



Division of Public Works .
1000 South Houser St.
Muscatine, IA 52761

Recycling Center and Transfer Station

Phone (563) 263-9689
Fax: (563) 263-9689

MEMORANDUM

To: Mayor and City Council Members
Cc: Greg Jenkins, Interim City Administrator
From: David Popp, Solid Waste/Collection and Drainage Manager
Date: July 30, 2020
Re: Muscatine Landfill Annual Services Proposal

Recycling Center
Transfer Station
Landfill Operations
Refuse Collection

Introduction:

The City of Muscatine manages and operates the Muscatine County Sanitary Landfill, City of Muscatine C&D Landfill and the Muscatine Transfer Station. Engineering Services such as groundwater sampling, water quality reporting, and gas monitoring are examples of services provided by an environmental services agreement.

Background:

The purpose of this proposal is to provide the necessary annual sampling, inspection and reporting required by the Iowa DNR and EPA for three facilities. These include the Muscatine County Sanitary Landfill, The City of Muscatine C&D Landfill and the City of Muscatine Transfer Station.

Recommendation/Rationale:

Staff recommends that the council approve this request for proposal No.175050 from Barker Lemar Engineering Consultants in the amount of \$29,615.00 in FY 2021, \$28,550.00 in FY 2022 and \$29,430.00 in FY 2023 for the Annual Services Agreement. Funds for this service are budgeted in the FY 2021 Landfill budget for this expense.

Background Information:

Barker Lemar Engineering Consultants proposal No. 175050



March 19, 2020

Dave Popp, Solid Waste/Collections and Drainage Manager
Muscatine County Solid Waste Management Agency
1000 South Houser Street
Muscatine, Iowa 52761

RE: Proposal: Annual Services – Fiscal Year 2021 through Fiscal Year 2023 (July 1, 2020 - June 30, 2023)
Muscatine County Sanitary Landfill, Muscatine Recycling and Transfer Station,
and Muscatine C&D Landfill
Proposal No. 175050

Dear Dave:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide environmental services to the City of Muscatine (Client). The purpose of this scope of services is to provide the engineering services as described herein that are required to comply with the conditions outlined in the permits and Iowa Administrative Code (IAC) for the Muscatine County Sanitary Landfill, Muscatine Recycling and Transfer Station, and the closed Muscatine construction and demolition (C&D) Landfill.

1.0 PROJECT UNDERSTANDING

The Muscatine County Sanitary Landfill accepted waste after October 1, 2007; therefore, it is governed by the current IAC 567 Chapter 113.

The closed Muscatine C&D Landfill was issued a closure permit on December 29, 1994; it is governed by the closure permit and the 1989 IAC 567 Chapter 103.

The Muscatine Recycling and Transfer Station is governed under IAC 567 Chapter 106.

This scope of services was prepared based upon current Iowa Department of Natural Resources (DNR) regulations, and site permits and amendments.

2.0 SCOPE OF SERVICES

Based on the above information, BARKER LEMAR proposes the following scope of services for the Muscatine County Sanitary Landfill:

1. Semi-Annual Groundwater Sampling
2. Spring Sampling Notification
3. Annual Water Quality Report
4. Annual Statistical Software Licensing Fee
5. Leachate Control System Performance Evaluation Report
6. Landfill Gas Annual Report
7. Annual Financial Assurance Review
8. Greenhouse Gas (GHG) Report Preparation

BARKER LEMAR proposes the following scope of services for the Muscatine C&D Landfill:

1. Semi-Annual Groundwater Sampling
2. Annual Water Quality Report
3. Semi-Annual Engineering Inspections

BARKER LEMAR proposes the following scope of services for the Muscatine Recycling and Transfer Station:

1. Annual Transfer Station Inspection

MUSCATINE COUNTY SANITARY LANDFILL

Each task for the Muscatine County Sanitary Landfill is described below.

Task 1 – Groundwater Sampling

As a result of the Muscatine County Sanitary Landfill accepting municipal solid waste after October 1, 2007, the Muscatine County Sanitary Landfill is currently governed by IAC 567 Chapter 113. Based on the revised Hydrologic Monitoring System Plan (HMSP) and site operating permit, Table 1 at the end of this scope was prepared to show the anticipated sampling at the Muscatine County Sanitary Landfill during the semi-annual sampling events.

In the event that the DNR requires additional monitoring, the Client will be informed prior to commencing field work.

Task 2 – Spring Sampling Notification

The following is a description of the Task 2 services:

- Field sampling forms, laboratory analytical data sheets, and the 1st Semi-Annual Statistical Report will be prepared and retained for submittal in the subsequent Annual Water Quality Report;
- The Spring Sampling Notification (SSN), which will include a summary of statistical results, will be completed for the landfill;
- The SSN will be submitted to the DNR in 2021, 2022, and 2023 by June 30 of each year.

Task 3 – Annual Water Quality Report (AWQR)

The following is a description of the Task 3 services:

- The AWQR will be completed for the landfill;
- The report will include a summary of groundwater monitoring results, groundwater levels, monitoring well depths, analysis of the data collected, statistical analysis, and associated sampling recommendations;
- The AWQR will be prepared under the direction and signed by a qualified groundwater scientist and will utilize the DNR template;
- The report will be submitted to the DNR by January 31 of 2021, 2022, and 2023.

Task 4 – Annual Statistical Software Licensing Fee

BARKER LEMAR staff has obtained a statistical software license to allow use of the software to complete statistics for the site. A renewal license fee is required annually.

Task 5 – Leachate Control System Performance Evaluation Report (LCSPER)

The following is a description of the Task 5 services:

- The LCSPER will be prepared in accordance with the current DNR template;
- The report will include a summary of disposal volumes of leachate, laboratory testing, and monthly leachate head levels provided by the Client's staff;
- The LCSPER will be submitted to the DNR by January 31 of 2021, 2022, and 2023 as a supplement to the AWQR.

Task 6 – Landfill Gas Annual Report

The following is a description of the Task 6 services:

- Obtain the quarterly gas monitoring results, actions taken, and results of actions taken from the Client's staff;
- Prepare and submit the annual report to the DNR by January 31 of 2021, 2022, and 2023 as a supplement to the AWQR.

Task 7 – Annual Financial Assurance Review

The following is a description of the Task 7 services:

- Estimate the amount to be set aside for closure/post closure care for the site to meet the Financial Assurance rules;
- As part of the Financial Assurance requirements for closure and post closure of municipal solid waste landfills, the owner or operator is required to submit to the DNR a detailed written estimate in current dollars and certified by an Iowa-licensed professional engineer. Following the initial detailed written estimate, line items where changes have been made since the previous submittal will be re-evaluated in subsequent years. The Inflation Factor from the US Department of Commerce will be applied to line items where changes have not occurred since the previous submittal;
- The estimates and completed DNR Form 542-8090 Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form will be provided to the Client by March 1 of 2018, 2019, and 2020. It is the Client's responsibility to provide the required documentation to the DNR by April 1 of each year as required by IAC 567-113.14(4).

Task 8 – Greenhouse Gas (GHG) Report Preparation

BARKER LEMAR staff will perform the following:

- Digitally submit by March 31st of 2021, 2022, and 2023 an annual report meeting the requirements of 40 CFR 98.3(c) with inclusion of applicable additional Subpart C and HH requirements; and

- Through compliance of the monitoring, reporting, recordkeeping, and verification requirements prescribed in 40 CFR 98.3, the annual report will include the requirements from the appropriate subparts A, C, and HH.
- Client shall provide fuel invoices and waste quantity and composition data.

MUSCATINE C&D LANDFILL

Each task for the Muscatine C&D Landfill is described below.

Task 1 – Groundwater Sampling

Based on the HMSP and site permit and amendments, Table 2 at the end of this scope was prepared to show the anticipated sampling BARKER LEMAR will perform at the Muscatine C&D Landfill during the semi-annual sampling events.

In the event that the DNR requires additional monitoring, the Client will be informed prior to commencing field work.

Task 2 – Annual Water Quality Report (AWQR)

The following is a description of the Task 2 services:

- The AWQR will be completed for the landfill;
- The report will include a summary of groundwater monitoring results, groundwater levels, monitoring well depths, analysis of the data collected, statistical analysis, and associated sampling recommendations;
- Any modifications required by the DNR for the groundwater statistical analysis program during the reporting period will be summarized in the AWQR. However, this does not include any additional associated analysis;
- The AWQR will be prepared under the direction of, and signed by, an engineer licensed in the State of Iowa;
- The report will be submitted to the DNR by November 30 of 2020, 2021, and 2022.

Task 3 – Annual Landfill Engineering Inspections

The following is a description of the Task 3 services:

- A landfill site inspection will be performed annually at the Muscatine C&D Landfill;
- The inspection will be prepared under the direction of, and signed by, an engineer licensed in the State of Iowa;
- The inspection reports will be submitted to the DNR by May 1, of each year.

MUSCATINE RECYCLING AND TRANSFER STATION

The task for the Muscatine Recycling and Transfer Station is described below.

Task 1 – Annual Transfer Station Inspection

BARKER LEMAR staff will perform the following subtasks:

- An annual inspection will be performed at the transfer station;

- The inspection will be performed under the direction of, and signed by, an engineer licensed in the State of Iowa;
- The inspection reports will be submitted to the DNR by May 1 of each year.

3.0 LIMITATIONS

The above scope of services is based on review of the site permits and associated documents.

Services not set forth in section 2.0, scope of services, are excluded from this proposal. BARKER LEMAR assumes 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 subsequent to receiving the signed confirmation of notice to proceed, or the Client's verbal authorization followed by the signed confirmation of notice to proceed. Barring circumstances beyond BARKER LEMAR control, BARKER LEMAR anticipates completing the scope of services July 1, 2020 through June 30, 2023 in accordance with the timeframes set forth in the site permits and Iowa Administrative Code.

5.0 COMPENSATION

BARKER LEMAR agrees to perform the above scope of services on a lump sum by task basis. The compensation for the proposed scope of services may be found in Tables 3, 4, and 5 (attached) and are valid for 60 days following the date of this proposal. Although the 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 this proposal. 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 to be followed as stated in the attached Terms and Conditions. Should conditions be encountered that require significant changes or an increase in the scope of work, we will contact you and proceed further only with your authorization, followed by a signed change order.

6.0 HEALTH AND SAFETY

This proposal assumes that Level D safety precautions are adequate. 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 Client include the right-of-entry to conduct inspections and sampling operations. The Client 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. Additionally, the Client is responsible for providing the following information for annual report completion: quarterly methane monitoring field data, monthly leachate level measurements, total gallons of leachate hauled annually, annual leachate analytical data fuel invoices, and waste quantity and composition data. We have enclosed our Terms and Conditions that should be considered part of this proposal.



CONFIRMATION OF NOTICE TO PROCEED

Proposal No. 175050

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

BARKER LEMAR agrees to perform and complete the following Services for the Client at its facilities located in Muscatine County, Iowa.

The scope of services is described as groundwater sampling, inspections, and reporting associated and provide other technical and/or administrative services as needed and outlined in this proposal (see scope of services section for greater detail).

BARKER LEMAR agrees to perform the above scope of services for a total compensation estimated to be: \$87,595, as shown in Tables 3, 4, and 5. Client will be invoiced only for the services provided at the rates indicated. 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 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.

BARKER LEMAR ENGINEERING CONSULTANTS

CITY OF MUSCATINE



Jamie Lane
Ecological/Compliance Analyst
3/19/2020
jlane@barkerleamar.com

Dave Popp
Solid Waste/Collections and Drainage Manager

Date: _____

dppopp@muscatineiowa.gov

Timothy C. Buelow, P.E.
Principal Engineer
3/19/2020
tbuelow@barkerleamar.com

Copies: Addressee
Electronic File

2021-2023 Annual Services

**TABLE 1
MUSCATINE COUNTY SANITARY LANDFILL
ANTICIPATED SAMPLING SCHEDULE
PROPOSAL NO. 175050**

Monitoring Point	Monitoring Program	1 st Semi-Annual	2 nd Semi-Annual
MW-29	Background	Appendix I, TSS	Appendix I, TSS
MW-49BG	Background	Appendix I, TSS	Appendix I, TSS
MW-50BG	Background	Appendix I, TSS	Appendix I, TSS
MW-2	Assessment	Appendix I, Bis[2-ethylhexyl] phthalate, TSS	Appendix I, Bis[2-ethylhexyl] phthalate, TSS
MW-4	Pre-Corrective Action	Appendix I, TSS	Appendix I, TSS
MW-9	Assessment	Appendix I, Cyanide, TSS	Appendix I, Cyanide, TSS
MW-10A	Assessment	Appendix I, TSS	Appendix I, TSS
MW-11	Assessment	Appendix I, TSS	Appendix I, TSS
MW-12R	Assessment	Appendix I, TSS	Appendix I, TSS
MW-13	Pre-Corrective Action	Appendix I, TSS	Appendix I, TSS
MW-20	Assessment	Appendix I, TSS	Appendix I, TSS
MW-21	Assessment	Appendix I, TSS	Appendix I, TSS
MW-22	Assessment	Appendix I, TSS	Appendix I, TSS
MW-23	Pre-Corrective Action	Appendix I, TSS	Appendix I, TSS
MW-24	Assessment	Appendix I, TSS	Appendix I, TSS
MW-25	Assessment	Appendix I, TSS	Appendix I, TSS
MW-26	Assessment	Appendix I, TSS	Appendix I, TSS
MW-38	Pre-Corrective Action	Appendix I, Aldrin, Endosulfan I, TSS	Appendix I, Aldrin, Endosulfan I, TSS
MW-39	Pre-Corrective Action	Appendix I, Endosulfan I, TSS	Appendix I, Endosulfan I, TSS
MW-30	Bracketing	Vinyl Chloride	Vinyl Chloride

Monitoring Point	Monitoring Program	1 st Semi-Annual	2 nd Semi-Annual
MW-31	Bracketing	Benzene	Benzene
MW-33	Bracketing	Vinyl Chloride	Vinyl Chloride
MW-34	Bracketing	Benzene, Vinyl Chloride	Benzene, Vinyl Chloride
MW-35	Bracketing	Vinyl Chloride	Vinyl Chloride

Notes:

- 1) It should be noted that an Appendix II sampling event is required in assessment and pre-corrective action monitoring wells every 5 years. In the event an Appendix II constituent is detected outside of the normal Appendix I list, that constituent will continue to be sampled for until at least nine consecutive non-detect measurements and approval from the DNR to cease sampling.
- 2) Bracketing monitoring wells will be sampled for during the fall 2020 and spring 2021 semi-annual sampling events as part of this scope. Future sampling of bracketing wells will be determined following the submittal of the Assessment of Corrective Measures Report and subsequent Corrective Action Monitoring Program Report.
- 3) TSS: Total Suspended Solids.

**TABLE 2
MUSCATINE C&D LANDFILL
ANTICIPATED SAMPLING SCHEDULE
PROPOSAL NO. 175050**

Monitoring Point	Location	1 st Semi-Annual	2 nd Semi-Annual
MW-6	Upgradient	Appendix I, TSS	Appendix I, TSS
MW-2	Downgradient	Appendix I, TSS	Appendix I, TSS
MW-3	Downgradient	Appendix I, TSS	Appendix I, TSS
MW-4	Downgradient	Appendix I, TSS	Appendix I, TSS
MW-7	Downgradient	Appendix I, TSS	Appendix I, TSS
MW-1	Not Applicable	Water Level	Water Level
MW-5	Not Applicable	Water Level	Water Level
PZ-8	Not Applicable	Water Level	Water Level

TABLE 3
ANNUAL SERVICES ACTIVITIES
PROPOSAL NO. 175050
Fiscal Year 2021 Activities (July 1, 2020 – June 30, 2021)

Activity	July to September	October to December	January to March	April to June	Total
Muscatine County Sanitary Landfill					
Groundwater Sampling*	\$5,640		\$5,640		\$11,280
Spring Sampling Notification				\$2,575	\$2,575
AWQR		\$6,250			\$6,250
Statistical Software Licensing Renewal Fee		\$225			\$225
LCSPER		\$1,030			\$1,030
Landfill Gas Annual Report		\$415			\$415
Annual Financial Assurance Review			\$1,555		\$1,555
GHG Report			\$1,250		\$1,250
Muscatine C&D Landfill					
Groundwater Sampling*†	\$930		\$930		\$1,860
AWQR		\$1,575			\$1,575
Annual Engineering Inspection			\$1,000		\$1,000
Muscatine Recycling and Transfer Station					
Annual Transfer Station Inspection			\$600		\$600
Annual Compliance Total	\$6,570	\$9,495	\$10,975	\$2,575	\$29,615

*Client pays analytical fees direct.

† Mobilization fees are included with Groundwater Sampling under the Muscatine County Sanitary Landfill.

TABLE 4
ANNUAL SERVICES ACTIVITIES
PROPOSAL NO. 175050
Fiscal Year 2022 Activities (July 1, 2021 – June 30, 2022)

Activity	July to September	October to December	January to March	April to June	Total
Muscatine County Sanitary Landfill					
Groundwater Sampling*	\$4,770		\$4,770		\$9,540
Spring Sampling Notification				\$2,655	\$2,655
AWQR		\$6,435			\$6,435
Statistical Software Licensing Renewal Fee		\$225			\$225
LCSPER		\$1,060			\$1,060
Landfill Gas Annual Report		\$430			\$430
Annual Financial Assurance Review			\$1,610		\$1,610
GHG Report			\$1,285		\$1,285
Muscatine C&D Landfill					
Groundwater Sampling*†	\$1,000		\$1,000		\$2,000
AWQR		\$1,655			\$1,655
Annual Engineering Inspection			\$1,035		\$1,035
Muscatine Recycling and Transfer Station					
Annual Transfer Station Inspection			\$620		\$620
Annual Compliance Total	\$5,770	\$9,805	\$10,320	\$2,655	\$28,550

*Client pays analytical fees direct.

† Mobilization fees are included with Groundwater Sampling under the Muscatine County Sanitary Landfill.

TABLE 5
ANNUAL SERVICES ACTIVITIES
PROPOSAL NO. 175050
Fiscal Year 2023 Activities (July 1, 2022 – June 30, 2023)

Activity	July to September	October to December	January to March	April to June	Total
Muscatine County Sanitary Landfill					
Groundwater Sampling*	\$4,905		\$4,905		\$9,810
Spring Sampling Notification				\$2,735	\$2,735
AWQR		\$6,630			\$6,630
Statistical Software Licensing Renewal Fee		\$225			\$225
LCSPER		\$1,090			\$1,090
Landfill Gas Annual Report		\$445			\$445
Annual Financial Assurance Review			\$1,670		\$1,670
GHG Report			\$1,320		\$1,320
Muscatine C&D Landfill					
Groundwater Sampling*†	\$1,025		\$1,025		\$2,050
AWQR		\$1,740			\$1,740
Annual Engineering Inspection			\$1,070		\$1,070
Muscatine Recycling and Transfer Station					
Annual Transfer Station Inspection			\$645		\$645
Annual Compliance Total	\$5,830	\$10,130	\$10,635	\$2,735	\$29,430

*Client pays analytical fees direct.

† Mobilization fees are included with Groundwater Sampling under the Muscatine County Sanitary Landfill.



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 there from), 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.