be provided to the Owner for review. Owner comments shall be addressed and incorporated into the Engineering Report.

3. *Alternatives Analysis.*

- a. *Develop Conceptual Layouts.* For the shortlisted alternatives, develop conceptual layouts and treatment trains coinciding with 1) the potential discharge limits developed in the Baseline Review Task and 2) the short-list of technologies developed in the Alternatives Screening. For each alternative, the following will be developed.
- 1) North WRF layout plan showing selected processes, facility locations, preliminary sizing information, configuration, equipment types, etc.
 - 2) Associated process schematic and process model.
 - 3) Discharge pipeline alignments, outfall locations and outfall facilities.

- 4) Information and general criteria for any required pumping facilities, including influent pumping from Lift Station D and effluent pumping, if needed.
- b. *Develop Aesthetic Alternatives.* Aesthetic considerations for the North WRF will be developed to meet the overall goals of the North WRF and will not necessarily vary among alternatives. This task will evaluate options for odor control, architecture, noise, wetlands, conservation and/or preservation, parks and trails. The Owner will provide the existing Riparian Corridor Plan for the site. The following will be considered:
- 1) An architecture plan that suits the surrounding area and creates an appeal for area residents.
 - 2) Odor control facilities to reduce nuisance odors originating from the treatment facilities.
 - 3) Noise reduction considerations.
 - 4) Wetlands, trails and preservation elements to encourage the public to visit and use the site, discharge pipeline corridor and/or Little River green areas for recreational and/or educational purposes.
- c. *Determine Value of Reuse Water.* A method will be developed, applied and documented for ascertaining the value of reuse water according to the benefit added from a nonpotable (industrial or agricultural) and potable (drinking water supply source) perspective.
- d. *Develop Life Cycle Cost Estimates.* Develop a 20-year life cycle cost for each shortlisted alternative. The life cycle costs will incorporate construction costs and O&M costs, itemized for each alternative and presented in present-day dollars. All assumptions will be clearly noted.
- e. *Conduct Non-Economic Analysis.* Non-economic considerations shall be compared for each shortlisted alternative using the following methodology:
- 1) Develop a list of non-economic factors to be considered.
 - 2) Send list to Owner, and Owner staff shall determine the relative weight of each factor (sum of weights shall equal 100).
 - 3) For each factor, score each shortlisted alternative on a scale of 1 to 5 (with 1 being unfavorable and 5 being favorable).
 - 4) Provide a table showing the weighted score calculations for each shortlisted alternative and rank the alternatives from highest to lowest total weighted score for non-economic considerations.

- f. *Technical Memorandum #2: Alternatives Analysis.* Prepare TM No. 2 to document the alternative analysis task. The TM shall include a narrative of the methodology and results, including exhibits, but will not include a recommendation for the preferred alternative. Three copies of the draft TM shall be provided to the Owner for review. Owner comments shall be addressed and incorporated into the Engineering Report.
 - g. *Alternatives Analysis Workshop.* Discuss the results of the Alternatives Analysis Task in a workshop setting. During the workshop, the preferred alternative shall be selected by Owner. Submit a written workshop summary for Owner review.
4. *Development of Selected Alternative.*
- a. *Develop Conceptual Layouts.* Development of the selected alternative will include preparation of the following:
 - 1) Site plans for the recommended treatment plant, pump station(s), and discharge point(s), as applicable.
 - 2) Process flow schematic and hydraulic profile.
 - 3) Plan of the pipeline(s) showing the horizontal alignment and any special crossings.
 - 4) Exhibits for aesthetics-related issues previously identified for the selected alternative, to include maps of wetlands, trails, parkland, etc., if appropriate.
 - b. *Develop Cost Estimate.* Develop estimated project costs for the selected alternative with each component separately itemized, including the following: Opinion of Probable Construction Cost (OPCC), allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and, on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
 - c. *Technical Memorandum #3: Development of Selected Alternative.* Prepare TM No. 3 to present the conceptual design concept and cost estimate for the selected alternative. Three copies of the draft TM shall be provided to the Owner for review. Owner comments shall be addressed and incorporated into the Engineering Report.
5. *Engineering Report (ER) and Presentations.* Prepare and submit to Owner and ODEQ an Engineering Report, compliant with OAC 252:656 and describing the conceptual design for the selected alternative.
- a. *Draft ER Development.*

- 1) Identify any required variances from ODEQ rules.
 - 2) Discuss considerations involving the Sensitive Watershed classification for Lake Thunderdird.
 - 3) Present project timeline based on Lift Station D's capacity to handle the North flow for homes producing up to 4.5 mgd average flow (23.8 mgd peak 2-hour flow). Project timeline should also incorporate overall time for project to be planned, designed, permitted and constructed.
 - 4) Incorporate TM Nos. 1, 2 and 3 into the ER, including modifications to the TMs per previously-received Owner comments.
 - 5) Owner will provide text (.doc) files from recent South WRF Upgrade ER in order to cut/paste general and background data needed to satisfy ODEQ's requirements.
 - 6) Submit three copies of the draft ER to the Owner for review.
- b. *Public Education Meeting.* Prepare presentation boards and presentation "talking points" summarizing the results of the North WRF Project in an informal, conversation-style Public Meeting. The presentation boards shall present the top-ranking scenarios and shall focus on the aesthetics-related issues for the North WRF. Attend the Public Meeting, answer questions, and support Owner in conducting a brief presentation with the attendees. The purpose of the meeting is to present the results of the alternatives analysis and potential aesthetics improvements to the citizens and obtain their input on the North WRF plan. Provide a written summary of the issues discussed and questions asked during the Public Meeting.
 - c. *City Council Presentation.* Present the results of the overall study in PowerPoint format at a regular City Council meeting. Assist the Owner in answering questions from the Council and citizens.
 - d. *Final ER Development and ODEQ Coordination.* Revise the ER in response to input received from the public meeting and Council presentation, as appropriate, and furnish three final copies to the Owner for submittal to ODEQ for review. This scope of work is complete once the Final ER is submitted to ODEQ.
6. *Additional Services:* This task is not yet authorized. The work of this task may include meeting attendance or other relevant tasks that occur after submittal of the ER to ODEQ, upon request of Owner. Additional tasks may also include Engineering Report amendments once ODEQ has promulgated new regulations for indirect potable reuse.
- B. Engineer's services under the Study and Report Phase shall be completed within 9 months of receiving written Notice to Proceed from the Owner and will be considered complete on the date when the final Engineering Report has been delivered to Owner.

A1.02 *Preliminary Design Phase*. Not Included.

A1.03 *Final Design Phase*. Not Included.

A1.04 *Bidding or Negotiating Phase*. Not Included.

A1.05 *Construction Phase*. Not Included.

A1.06 *Post-Construction Phase*. Not Included.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining

process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Consultants for other than Basic Services.
9. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
11. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
12. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
13. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
14. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
15. Overtime work requiring higher than regular rates.
16. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization.* Not Included.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests, including but not limited to the review of Contract Documents supplied by Engineer.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and

limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: None.

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2013.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:

1. A Lump Sum amount of \$249,935 for the Study and Report Phase.
2. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.

C2.02 Compensation for Additional Services – Direct Labor Costs Times a Factor Method of Payment

A. Owner shall pay Engineer for Additional Services as follows:

1. *General:* For services of Engineer’s personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A of the Agreement, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to Engineer’s Direct Labor Costs times a factor of 3.2, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any.

B. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth as follows:
 - a. Technology Charge \$ 3.70 / hour of labor
 - b. Office expenses (copies, phone, faxes, etc) 3% of labor cost
 - c. Travel Expense At cost
 - d. Other Specialized Expenses At cost

2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for and the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.0.

C. Other Provisions Concerning Payment for Additional Services:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.05.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

Task Description	HDR Engineering Inc.												Alan Plummer Associates Inc.												With Sub Mgmt Fee	GRAND TOTAL
	Project Manager	Project Engineer	Staff Engineer	Lead Process	Process Design	QA/QC	Drafting	Engin. Assistant	Total Hours	Labor Cost	Expenses	HDR Total	Principal	Project Manager	Project Engineer	EIT	Drafting	Clerical	QA/QC	Total Hours	Labor Cost	Expenses	APAI Total			
	\$ 241	\$ 180	\$ 122	\$ 331	\$ 148	\$ 336	\$ 124	\$ 114					\$ 240	\$ 210	\$ 125	\$ 105	\$ 98	\$ 78	\$ 225							
1. Project Initiation & Baseline Review																										
a. Review Available Data & Reports	8	8		2	2			4	24	\$ 4,782	\$ 143	\$ 4,925				8				8	\$ 840	\$ 50	\$ 890	\$ 935	\$ 5,860	
b. Project Kickoff Workshop	8	10							18	\$ 3,728	\$ 517	\$ 4,245	4	4	4					12	\$ 2,300	\$ 1,050	\$ 3,350	\$ 3,518	\$ 7,763	
c. Meetings with COMCD, ODEQ, OWRB	10	10							20	\$ 4,210	\$ 531	\$ 4,741	10		6					16	\$ 3,150	\$ 700	\$ 3,850	\$ 4,043	\$ 8,784	
Subtotal	26	28	-	2	2	-	-	4	62	\$ 12,720	\$ 1,191	\$ 13,911	14	4	10	8	-	-	-	36	\$ 6,290	\$ 1,800	\$ 8,090	\$ 8,496	\$ 22,407	
2. Alternatives Screening																										
a. Discharge Permit & Scenario Assumptions	4	4							8	\$ 1,684	\$ 51	\$ 1,735		4	24					28	\$ 3,840	\$ 100	\$ 3,940	\$ 4,137	\$ 5,872	
b. Identify Feasible Tmt Technologies	2	8		4	48				62	\$ 10,350	\$ 311	\$ 10,661		4	36	40				80	\$ 9,540	\$ 100	\$ 9,640	\$ 10,122	\$ 20,783	
c. Screening Analysis	8	12			32				52	\$ 8,824	\$ 265	\$ 9,089		4	8	8				20	\$ 2,680	\$ 100	\$ 2,780	\$ 2,919	\$ 12,008	
d. Screening Workshop	4	8		4					16	\$ 3,728	\$ 1,172	\$ 4,900		8						8	\$ 1,680	\$ 350	\$ 2,030	\$ 2,132	\$ 7,032	
e. TM #1: Planning Critieria & Alts. Screening	8	16			2	2		4	32	\$ 6,232	\$ 187	\$ 6,419	4	8	12	20		4	3	51	\$ 7,227	\$ 100	\$ 7,327	\$ 7,693	\$ 14,112	
Subtotal	26	48	-	8	82	2	-	4	170	\$ 30,818	\$ 1,986	\$ 32,804	4	28	80	68	-	4	3	187	\$ 24,967	\$ 750	\$ 25,717	\$ 27,003	\$ 59,807	
3. Alternatives Analysis																										
a. Develop Conceptual Layouts	8	8	40	8	24		20	12	120	\$ 18,296	\$ 549	\$ 18,845		4	24	24	8			60	\$ 7,144	\$ 100	\$ 7,244	\$ 7,606	\$ 26,451	
b. Develop Aesthetic Alternatives	8	2	8	2	8				28	\$ 5,110	\$ 153	\$ 5,263		4	24	24				52	\$ 6,360	\$ 100	\$ 6,460	\$ 6,783	\$ 12,046	
c. Determine Value of Reuse Water	1								1	\$ 241	\$ 7	\$ 248	8	4	16					28	\$ 4,760	\$ 100	\$ 4,860	\$ 5,103	\$ 5,351	
d. Develop Life Cycle Cost Estimates	4	4	44	2	4				58	\$ 8,306	\$ 249	\$ 8,555			4	8				12	\$ 1,340	\$ 100	\$ 1,440	\$ 1,512	\$ 10,067	
e. Conduct Non-economic Analysis	8	8	8	2	2				28	\$ 5,302	\$ 159	\$ 5,461	2	4						6	\$ 1,320		\$ 1,320	\$ 1,386	\$ 6,847	
f. TM #2: Alternatives Analysis	4	16	16		4	2	4	4	50	\$ 8,012	\$ 240	\$ 8,252	2		8	16		4	4	34	\$ 4,372	\$ 100	\$ 4,472	\$ 4,696	\$ 12,948	
g. Alternatives Analysis Workshop	8	8							16	\$ 3,368	\$ 506	\$ 3,874		8	8					16	\$ 2,680	\$ 700	\$ 3,380	\$ 3,549	\$ 7,423	
Subtotal	41	46	116	14	42	2	24	16	301	\$ 48,635	\$ 1,863	\$ 50,498	12	24	84	72	8	4	4	208	\$ 27,976	\$ 1,200	\$ 29,176	\$ 30,635	\$ 81,133	
4. Development of Selected Alternative																										
a. Develop Conceptual Layouts	12	24	56	2	16		60		170	\$ 24,514	\$ 735	\$ 25,249		8	24	20				52	\$ 6,780	\$ 100	\$ 6,880	\$ 7,224	\$ 32,473	
b. Develop Cost Estimate	4	8	24		2				38	\$ 5,628	\$ 169	\$ 5,797								-	\$ -	\$ -	\$ -	\$ -	\$ 5,797	
c. TM #3: Development of Selected Alt.		8	6			2		8	24	\$ 3,756	\$ 113	\$ 3,869	2	10	8	8		4	4	36	\$ 5,632	\$ 100	\$ 5,732	\$ 6,019	\$ 9,888	
Subtotal	16	40	86	2	18	2	60	8	232	\$ 33,898	\$ 1,017	\$ 34,915	2	18	32	28	-	4	4	88	\$ 12,412	\$ 200	\$ 12,612	\$ 13,243	\$ 48,158	
5. ER and Presentations																										
a. Draft ER Development	4	16				2	8	20	50	\$ 7,788	\$ 234	\$ 8,022	4	4	16				2	26	\$ 4,250	\$ 100	\$ 4,350	\$ 4,568	\$ 12,590	
b. Public Education Meeting	8	12					8	8	36	\$ 5,992	\$ 715	\$ 6,707	4	8	4					16	\$ 3,140	\$ 700	\$ 3,840	\$ 4,032	\$ 10,739	
c. City Council Presentation	8	4						6	18	\$ 3,332	\$ 635	\$ 3,967		8	4					12	\$ 2,180	\$ 700	\$ 2,880	\$ 3,024	\$ 6,991	
d. Final ER and ODEQ Coordination	4	24							28	\$ 5,284	\$ 159	\$ 5,443		4	8					12	\$ 1,840	\$ 700	\$ 2,540	\$ 2,667	\$ 8,110	
Subtotal	24	56	-	-	-	2	16	34	132	\$ 22,396	\$ 1,743	\$ 24,139	8	24	32	-	-	-	2	66	\$ 11,410	\$ 2,200	\$ 13,610	\$ 14,291	\$ 38,430	
6. Additional Services (Unauthorized)									-	\$ -	\$ -	\$ -								-	\$ -	\$ -	\$ -	\$ -	\$ -	
TOTAL	133	218	202	26	144	8	100	66	897	\$ 148,467	\$ 7,800	\$ 156,267	40	98	238	176	8	12	13	585	\$ 83,055	\$ 6,150	\$ 89,205	\$ 93,668	\$ 249,935	

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2013.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | <u>\$1,000,000</u> |
| 2) Disease, Policy Limit: | <u>\$1,000,000</u> |
| 3) Disease, Each Employee: | <u>\$1,000,000</u> |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000</u> |
| 2) General Aggregate: | <u>\$1,000,000</u> |
| d. Excess or Umbrella Liability -- | |
| 1) Each Occurrence: | <u>\$1,000,000</u> |
| 2) General Aggregate: | <u>\$1,000,000</u> |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| 1) Each Accident | <u>\$1,000,000</u> |
| f. Professional Liability -- | |
| 1) Each Claim Made | <u>\$1,000,000</u> |
| 2) Annual Aggregate | <u>\$1,000,000</u> |

2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2013.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2013.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages 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, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages 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 any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

- B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and

Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, 2013.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

3. *Agreement Summary (Reference only)*

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____