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Public Works

City Transit
263-8152

MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

To: Mayor and City Council Members

CC: Gregg Mandsager, City Administrator

FROM: Brian Stineman, Public Works Director

DATE: September 13, 2016

RE: Request to Enter into Contract for Impact Delineation Monitoring Wells

INTRODUCTION:

The City owns and operates the Muscatine County Sanitary Landfill. In 2015 the landfill entered into a consent order with the Iowa Department of Natural Resources. The consent order requires that during calendar year 2016 the landfill sample groundwater monitoring wells for natural attenuation parameters and to install new monitoring wells at the waste boundary bracket the contamination plume boundary.

BACKGROUND:

The city has contracted with Barker Lemar Engineering Consultants to provide annual monitoring and reporting for the landfill consent order requirements. This latest proposal from Barker Lemar will provide the required installation and sampling of monitoring wells to bracket the contamination plume boundary.

RECOMMENDATION/RATIONALE:

Staff recommends that council approve this request to enter into the contract with Barker Lemar to install the Impact Delineation Monitoring Wells. The cost of this work is estimated at \$19,750 and is included in the Fiscal Year 2017 Landfill Budget.

Memo from Barker Lemar Regarding Proposal No. 164480:

Where this works fits in the original timeline: Initial drilling included determining if monitoring wells MW-27 and MW-28 were installed too close to the waste boundary. They were too close and therefore were replaced. The hope was that being able to move the wells further away from the waste would result in finding less contamination. It has done that but not to the point of no contamination. The replacement wells (MW-38 and MW-39) had to have five samples collected over a one year period before statistical analyses could be performed to determine what further plume bracketing would be required. That sampling was recently completed, the statistics run, and now we are in a position to know what the next step in bracketing is. Addressing other bracketing requirements is also included.

Why it is important: This round of drilling will attempt to define the plume on the Winter's property, which is a DNR requirement and is also necessary for the easement/acquisition process to move forward (we need to know how big the plume is to know how much property might be involved). We also are looking further into migration pathways on the southwest side of the landfill before committing to some deep bedrock drilling in that area.

Other pertinent facts: This drilling is a planned activity in the Consent Order at the time originally contemplated. It likely will not be the last drilling event as plume information from these wells will be used to determine what is left. Plumes are to be defined by August 1, 2017.

August 30, 2016

Laura Liegois, Solid Waste Manager
Muscatine County Solid Waste Management Agency
215 Sycamore Street
Muscatine, Iowa 52761

**RE: Impact Delineation Monitoring Wells
Muscatine County Sanitary Landfill
Permit No. 70-SDP-02-75P
Proposal No. 164480**

Dear Laura:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide professional services to the Muscatine County Solid Waste Management Agency (Agency) for the Muscatine County Sanitary Landfill (Landfill). This proposal addresses the requirements to further delineate the extent of the groundwater impact along a portion of both the eastern and western boundaries of the site.

1.0 PROJECT UNDERSTANDING

Groundwater sampling and statistical analyses associated with the Hydrologic Monitoring System Plan (HMSP) monitoring network for the landfill through the 2nd 2016 semi-annual statistical evaluation has indicated exceedances of groundwater protection standards (GWPSs) at statistically significant levels (SSLs) as shown in Table 1 below.

**Table 1
Statistically Significant GWPS Exceedances**

Constituent	MW-4	MW-11	MW-12R	MW-13	MW-20	MW-22	MW-23	MW-38	MW-39
Arsenic			X						
Benzene							X		
Cobalt	X		X		X	X		X	X
Nickel									
Vinyl Chloride		X		X					

Note: The SSLs indicated in Table 1 were obtained from the 2016 Annual Water Quality Report.

Pursuant to Iowa Administrative Code (IAC) 567 113.10(6)"g"(1), measured SSLs require actions including the installation of monitoring wells to bracket the area of suspected groundwater impact and to monitor potential migration in the projected direction of groundwater flow, notify adjacent landowners of potential impact if off-site, and initiate an assessment of corrective measures (ACM).

In accordance with IAC 567-113.10(6)"g"(1)"1", additional monitoring wells are proposed to be installed and sampled to characterize the extent of the groundwater impact due to cobalt (in monitoring wells MW-4, MW-38, and MW-39), vinyl chloride (in monitoring well MW-13), and both arsenic and cobalt (in monitoring well MW-12R).

2.0 SCOPE OF SERVICES

Based on the above information, BARKER LEMAR proposes to install the following monitoring wells in order to evaluate the character and extent of the groundwater impact near some monitoring wells with measured SSLs as required by IAC 567-113.10(6)"g"(1)"1". The approximate location of these proposed monitoring wells are described below.

- MW-40: Approximately 100 feet east of monitoring well MW-38.
- MW-41: East of monitoring well MW-39 at the property boundary.
- MW-42: East of monitoring well MW-4 at the property boundary.
- MW-43: A water table monitoring well adjacent to monitoring well MW-33.
- MW-44: A deep monitoring well adjacent to MW-38.
- MW-45: A deep monitoring well adjacent to MW-39.
- MW-46: A deep monitoring well adjacent to MW-12R.

It should be noted that if this round of monitoring well installations does not fully define the extent of the impacted groundwater plumes, additional monitoring well installations will be required in the area drilled. Additionally, further impact delineation in the bedrock to the southwest of the site will be required; however, further assessment is necessary prior to determining drilling requirements.

BARKER LEMAR staff will conduct a post-drilling survey of monitoring wells installed to obtain coordinates and elevations of the ground surface, top of casing, and top of protective casing for each well. Construction documentation and boring logs for the new wells will be submitted to the Iowa Department of Natural Resources (DNR).

The Agency will be responsible coordinating site access for off-site well installations.

The installation of low-flow sampling equipment in the new monitoring wells will be added as a line item in the annual services contract. Wells with water levels less than 25 feet below the top of casing will have well tubing and wellheads installed for sampling via peristaltic pump; this is anticipated for monitoring wells MW-40, MW-41, MW-42, and MW-43. Wells with water levels greater than 25 feet below the top of casing will have dedicated submersible pumps and wellheads installed for sampling; this is anticipated for monitoring well MW-44, MW-45, and MW-46.

3.0 LIMITATIONS

Services not set forth in Section 2.0, Scope of Services, are excluded from this proposal. BARKER LEMAR has no responsibility to perform such excluded services and has no liability associated with the non-performance of such services.

4.0 SCHEDULE

BARKER LEMAR will begin these services upon receiving the signed Confirmation of Notice to Proceed, or the Client's verbal authorization followed by the signed Notice to Proceed. Barring circumstances beyond BARKER LEMAR's control, BARKER LEMAR anticipates completing the scope of services within 90 days of receipt of the signed Notice to Proceed.

5.0 COMPENSATION

The fees for the proposed scope of services are shown in the Table 2 below and are valid for 60 days following the date of this proposal. Although fees are shown by task, the compensation for individual tasks are not independent of each other, and elimination of any task or part of a task shall justify a review and potential adjustment of the compensation for the remaining scope of services. Our invoices will be submitted monthly and will reflect the percentage complete of each task as of the date of the invoice.

Payment terms are as described in the attached Terms and Conditions. Should conditions be encountered that require a change in the scope of services, compensation, or schedule, BARKER LEMAR will contact Client and proceed only with Client authorization, followed by a signed Change Order.

**Table 2
Compensation**

Description	Estimated Cost
Install Monitoring Wells for Impact Delineation (see Attachment A)	
• MOBILIZATION/DEMobilIZATION	\$ 2,500
• WELL DRILLING & INSTALLATION	\$ 9,900
• WELL PROTECTION	\$ 2,800
• WELL DEVELOPMENT	\$ 1,400
• SURVEY, POST-DRILLING	\$ 1,250
• PER-DIEM	\$ 1,000
• DEPARTMENT REQUIRED REPORTING/PROJECT MANAGEMENT	\$ 900
TOTAL	\$19,750

6.0 HEALTH AND SAFETY

This proposal assumes that Level D safety precautions are adequate and confined space entry is not required. Level D safety attire generally consists of a normal work uniform including safety shoes, hard-hat where required, and appropriate eye protection. The costs will be adjusted accordingly if site-specific conditions require more stringent health and safety procedures.

7.0 CONDITIONS

Items to be provided by the Agency include the right-of-entry for well installation or other on-site and adjacent property activities requested by the Agency. The Agency is responsible for making BARKER LEMAR aware of any restrictions or special requirements regarding the site and its required activities prior to the commencement of the fieldwork. We have enclosed our Terms and Conditions that should be considered part of this proposal.

CONFIRMATION OF NOTICE TO PROCEED

Proposal No. 164480

The above proposal and attached Terms and Conditions are understood and accepted.

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) agrees to perform and complete the following services for the Muscatine County Solid Waste Management Agency (Client) at its facility located in Muscatine County, Iowa.

The scope of services includes installation of impact delineation monitoring wells as described in Section 2.0 and will include other technical and/or administrative services as outlined in this proposal.

BARKER LEMAR agrees to perform the above scope of services for a total compensation estimated to be \$19,750. Client will be invoiced for the percent of project completed at the time of the invoice. The compensation for the proposed scope of services is valid for 60 days following the date of this proposal.

If this proposal meets with your approval, sign two originals of this Confirmation of Notice to Proceed, retain one original for Client files, and return one original or copy via email, fax to 515.256.0572, or U.S. mail to Barker Lemar Engineering Consultants, 1801 Industrial Circle, West Des Moines, IA 50265.

If you have questions regarding any of the information above, please contact one of the authorized signers below at 515.256.8814, or 800.707.4248

Sincerely,
BARKER LEMAR ENGINEERING CONSULTANTS

Muscatine County Solid Waste Management
Agency



Nathan Ohrt
Project Manager
Date: August 30, 2016

Laura Liegois
Date:
Solid Waste Manager



Timothy C. Buelow, P.E.
Principal Engineer
Date: August 30, 2016

Copies: Addressee (2)
Electronic File

ATTACHMENT A

BARKER LEMAR

ENGINEERING CONSULTANTS

FEE SCHEDULE - BRACKETING MONITORING WELL INSTALLATION

PROJECT: Muscatine County Sanitary Landfill
 CITY: Stockton, Iowa

PROPOSAL NO.: 164480
 PREPARED: August 30, 2016

BID BASIS	DEPTHS (ft)
Install Monitoring Well (MW-40)	20
Install Monitoring Well (MW-41)	20
Install Monitoring Well (MW-42)	15
Install Monitoring Well (MW-43)	20
Install Monitoring Well (MW-44)	46
Install Monitoring Well (MW-45)	43
Install Monitoring Well (MW-46)	34
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NUMBER OF BORINGS	7
TOTAL FOOTAGE	198

SCOPE OF SERVICES	QUANTITY	UNITS	UNIT COST	TOTAL COST
MOBILIZATION/DEMOBILIZATION	1	LUMP SUM	\$ 2,500	\$ 2,500
WELL DRILLING & INSTALLATION	198	FEET	\$ 50	\$ 9,900
WELL PROTECTION	7	EACH	\$ 400	\$ 2,800
WELL DEVELOPMENT	7	EACH	\$ 200	\$ 1,400
SURVEY, POST-DRILLING	1	LUMP SUM	\$ 1,250	\$ 1,250
PER-DIEM	4:2	DAYS:PERSON	\$ 125	\$ 1,000
DEPARTMENT REQUIRED REPORTING/PROJECT MANAGEMENT	1	LUMP SUM	\$ 900	\$ 900
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TOTAL PROJECT COST				\$ 19,750.00

Assumptions:

- Well depths exclude stick-up and were determined from interpolated groundwater elevations.
- Well depths may be adjusted based on observations made while drilling. If a boring must be abandoned due to encountering an obstacle, the client will be billed at a rate of one half (1/2) the well drilling rate for the lost footage.

TERMS AND CONDITIONS

PAYMENT TERMS

Payment is due upon receipt of our invoice. If payment is not received within 30 days from the invoice date, Client agrees to pay a finance charge on the principal amount of the past due account of 1 1/2% per month. If 1 1/2% per month exceeds the maximum allowed by law; the charge shall automatically be reduced to the maximum legally allowable. In the event the Client requests termination of the services prior to completion, a termination charge in an amount not to exceed 30% of all charges incurred through the date services are stopped plus any shutdown costs may, at the discretion of Barker, Lemar & Associates, Inc., be made. If during the execution of the services, Barker, Lemar & Associates, Inc. is required to stop operations as a result of changes in the scope of services such as requested by the Client or requirements of third parties, additional charges will be applicable. Client is responsible for all cost of the collection of unpaid accounts, including reasonable attorney fees.

INSURANCE

Barker, Lemar & Associates, Inc. maintains Workers' Compensation and Employers Liability Insurance in conformance with applicable state law. In addition, we maintain Commercial General Liability Insurance with combined Single Bodily Injury and property damage limits of \$1,000,000 and Automobile Liability Insurance with combined Single Bodily Injury and property damage limits of \$1,000,000. A certificate of insurance can be supplied evidencing such coverage, which contains a clause providing that 10 days written notice be given prior to cancellation. Cost of the above coverage is included in our quoted fees. If additional coverage or increased limits of liability are required, Barker, Lemar & Associates, Inc. will endeavor to obtain the requested insurance and charge separately for costs associated with additional coverage or increased limits.

LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and Barker, Lemar & Associates, Inc., the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants shall not exceed the applicable insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Client agrees that Barker, Lemar & Associates, Inc.'s liability for any damage on account of any error, omission, or other professional negligence by Barker, Lemar & Associates, Inc. will be limited to a sum not to exceed \$50,000 or the amount presently due Barker, Lemar & Associates, Inc. for services rendered hereunder, whichever is greater.

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

Barker, Lemar & Associates, Inc. shall not be responsible for any acts or omissions of the Contractor, any sub contractor, any entity performing any portions of the Work or any agents or employees of any of them. Barker, Lemar & Associates, Inc. does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

POLLUTION CLAIMS

Client hereby understands and agrees that Barker, Lemar & Associates, Inc. has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Client's premises, or in connection with or related to this project with respect to which Barker, Lemar & Associates, Inc. has been retained to provide professional engineering services. Barker, Lemar & Associates, Inc.'s total liability to Client resulting from any release or threatened release of any hazardous waste, substance, pollutant or contaminant, whether or not directly or indirectly generated by Barker, Lemar & Associates, Inc.'s performance of the work hereunder (including any injury to persons or property or death resulting therefrom), shall not exceed the amount due Barker, Lemar and Associates, Inc. for services rendered hereunder. This limitation applies to all liabilities, including indemnification liabilities, whether based on contract, tort (including negligence), and strict liability or otherwise. This limitation of liability does not in any way limit or affect Client's obligations to indemnify and hold Barker, Lemar & Associates, Inc., its owners, officers, directors, and employees harmless. This limitation of liability shall not apply to the extent it is held that the loss or damage arose from Barker, Lemar & Associates, Inc.'s gross negligence or intentional misconduct. In addition, Client agrees to limit Barker, Lemar & Associates, Inc.'s liability to the same extent that Client's liability is limited pursuant to its contract with its client (if one exists).

DOCUMENTS

Barker, Lemar & Associates, Inc.'s liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. Barker, Lemar & Associates, Inc. makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by Barker, Lemar & Associates, Inc. under this Agreement. In no event shall Barker, Lemar & Associates, Inc., its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.

STANDARD OF CARE

In providing services under this Agreement, Barker, Lemar & Associates, Inc. shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same or similar locality. Barker, Lemar & Associates, Inc. makes no warranty, express or implied, as to its professional services rendered under this Agreement.

RIGHT-OF-ENTRY

Unless otherwise agreed, Client will furnish right-of-entry on the property for Barker, Lemar & Associates Inc. to make the planned borings, surveys, tests, and/or explorations. Barker, Lemar & Associates Inc. will take reasonable precautions to limit damage to the property caused by our operations, but we have not included in our fee the cost of restoration of damage that may result. If Client desires Barker, Lemar & Associates Inc. to restore the property to its former condition, we will accomplish this, to the extent reasonably possible, and add the cost to the proposed fee.

SITE VISITS

Barker, Lemar & Associates, Inc. shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and Barker, Lemar & Associates, Inc., in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of Barker, Lemar & Associates, Inc.'s work but rather are to allow the Consultant to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, Barker, Lemar & Associates, Inc. shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

if the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by Barker, Lemar & Associates, Inc. as Additional Services in accordance with the terms of this Agreement

Barker, Lemar & Associates, Inc. shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

SAMPLING OR TESTING OF LOCATION

The fees do not include costs associated with surveying of the site or the accurate horizontal and vertical locations of tests, unless otherwise specifically agreed to by the parties. Field test or boring locations described in Barker, Lemar & Associates, Inc.'s report contemplated by these Terms and Conditions or shown on sketches are based on specific information furnished by others or estimates made in the field by our technicians. Such dimensions, depths, or elevations should be considered as approximations unless otherwise stated in the reports contemplated by these Terms and Conditions.

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. Barker, Lemar & Associates, Inc. may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. Barker, Lemar & Associates, Inc. shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

SAMPLE DISPOSAL AGREEMENT

Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests unless otherwise regulatory required. Upon written request, Barker, Lemar & Associates, Inc. will retain test specimens or drilling samples for mutually acceptable storage charge and period of time.

DAMAGE TO EXISTING MAN-MADE OBJECTS

It shall be the responsibility of the Client or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects and underground utilities relative to field tests or boring locations. Barker, Lemar & Associates, Inc.'s field personnel are trained to recognize clearly identifiable stakes or markings in the field and without special written instruction to initiate field testing drilling and/or sampling within a reasonable distance of each designated location. If Barker, Lemar & Associates, Inc. is cautioned, advised, or given data in writing that reveal the presence or potential presence of underground or over ground obstructions, such as utilities, Barker, Lemar & Associates, Inc. will give special instructions to its field personnel. As evidenced by Client's acceptance of this proposal, Client agrees to indemnify and save harmless from all claims, suits, losses, personal injuries, death, and property liability resulting from unusual subsurface conditions or damages to subsurface structures, including utility lines, owned by Client or third parties, occurring in the performance of the proposed services, whose presence and, exact locations were not revealed to Barker, Lemar, & Associates, Inc. in writing, and to reimburse Barker, Lemar & Associates, Inc. for expenses in connection with any such claims or suits, including reasonable attorney fees.

DISPOSAL

Barker, Lemar & Associates, Inc. is not, and has no authority to act as, a handler, generator, operator, treated, storer, transporter or disposer of hazardous waste, substances, pollutants or contaminants found or identified at the site. Barker, Lemar & Associates, Inc. shall have no responsibility for the transportation, storage, treatment or disposition of contaminated or potentially contaminated waste materials of any kind, which are directly or indirectly generated from Barker, Lemar & Associates, Inc.'s performance of the work in accordance with these Terms and Conditions. Client shall be responsible for the disposal of any such waste materials.

SAFETY

Should Barker, Lemar & Associates, Inc. provide periodic observations or monitoring services at the job site during construction, Client agrees that in accordance with generally-accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's procedures conducted by Barker, Lemar & Associates, Inc. is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

CONSTRUCTION COST OPINIONS

Opinions of probable cost for the facilities considered and designed under this Agreement are prepared by Barker, Lemar & Associates, Inc. through exercise of its experience and judgment in applying presently available cost data, but it is recognized that Barker, Lemar & Associates, Inc. has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that Barker, Lemar & Associates, Inc. cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from Barker, Lemar & Associates, Inc.'s opinion of probable construction costs.

OWNERSHIP OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations, and estimates, prepared by Barker, Lemar & Associates, Inc., are instruments of service pursuant to these Terms and Conditions and shall be the sole property of Barker, Lemar & Associates, Inc. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned to Barker, Lemar & Associates Inc. upon demand and will not be used by Client for any purpose whatsoever. Client further agrees that under no circumstances shall any documents produced by Barker, Lemar & Associates Inc., pursuant to these Terms and Conditions, be used at any location or for any project not expressly provided for in these Terms and Conditions without the written permission of Barker, Lemar & Associates, Inc. At the request and expense of Client, Barker, Lemar & Associates, Inc. will provide Client with copies of documents created in the performance of the work for a period not exceeding five years following submission of the report contemplated by these Terms and Conditions.

SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties of this Agreement.

SEVERABILITY

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

WAIVER

Barker, Lemar & Associates, Inc.'s waiver of any term, condition, or breach of any term, condition, covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

GOVERNING LAW

These Terms and Conditions shall be governed in all respects by the laws of the State of Iowa. Any litigation to be filed by either party to the contract shall be filed in Polk County, Iowa District Court or Federal Court for the Southern District of Iowa

ENTIRE AGREEMENT

This Agreement, and its attachments, contains the entire understanding between Owner and Barker, Lemar & Associates, Inc. relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.