

**AGENDA
CITY COUNCIL
WORK SESSION
CITY OF EAST GRAND FORKS
OCTOBER 27, 2009
5:00 PM**

CALL TO ORDER

CALL OF ROLL

DETERMINATION OF A QUORUM

1. Engineer Contract – Scott Huizenga
2. City Attorney Contract – Scott Huizenga
3. Council Pay Ordinance – Marc DeMers

ADJOURN

**AGENDA
CITY COUNCIL
CLOSED MEETING
CITY OF EAST GRAND FORKS
OCTOBER 27, 2009
5:00 PM**

CALL TO ORDER

CALL OF ROLL

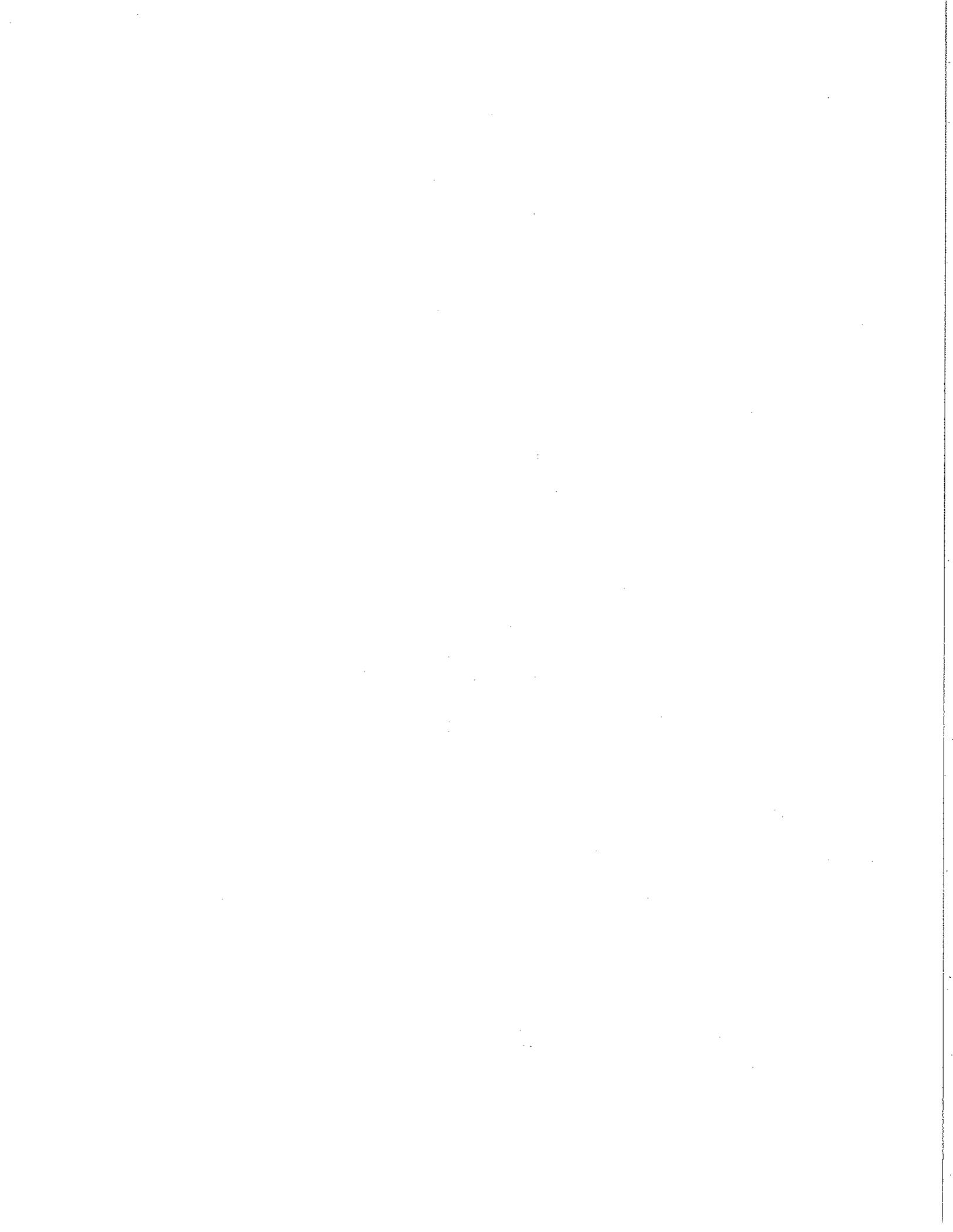
DETERMINATION OF A QUORUM

1. Consider strategy for labor negotiations pursuant to Minn.Stat. 13D.03, subd. 1 (b).

ADJOURN

Upcoming Meetings:

Regular Meeting – November 3, 2009 – 5:00 PM – Council Chambers
Work Session – November 10, 2009 – 5:00 PM – Training Room
Regular Meeting – November 17, 2009 – 5:00 PM – Council Chambers



This is Appendix 1 to EXHIBIT C, consisting of 1 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER _____

STANDARD HOURLY RATES SCHEDULE

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services performed on the date of the Agreement are:

PERSONNEL	2009	2010	2011	2012
1. ENGINEERS				
A. Principal Engineer	\$ 95.51	\$ 96.00	\$ 99.00	\$104.00
B. Professional Engineer	\$ 78.53	\$ 79.00	\$ 82.00	\$ 85.00
C. Engineer II		\$ 72.00	\$ 74.00	\$ 77.00
D. Engineer I	\$ 69.00	\$ 69.00	\$ 70.00	\$ 72.00
2. SURVEYORS - INSPECTORS -- DRAFTSMEN				
A Registered Land Surveyor II	\$ 89.14	\$ 89.00	\$ 92.00	\$ 95.00
Registered Land Surveyor I	\$ 70.04	\$ 70.00	\$ 71.00	\$ 73.00
		\$72.00	\$74.00	\$76.00
B. Inspector, Eng. Technician, Draftsman IV	\$ 65.79	\$ 66.00	\$ 67.00	\$ 69.00
Inspector, Eng. Technician, Draftsman III	\$ 55.18	\$55.00	\$56.00	\$57.00
Inspector, Eng. Technician, Draftsman II	\$ 46.69	\$ 47.00	\$ 48.00	\$ 49.00
Inspector, Eng. Technician, Draftsman I	\$ 41.39	\$ 41.00	\$ 42.00	\$ 43.00
C. Field Assistant	\$ 26.53	\$ 27.00	\$ 27.00	\$ 28.00
3. CLERICAL				
	\$ 29.71	\$ 30.00	\$ 30.00	\$ 31.00
4. CHARGEABLE EXPENSES				
Subsistence at actual cost				
Travel Vehicles				Government Rate per mile
Survey Vehicles				Government Rate per mile
Outside Consultants				Actual Cost + 10%
RTK GPS Survey Equipment				\$50.00 per hour
Boat/Snowmobile/Ranger All Terrain Vehicle				\$75.00 per day
Air Travel				Actual Cost
Meals and Lodging				Actual Cost
Reproducible Copies (Mylar)				\$1.75 sq. ft.
Reproducible Copies (Paper)				\$0.40 sq. ft.

Long Distance Telephone, Facsimile, and any but ordinary first class postage at actual cost.

Cost for surveying materials, drafting materials required for the job at actual cost plus 25%

FLOAN

Consulting Engineers



SANDERS

Land Surveyors

June 10, 2009

Scott Huizenga
City Administrator
City of East Grand Forks
PO Box 373
East Grand Forks, MN 56721

RE: 2010-2012 Engineering Agreement
East Grand Forks, MN

Dear Scott:

Enclosed please find two (2) copies of the 2010-2012 Engineering Agreement. Please execute and return one (1) copy to our office.

We are proposing a new rate schedule for this agreement and the increase is approximately two (2) percent per year, with the 2010 rate virtually the same as the 2009 rate.

The agreement language is exactly the same, however I am sending a copy to Mr. Galstad for his review.

Respectfully yours,
Floan-Sanders, Inc.

Greg Boppre, P.E.

GB:kk
Enc.

Cc: Ron Galstad, City Attorney

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between City of East Grand Forks (“OWNER”) and Floan-Sanders, Inc. (“ENGINEER”).

OWNER intends to engage the Engineer to render certain technical or professional services hereinafter described in connection with all City and Special Assessment projects within the City of East Grand Forks, MN for the years 2010, 2011 and 2012 (“Project”).

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if

ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the 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. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related

charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid 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.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein 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 industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's 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 wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

5.02 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. 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 ENGINEER's profession practicing under similar circumstances at the same time and in the same locality.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. 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, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's 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's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. 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.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. 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 (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

6.02 Authorized Project Representatives

A. Contemporaneous 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 individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

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 right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any

conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. 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 errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification 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 ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates 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."

B. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

C. 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.

D. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's 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 any of the insureds or additional insureds thereunder.

E. At any time, OWNER may request that ENGINEER, 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, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's 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 Termination

A. 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 ENGINEER believes that ENGINEER is being requested by OWNER to 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 as a result of such

substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its 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 the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 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.

6.06 Controlling Law

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

6.07 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, 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, 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, Contractor's 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. The OWNER agrees that the substance of the provisions of this paragraph 6.08.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 exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit H, "Dispute Resolution."

6.09 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, 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: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.10 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. 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.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

6.11 Notices

A. 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, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.12 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.13 Severability

A. 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, who 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.

6.14 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.15 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *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.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *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, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and 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.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified

in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *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.

20. *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.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction

Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *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.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's*--Polychlorinated biphenyls.

30. *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.

31. *Radioactive Materials*--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.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *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.

36. *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 ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *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.

39. *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.

40. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and 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.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than

strictly construction-related aspects of the Contract Documents.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of 9 pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of 2 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 2 pages.

D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.

E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.

F. Exhibit G, "Insurance," consisting of 2 pages.

G. Exhibit H, "Dispute Resolution," consisting of 1 page.

H. Exhibit I, "Allocation of Risks" consisting of 1 pages.

I. Exhibit J, "Special Provisions," consisting of 1 pages.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 36 inclusive, 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.

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

OWNER:

By: _____

Title: _____

Date Signed: _____

Address for giving notices:

Designated Representative (paragraph 6.02.A):

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____

ENGINEER:

Greg Bopp

By: Greg Bopp

Title: President

Date Signed: 6/10/09

Address for giving notices:

1600 Central AVENUE

EBST Grand Forks, MN

56721

Designated Representative (paragraph 6.02.A):

GREG BOPPE

Title: President

Phone Number: 218-773-1185

Facsimile Number: _____

E-Mail Address: gbopp@fs-mn.com

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated _____.

Initial:

OWNER _____

ENGINEER _____

ENGINEER'S SERVICES

Article 1 of the Agreement is amended and 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:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
 2. Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
 3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
 4. Identify and evaluate other alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment meet OWNER's requirements for the Project.
 5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, 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.
 6. Perform or provide the following additional Study and Report Phase tasks or deliverables:
 7. Furnish 2 review copies of the Report to OWNER within 30 days of authorization to begin services and review it with OWNER.
 8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish 12 final copies of the revised Report to the OWNER within 30 days after completion of reviewing it with OWNER.
- B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.

A1.02 Preliminary Design Phase

A. After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, selection, and authorization, prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
3. Advise OWNER if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data, information, or services.
4. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph A1.01.A.5.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
6. Furnish the Preliminary Design Phase documents to and review them with OWNER.
7. Submit to OWNER 2 final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within 30 days after authorization to proceed with this phase.

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

A1.03 Final Design Phase

A. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.
3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph A1.01.A.5.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:
5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.
6. Submit 2 final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER within 30 days after authorization to proceed with this phase.

B. In the event that the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is negotiable.

D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to OWNER.

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement. Reimbursement shall be as stated in Exhibit C.

3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.

4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.

6. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work in progress while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

7. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.

10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and

programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

12. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

13. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit-price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.6.a are expressly subject to the limitations set forth in paragraph A1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

15. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A1.05.A.10.

c. ENGINEER shall transmit these documents to OWNER.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

17. *Additional Tasks.* Perform or provide the following additional tasks or deliverables which will be reimbursed as per the hourly rate schedule in Exhibit C:

a.) Appearances before courts or boards on matters of litigation related to the project.

a.) Such other general services, such as the following:

- 1.) Meeting – TAC, Utility, Department
- 2.) Department Head Requests

*Council and Water and Light meetings, are a services of the consulting firm and are not billable under this agreement.

18. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.05.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

19. Preparing and furnishing to OWNER Record Drawings (2 sets) showing appropriate record information based on Project annotated record documents received from Contractor. These Record Drawings shall be delivered to the Owner by March of the following construction season.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase*

A. Upon written authorization from OWNER, ENGINEER, during the Post-Construction Phase, shall:

1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.
2. Assist OWNER in training OWNER's staff to operate and maintain Project, equipment, and systems.

3. Assist OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.

4. Together with OWNER, visit the Project to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.

5. In company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.

PART 2 -- ADDITIONAL SERVICES

A2.01 *Additional Services Requiring OWNER's Authorization in Advance*

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

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.

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 of this Agreement 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 with respect to Exhibit B.

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 feasibility studies, cash flow and economic evaluations, 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 ENGINEER's Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.

10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.

11. 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.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.

15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, 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.

16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.

17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.

18. Preparation of operation and maintenance manuals.

19. 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.

20. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.

21. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

A2.02 Required Additional Services

A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER _____

OWNER'S RESPONSIBILITIES

Article 2 of the Agreement is amended and 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:

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 in or relating to existing surface or subsurface structures at or contiguous to 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 a Hazardous Environmental Condition 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 or in the work 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. 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.

3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

J. 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.

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

L. 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.

M. 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.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. 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.

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.

2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

This is EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER _____

PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER --

C4.01 For Basic Services Having A Determined Scope -- Percentage of Construction Cost Method of Payment

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. General. An amount equal to a percentage of the Construction Cost.

<u>COST OF CONSTRUCTION</u>	<u>BASIC FEE</u>
A. \$ to \$50,000	10% or negotiated
B. \$50,000 to \$150,000	10%
C. \$150,000 to \$300,000	\$15,000 + 9% of excess over \$150,000
D. \$300,000 to \$500,000	9%
E. \$500,000 to 5,000,000	8%

This amount includes compensation for ENGINEER's Services and services of ENGINEER's Consultants, if any. The percentage of Construction Cost noted herein accounts for labor, overhead, profit, and Reimbursable Expenses.

2. As a basis for payment to ENGINEER, Construction Cost will be based on one or more of the following determinations with precedence in the order listed for Work designed or specified by ENGINEER:

- a. For Work designed or specified and incorporated in the completed Project, the actual final cost of the work performed by Contractor and paid by OWNER.

- b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work; or, if the Work is not Bid, the lowest bona fide negotiated proposal for such Work.

- c. For Work designed or specified but not constructed upon which no such Bid or proposal is received, ENGINEER's most recent opinion of probable Construction Cost. The Engineer and the Owner do hereby agree that if the time of the bid letting and the determination of the project cost, the Owner determines the project is not feasible, the Engineer shall be compensated 50% of the basic fee as determined in this section. It is further understood that this 50% of the basic fee represents only a partial payment to the Engineer for professional services rendered and if at some future date the Owner proceeds with project, the Engineer shall receive the remaining 50% of the basic fee plus compensation for any additional changes required in the plans and specifications.

d. Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by OWNER will be included at current market prices.

e. No deduction is to be made from ENGINEER's compensation on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

3. Progress payments:

a. The portion of the amounts billed for ENGINEER's services which is on account of the Percentage of Construction Cost will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Percentage of Construction Cost.

b. Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount, if any, as may be necessary to bring total compensation paid during such phase on account of the percentage of Construction Cost to the following estimated percentages of total compensation payable on account of the percentage of Construction Cost for all phases of Basic Services:

Study and Report Phase	0%
Preliminary Design Phase	25%
Final Design Phase	25%
Bidding or Negotiating Phase	45%
Construction Phase	5%
	100%

c. ENGINEER may alter the distribution of compensation between individual phases of the work noted herein but shall not exceed the total percent fee unless approved in writing by the OWNER.

4. Resident Project Representative and Construction Staking

It is understood that these services provided compensation for inspection and staking, shall not exceed 5% (five percent) of the construction cost, unless otherwise negotiated between Owner and Engineer, except for staking and inspection services in connection with state aid and federal projects where the total project fee is limited to 25% (twenty-five percent) of the construction cost.

4. Special Assessment Projects

The Owner shall compensate the Engineer one percent (1%) of the Actual Construction Cost, for preparation of the Special Assessment.

This is Appendix 1 to EXHIBIT C, consisting of 1 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER _____

STANDARD HOURLY RATES SCHEDULE

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services performed on the date of the Agreement are:

PERSONNEL	2010	2011	2012
1. ENGINEERS			
A. Principal Engineer	\$ 96.00	\$ 99.00	\$104.00
B. Professional Engineer	\$ 79.00	\$ 82.00	\$ 85.00
C. Engineer II	\$ 72.00	\$ 74.00	\$ 77.00
D. Engineer I	\$ 69.00	\$ 70.00	\$ 72.00
2. SURVEYORS - INSPECTORS - DRAFTSMEN			
B. Registered Land Surveyor II	\$ 89.00	\$ 92.00	\$ 95.00
Registered Land Surveyor I	\$ 70.00	\$ 71.00	\$ 73.00
C. Inspector, Eng. Technician, Draftsman V	\$ 72.00	\$ 74.00	\$ 76.00
Inspector, Eng. Technician, Draftsman IV	\$ 66.00	\$ 67.00	\$ 69.00
Inspector, Eng. Technician, Draftsman III	\$ 55.00	\$ 56.00	\$ 57.00
Inspector, Eng. Technician, Draftsman II	\$ 47.00	\$ 48.00	\$ 49.00
Inspector, Eng. Technician, Draftsman I	\$ 41.00	\$ 42.00	\$ 43.00
D. Field Assistant	\$ 27.00	\$ 27.00	\$ 28.00
3. CLERICAL			
	\$ 30.00	\$ 30.00	\$ 31.00
4. CHARGEABLE EXPENSES			
Subsistence at actual cost			
Travel Vehicles		Government Rate per mile	
Survey Vehicles		Government Rate per mile	
Outside Consultants		Actual Cost + 10%	
RTK GPS Survey Equipment		\$50.00 per hour	
Boat/Snowmobile/Ranger All Terrain Vehicle		\$75.00 per day	
Air Travel		Actual Cost	
Meals and Lodging		Actual Cost	
Reproducible Copies (Mylar)		\$1.75 sq. ft.	
Reproducible Copies (Paper)		\$0.40 sq. ft.	

Long Distance Telephone, Facsimile, and any but ordinary first class postage at actual cost.

Cost for surveying materials, drafting materials required for the job at actual cost plus 25%.

This is **EXHIBIT D**, consisting of 4 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated _____.

Initial:

OWNER _____

ENGINEER _____

**DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF
AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE**

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.02 *Resident Project Representative*

A. ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

1. *General:* RPR is ENGINEER's agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.
 - c. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections, Tests, and System Startups:*
 - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.
10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

- d. Maintain records for use in preparing Project documentation.
 - e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.
11. *Reports:*
- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
 - d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.
14. *Completion:*
- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
 - c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
 - d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
 - 4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize OWNER to occupy the Project in whole or in part.

This is EXHIBIT E, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER _____

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER's Construction Contract Identification:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To:

And To:

The undersigned hereby gives notice to the above OWNER and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: _____

Title: _____

Dated: _____, _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is EXHIBIT G, consisting of 2 pages, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER _____

INSURANCE

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 Insurance

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
1) Each Accident:	<u>\$100,000.00</u>
2) Disease, Policy Limit:	<u>\$500,000.00</u>
3) Disease, Each Employee:	<u>\$100,000.00</u>
c. General Liability --	
1) Each Occurrence (Bodily Injury and Property Damage):	<u>\$3,000,000.00</u>
2) General Aggregate:	<u>\$3,000,000.00</u>
d. Excess or Umbrella Liability --	
1) Each Occurrence:	<u>\$1,000,000.00</u>
2) General Aggregate:	<u>\$2,000,000.00</u>
e. Automobile Liability --	
1) Bodily Injury:	
a) Each Accident	<u>\$1,000,000.00</u>
2) Property Damage:	
a) Each Accident	<u>\$1,000,000.00</u>
f. Other (specify):	
<u>Professional Liability</u>	<u>\$1,000,000.00</u>

2. By OWNER:

a. Workers' Compensation:	Statutory
b. Employer's Liability --	
1) Each Accident	\$ _____
2) Disease, Policy Limit	\$ _____
3) Disease, Each Employee	\$ _____

- c. General Liability --
 - 1) General Aggregate: \$ _____
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$ _____

- d. Excess Umbrella Liability --
 - 1) Each Occurrence: \$ _____
 - 2) General Aggregate: \$ _____

- e. Automobile Liability --
 - 1) Bodily Injury:
 - a) Each Accident \$ _____
 - 2) Property Damage:
 - a) Each Accident \$ _____

- [or]

- 1) Combined Single Limit (Bodily Injury and Property Damage):
 - Each Accident \$ _____

- f. Other (specify):
 - \$ _____

B. Additional Insureds

1. The following persons or entities are to be listed on OWNER's policies of insurance as additional insureds as provided in paragraph 6.05.B:

- a. _____
ENGINEER

- b. _____
ENGINEER'S CONSULTANT

- c. _____
ENGINEER'S CONSULTANT

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER MRS

DISPUTE RESOLUTION

Paragraph 6.09 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.09 *Dispute Resolution*

A. All Disputes between OWNER and ENGINEER shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association effective at the Effective Date of the Agreement, subject to the limitations and restrictions stated in paragraphs H6.09.A.1, H6.09.A.2, H6.09.A.3, and H6.09.A.4 below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the Dispute, has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute, would be barred by the applicable statute of limitations.

2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$1,000,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute, where the amount in controversy of any such Dispute, is more than \$1,000,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$1,000,000 (exclusive of interest and costs).

3. The award rendered by the arbitrators will be final, and judgment may be entered upon it in any court having jurisdiction thereof.

4. If a Dispute in question between OWNER and ENGINEER involves the work of a Contractor, subcontractor, or consultants to the OWNER or ENGINEER (each a "Joinable Party"), either OWNER or ENGINEER may join each Joinable Party as a party to the arbitration between OWNER and ENGINEER hereunder, and ENGINEER or OWNER, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between OWNER and ENGINEER involving the work of such Joinable Party. Nothing in this paragraph H6.09.A.4 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against OWNER or ENGINEER that does not otherwise exist.

This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER MLB

ALLOCATION OF RISKS

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

6.11.B Limitation of ENGINEER's Liability

1. *ENGINEER's Liability Limited to Amount of ENGINEER's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants, and any of them, 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 or breach of contract, or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents, or ENGINEER's Consultants, or any of them, shall not exceed the total compensation received by ENGINEER under this Agreement.

This is **EXHIBIT J**, consisting of 1 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated _____.

Initial:

OWNER _____
ENGINEER MLB

SPECIAL PROVISIONS

Paragraph(s) _____ of the Agreement is/are amended to include the following agreement(s) of the parties:

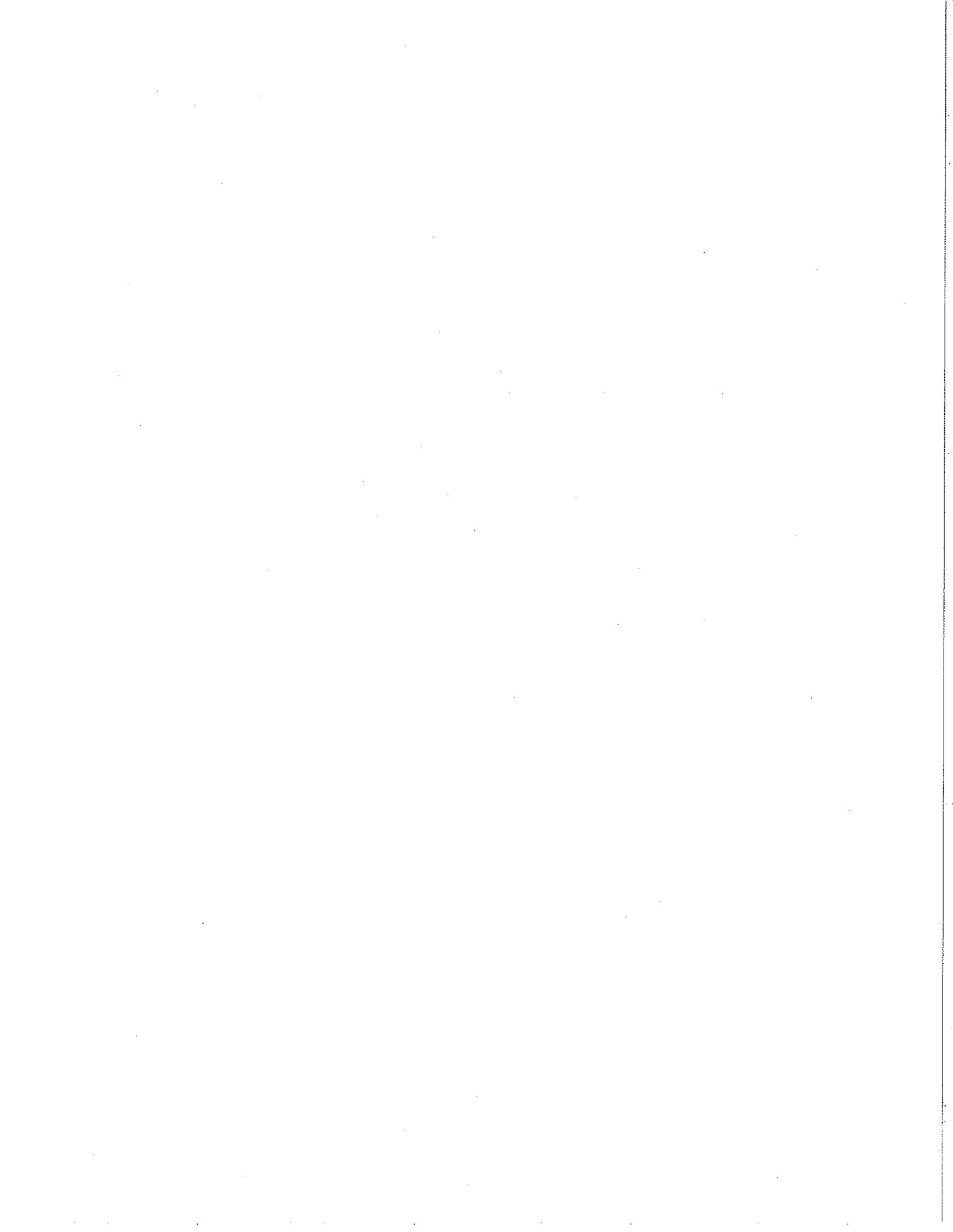
PROJECT MANAGEMENT

Project Management services will be required to perform consistent and effective communication for the US Army Corp of Engineer 'Flood Damage Reduction and Recreation Project', as outlined in the Project Cooperation Agreements.

These services shall include the project manager and all applicable staff members to perform the following:

Until the end of the period of construction, the Project team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; the allocation of project costs to the project flood damage reduction features and the project recreation features, and the allocation of costs to East Grand Forks; final inspection of the entire Project or requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters.

Compensation as per the attached hourly rate schedule (**Exhibit C**).



RETAINER AGREEMENT

THIS AGREEMENT is being made and entered into this 3rd day of November 2009, by and between the **City of East Grand Forks**, Minnesota, a municipal corporation organized under the laws of the State of Minnesota, P.O. Box 373, East Grand Forks, Minnesota 56721 (hereinafter referred to as the "City"); and **Ronald I. Galstad**, of and representing the law firm of Galstad, Jensen & McCann, A Minnesota Professional Association, P.O. Box 386, East Grand Forks, Minnesota 56721 (hereinafter referred to as "Galstad").

1. PURPOSE AND TERM. City hereby employs "Galstad" as its City Prosecutor/City Attorney for a term commencing the 1st day of January, 2010 and ending the 31st day of December, 2012, both dates inclusive.
2. DUTIES. As City Prosecutor/City Attorney "Galstad" will faithfully represent the interests of the City and shall prosecute all criminal suits, actions or proceedings to which the City is a party, and shall faithfully perform all other duties as requested and assigned by the City Administrator and/or the City Council.
3. ACCEPTANCE BY ATTORNEY. "Galstad" hereby accepts the employment of City Prosecutor/City Attorney for himself and the law firm of Galstad, Jensen & McCann P.A., and promises and will render to the best of his ability the services described in Paragraph II above during the continuance of this Agreement.
4. COMPENSATION OF ATTORNEY.
 - a. As compensation for all **CRIMINAL PROSECUTION** services required by City and rendered by City Prosecutor herein, City shall pay to the City Prosecutor the sum of sixty thousand (\$60,000.00) per annum, payable in monthly installments of five thousand (\$5,000.00) for 2010, 2011, and 2012.

- b. As compensation for all **CIVIL** services to be rendered by City Prosecutor herein, City shall pay City Prosecutor at the rate of one hundred ten (\$110.00) for 2009, 2010, and 2011.
 - c. The parties hereby further agree that "Galstad" shall be reimbursed for all of his out-of-pocket costs and expenses paid while fulfilling his duties as set forth in this agreement.
5. TERMINATION. This Agreement may be terminated at any time on six (6) months notice in writing from either party to the other party that employment hereunder is to be so terminated, or may at any time be terminated by the City for cause. Furthermore, should "Galstad" for any reason be unable to fulfill and perform the duties and obligations as set forth in this contract, the City reserves the right to cancel this contract after ten (10) working days notice in writing to "Galstad" and/or Galstad, Jensen & McCann P.A..
6. ASSIGNMENT. This contract may not be assigned by "Galstad" without the express written permission of the City.
7. BUDGET. "Galstad" recognizes that the City budgets the funds available to the City Prosecutor/City Attorney and hereby pledges to use his best efforts to deliver legal services within the budgeted amounts, such pledge being subject to the caveat that it is the City that controls the amount of work requested by and from the City Prosecutor/City Attorney.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at East Grand Forks, Minnesota, the day and year first above written.

City of East Grand Forks,
Minnesota

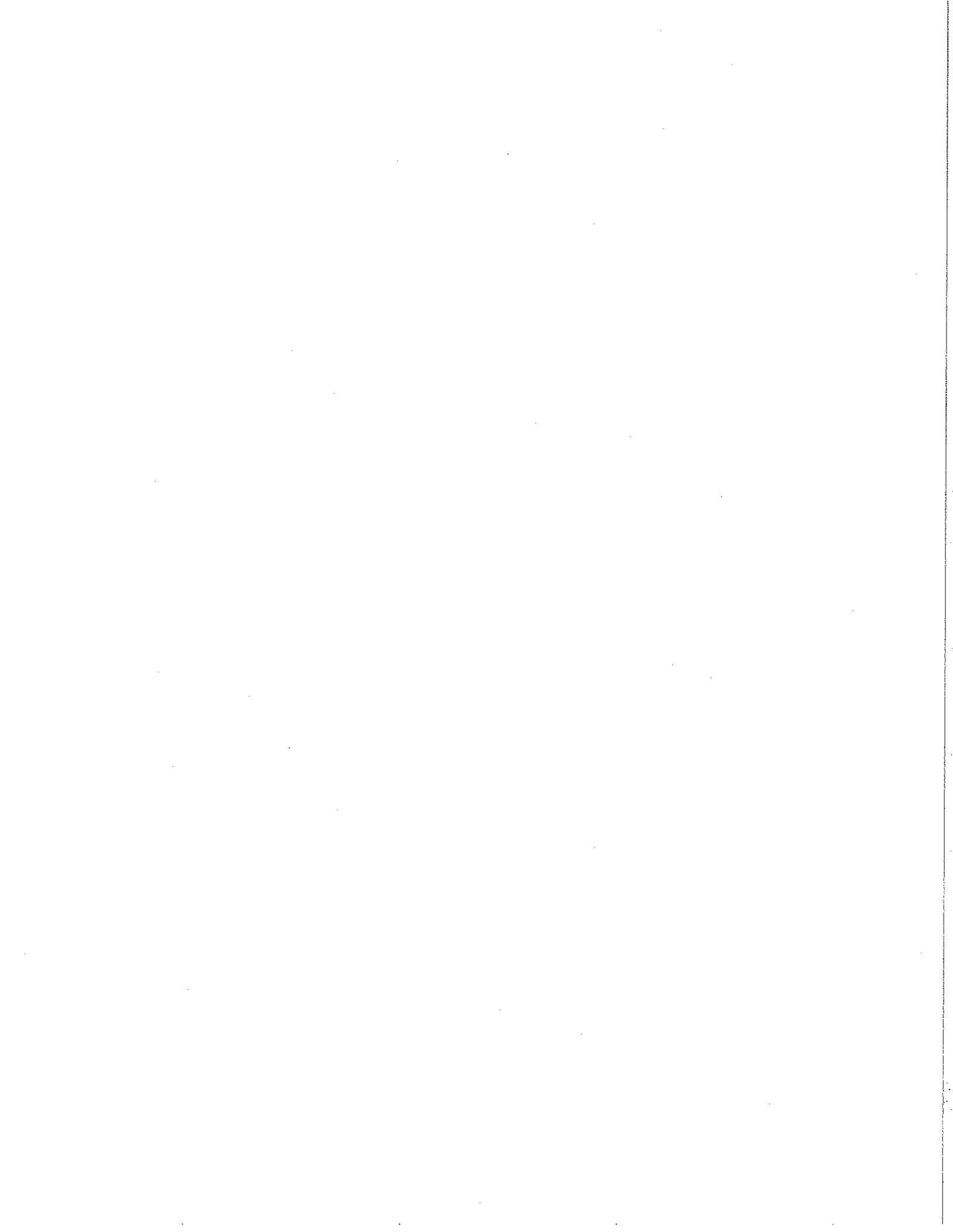
Galstad, Jensen & McCann,
A Professional Association

BY: _____
Its Mayor

BY: _____
Its President

BY: _____
Its City Administrator

(RETAINER AGREEMENT January 2007)



ORDINANCE NO. ___ 3RD SERIES

AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE SECTION 2.86 (A.K.A. CHAPTER 30 ENTITLED "ADMINISTRATION" BY AMENDING SECTION 30.12 SALARIES OF MAYOR AND COUNCIL MEMBERS; AND BY ADOPTING BY REFERENCE CITY CODE SECTION 34.99 AND SECTION 10.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS:

AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 1.09 A.K.A. PROPOSED CHAPTER 1 AND SECTION 1.09 (A.K.A. CHAPTER 10 AND SECTION 10.99) WHICH, AMONG OTHER THINGS, CONTAINING PENALTY PROVISIONS.

THE CITY OF EAST GRAND FORKS ORDAINS:

Section 1. Section 2.86 (a.k.a. Section 30.12 of the Proposed City Code) is hereby amended to INCLUDE the following:

That the Salary of the Mayor shall be set at \$700.00 dollars per month and that the salaries of each Council Member shall be set at \$400.00 dollars per month effective January 1, 2010.

Section 2. City Code Chapter 1 entitled "Definitions and General Provisions Applicable to Entire City Code Including Penalty for Violation" Section 1.09 entitled "Violation a Misdemeanor" (a.k.a. proposed Title Chapter 10 General provisions and Section 10.99) are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication and be given the Number ___, 3rd Series.

Voting Aye:
Voting Nay:
Absent:

The President declared the Ordinance passed.

Passed: November ___, 2009

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing Ordinance this ___ day of November, 2009.

Mayor

