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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, Director of Public Works

DATE: May 2, 2017

RE: Request to Issue Purchase Order for Landfill Cell Design

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**INTRODUCTION:**

The Muscatine County Landfill is close to using all available airspace in Cell #4. In order to provide future space for solid waste generated within the county the city must plan to construct the next cell. Barker Lemar Engineering Consultants is the City's consultant on the landfill and they have submitted a scope of services and contract to design and help oversee construction of the next landfill cell and required leachate storage lagoon.

**BACKGROUND:**

The City of Muscatine owns and maintains the Muscatine County Landfill as part of a 28E agreement with the Muscatine County Solid Waste Management Agency. As the financially responsible entity it is the burden of the City of Muscatine to construct and maintain the landfill to meet State and Federal guidelines. The City has retained Barker Lemar Engineering Consultants as to assist in meeting these requirements.

**RECOMMENDATION/RATIONALE:**

The Public Works staff requests to issue a purchase order in the amount of \$96,520 to Barker Lemar for the design and construction oversight of Landfill Cell Phase 5 and Leachate Storage Lagoon. Funding is available in the Landfill budget.

**BACKUP INFORMATION:**

Scope of Services and Contract



March 31, 2017

Ms. Kristy Korpi, Solid Waste Manager  
Muscatine Recycling Center and Transfer Station  
1000 South Houser Street  
Muscatine, Iowa 52761

**RE: Phase 5 Cell Construction Services  
Muscatine County Sanitary Landfill  
Permit No. 70-SDP-02-75P  
Proposal No. 164306**

Dear Kristy:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide construction services to the Muscatine County Solid Waste Management Agency (Client). The purpose of this scope is to provide the construction services associated with preparation of the Project Manual and Drawings (procurement and contracting documents, specifications, and drawings); Iowa Department of Natural Resources (DNR) construction notification; GPS surveying; construction administration; construction observation and documentation, field testing, and quality control and assurance; soils testing; and preparation and DNR submittal of the construction observation report for construction of the Phase 5 Cell at the Muscatine County Sanitary Landfill.

## **1.0 PROJECT UNDERSTANDING**

It is BARKER LEMAR's understanding that the Client intends to construct the Phase 5 Cell (Project) in 2017. As a result, BARKER LEMAR has prepared this proposal for the Client's consideration to perform the tasks associated with construction and a subsequent request for DNR approval for operation of the Phase 5 Cell.

## **2.0 SCOPE OF SERVICES**

The scope of services includes the following tasks:

1. Pre-Design Survey
2. Preparation of the Project Manual and Drawings
3. Bid Letting Services
4. DNR Construction Notification
5. GPS Surveying
6. Construction Administration
7. Construction Observation and Documentation, Field Testing, and Quality Control and Assurance
8. Soils and Materials Testing
9. Preparation and DNR Submittal of the Construction Observation Report
10. DNR Site Walkover



Each task is described below:

**Task 1 – Pre-Design Survey**

BARKER LEMAR will perform the following services:

- Perform a pre-design topographic survey of the project area to be used for preparation of the Project Manual and Drawings.

Notes:

- 1) BARKER LEMAR will conduct the pre-design survey prior to completion of the Project Manual and Drawings. Information from the pre-design survey will be included in the Project Manual and Drawings in Task 2, as well as the current facility site map.

Deliverables:

- 1) Not Applicable, see Task 2.

**Task 2 – Project Manual and Drawings**

BARKER LEMAR will perform the following services:

- Develop a Project Manual to include procurement and contracting documents, specifications, and drawings for construction of the Project from the permit plans, including but not limited to, grading, drainage, piping, and erosion control related to the proposed construction.
- Drawings for this project are anticipated to include a cover sheet with location map, site map with Contractor staging and construction access, grading plans (subgrade and cell), leachate & gas collection systems, storm water and erosion control systems, and details. Drawings shall be prepared on AutoCAD Civil 3D (or compatible) software according to BARKER LEMAR'S CADD guidelines.
- Quantity takeoffs will be included in the Project Manual and an opinion of probable cost will be prepared.
- Provide the technical specifications based on the Iowa Statewide Urban Designs and Specifications (SUDAS)®, the Natural Resource Conservation Service (NRCS) Standard Specifications, the Iowa Department of Transportation (IDOT) Standard Specifications, Army Corp of Engineers Standard Specifications, or custom-written.
- Provide a copy of the "near final" Project Manual and Drawings to the Client for their review and approval.
- Upon approval of the Project Manual and Drawings by the Client, BARKER LEMAR will provide the Client with two (2) copies of the Project Manual and Drawings.

Note:

- 1) This Task assumes Project Manual and Drawings for one construction scenario. If the Client requests a different scenario or modifications to the Project Manual and Drawings following commencement of work, additional fees shall apply and a change order will be prepared before commencing with further work.
- 2) Drawings and quantity takeoffs will be based on the pre-design survey outlined in Task 1. If site conditions change between the time of the pre-design survey and the start of construction, stated bid quantities may not be reflective.

- 3) *This Task does not include a borrow area study, as based on knowledge of site and previous discussions with Client, it is believed adequate soil borrow materials are available on-site. However, it should be noted that additional costs may be incurred if sufficient borrow materials are not available, or if on-site soils are not in conformance with project requirements. If following a discussion between BARKER LEMAR and the Client regarding soil needs, it is determined a borrow study may be necessary, BARKER LEMAR can prepare a cost estimate to have a geotechnical study of available borrow materials completed.*

*Deliverables:*

- 1) *Two copies of the "near final" Project Manual and Drawings to be provided to the Client for review.*
- 2) *Two copies of the finalized Project Manual and Drawings to be provided to the Client upon approval by the Client.*

**Task 3 – Bid Letting Services**

BARKER LEMAR will perform the following services:

- Send notice of the Project to area Contractors, plan rooms, and suppliers or as directed by the Client. BARKER LEMAR will provide a written bid advertisement (Notice of Hearing and Letting) to the Client, so it may be placed in local paper(s). The Client will be provided a list of where the plans are sent.
- Act as the distributor of the Project Manual and Drawings. The Project Manual and Drawings will be provided as follows: Client (2 copies, included in Task 2), Consultant (3 copies), and plan rooms (6 copies, maximum). Prospective planholders may obtain electronic copies of the Project Manual and Drawings from BARKER LEMAR'S website.
- Respond to questions and issue addenda accordingly during the letting period.
- Lead a pre-bid meeting to be held at the landfill. Minutes will be prepared and distributed following the meeting.
- Attend and assist with the bid opening.
- Review the bids for conformance with the bid documents. Bids will be tabulated and a written recommendation for award made to the Client.
- Prepare the notice of award and construction contract between the Client and the Contractor and coordinate the execution of the contract, bonds, and insurance certificate.

*Deliverables:*

- 1) *One copy of the Notice of Hearing and Letting to the Client for distribution to local newspapers by the Client.*
- 2) *Up to six copies of the finalized Project Manual and Drawings to be provided to plan rooms, as directed by the Client.*
- 3) *One copy of the pre-bid meeting minutes provided to the planholders, Client, File, and Field.*
- 4) *One copy of the bid proposals received, bid tabulation, and recommendation of award provided to the Client.*
- 5) *Preparation and issuance of the Notice of Award, including contract documents, to the selected Contractor by the Client.*



- 6) *One copy of the original signed contract documents provided to the Client, Contractor, and File following execution by the Client and Contractor.*
- 7) *Electronic copies of the Project Manual and Drawings, addendums, and bid tabulation shall be available on BARKER LEMAR's website.*

**Task 4 – DNR Construction Notification**

BARKER LEMAR will perform the following services:

- Notify the DNR ninety days prior to construction commencement.

*Deliverables:*

- 1) *One copy of the notification letter to be provided to the DNR, Client, File, and Field.*

**Task 5 – GPS Surveying**

BARKER LEMAR will perform the following services:

- Perform a topographic survey of the Project for verification purposes on an as needed basis. This task will be invoiced on a per-trip basis.

*Notes:*

- 1) *This Task assumes BARKER LEMAR will make one trip during the course of construction to survey the project area for verification purposes. Additional trips will be invoiced on a per trip basis.*
- 2) *This Task does not include the pre-construction survey, construction staking, or as-built surveying per the specifications, as it assumes this will be the responsibility of the Contractor.*
- 3) *Updated GPS survey information from the as-built survey events to be included in the construction observation report drawings and the current facility site map in Task 9.*

*Deliverables:*

- 1) *Not applicable, see Tasks 2 and 9.*

**Task 6 – Construction Administration**

BARKER LEMAR will perform the following services:

- Attend and document a pre-construction meeting.
- Review shop drawings and submittals.
- Review and issue Contractor's Application for Payments.
- Prepare and issue change orders, if applicable.
- Provide technical clarification to field, Client, and Contractor.
- Attend and document periodic construction progress meetings (up to three), including final walkover.
- Request from contractor final closeout documentation. Received documents will be forwarded to Client, including a cover letter.
- Review A-built documentation.
- Supply six waste boundary markers for installation by BARKER LEMAR's Resident Project Representative (RPR).

*Deliverables:*

- 1) *Pre-construction and progress meeting minutes to Client, Contractor, File, and Field.*
- 2) *Reviewed shop drawings and submittals to Client, Contractor, File, and Field.*
- 3) *Processed Contractor's Application for Payments to Client, Contractor, File, and Field.*
- 4) *Processed change orders, if applicable, to Client, Contractor, File, and Field.*
- 5) *Project closeout documentation to Client, Contractor, File, and Field.*
- 6) *Installation of waste boundary markers.*

**Task 7 – Construction Observation and Documentation, Field Testing, and Quality Control and Assurance**

BARKER LEMAR will perform the following services:

- Provide an RPR on site to provide construction observation and documentation and quality control and assurance per the Project Manual and Drawings and the QC&A program. This task will be invoiced at a per day rate. For the purposes of this proposal, the fees for this task are based on the number of days listed in Table 2. Invoicing will be based on actual days provided.
- Provide the field density testing to evaluate soil compaction efforts for construction of the Project's compacted clay liner and general fill.
- Measure and document constructed quantities for payment and reporting purposes.

*Notes:*

- 1) *Daily field logs, daily field density test forms, and construction progress photographs prepared under this task are to be included in the construction observation report in Task 9.*
- 2) *BARKER LEMAR estimates construction will take approximately 6 weeks, or 30 days. The actual number of days on-site will be based on the Contractor's construction schedule. The RPR will only be on-site as deemed necessary by BARKER LEMAR, or the Client, for the duration of this project. BARKER LEMAR will monitor construction activities closely and plan accordingly to prevent the RPR from being on-site unnecessarily. If the Contractor's submitted construction schedule varies significantly from BARKER LEMAR's estimated schedule, this task may be re-evaluated.*

*Deliverables:*

- 1) *Not applicable, see Task 9.*

**Task 8 – Soils and Materials Testing**

BARKER LEMAR will perform the following services:

- Perform an on-site visual soil investigation to determine soils from the borrow area that will likely be encountered during construction and collect soil samples, and submit them to a laboratory for analysis. For each soil type submitted, one standard Proctor test and one Atterberg limits test will be performed, as well as two remolded permeability tests (one at optimum moisture and one at +3% of optimum moisture). If additional soil types are encountered during construction, BARKER LEMAR will collect samples and submit them to a laboratory for the aforementioned analysis. For the purposes of this proposal, the fees for this task are based on laboratory analysis for two soil types. Invoicing will be based on the actual number of soil types tested.



- Obtain Shelby tube samples from the compacted clay liner (in general accordance with the DNR approved QC&A Program) for each soil type and submit to laboratory for permeability testing. For the purposes of this proposal, the fees for this task are based on ten Shelby tube samples. Invoicing will be based on the actual number of Shelby tube samples tested.
- Equipment rental for nuclear density testing gauge.

*Notes:*

- 1) *The soils and material testing results obtained as part of this task shall be included in the Construction Observation Report in Task 9.*
- 2) *The Contractor will obtain and collect samples of soils and materials for slope stability-related testing (Interface friction angles, direct shear, etc.) and send the samples to a laboratory selected by the Quality Control and Assurance (QC&A) Officer. The costs for testing will be paid directly to the laboratory by the Client. Copies of the laboratory test reports will be sent directly from the laboratory to the QC&A Officer. The costs for transport of the samples to the laboratory will be paid by the Contractor. The quantity and costs for these tests depend on the number, type, and combination of materials. Therefore, the fees from this testing can range significantly (\$5,000 to \$15,000).*
- 3) *Laboratory testing will be performed by a subconsultant(s) selected by BARKER LEMAR.*

*Deliverables:*

- 1) *Not applicable, see Task 9.*

**Task 9 – Preparation and DNR Submittal of the Construction Observation Report**

BARKER LEMAR will perform the following services:

- Prepare and submit a construction observation report to the DNR following construction of the Project in general accordance with IAC 567 Chapter 113.7(6)d.
- Develop new top of waste grades based on GPS as-built survey.

*Deliverables:*

- 1) *Construction observation report to be submitted to the DNR and Client (one copy each).*
- 2) *Fee does not include staking of top of waste or file conversion for GPS machine control.*
- 3) *Top of waste grades to be included in future airspace analysis, used for staking, or for Client use in GPS machine control.*

**Task 10 – DNR Site Walkover**

BARKER LEMAR will perform the following services:

- Perform a site walkover with the DNR following construction completion and submittal of the Construction Observation Report. A site walkover will be performed only if the DNR requests BARKER LEMAR to be present for their site walkover following the submittal of the Construction Observation Report.

*Deliverables: Not Applicable.*

### 3.0 LIMITATIONS

Services not set forth in the scope of services are excluded from the scope of BARKER LEMAR'S services and BARKER LEMAR assumes no responsibility to perform such services and no liability associated with the non-performance of such services.

### 4.0 SCHEDULE

We anticipate initiating work upon receipt of a Notice to Proceed according to the following schedule in Table 1:

**Table 1. Schedule of Tasks**

Task	Description	Schedule
1	Pre-Design Survey	30 days after receipt of signed notice to proceed
2	Project Manual Preparation	90 days after receipt of signed notice to proceed
3	Bid Letting Services	As directed by the Client following completion of Task 2
4	DNR Construction Notification	15 days after receipt of signed notice to proceed
5	GPS Surveying	From signing of construction contract documents through project completion
6	Construction Administration	From signing of construction contract documents through project completion
7	Construction Observation and Documentation, Field Testing and Quality Control and Assurance	From signing of construction contract documents through project completion
8	Soils and Materials Testing	From signing of construction contract documents through project completion
9	Prepare and Submit Construction Observation Report	45 days after project final completion
10	DNR Site Walkover	As requested by DNR following submittal of construction observation report

**Notes:**

1. The proposed schedule is subject to change following completion of Task 3 and/or review of the Contractor's schedule.
2. At the time of writing of this proposal, the letting is expected to occur in May to June 2017, with construction commencing in mid-summer 2017 such that completion is in Fall 2017.

### 5.0 COMPENSATION

The compensation for the proposed scope of services may be found in Table 2 and is valid for 60 days following the date of this proposal. Although the compensation is 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 for lump sum tasks, the number of units complete for unit tasks, and the time and materials for T&M tasks. 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.



**Table 2. Estimated Costs**

<b>Task</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Total Cost</b>
1) Pre-Design Survey	Lump Sum	1	\$ 1,900	\$ 1,900
2) Preparation of Project Manual and Drawings	Lump Sum	1	\$ 14,280	\$ 14,280
3) Bid Letting Services	Lump Sum	1	\$ 10,630	\$ 10,630
4) DNR Construction Notification	Lump Sum	1	\$ 490	\$ 490
5) GPS Surveying	Each	1	\$ 1,600	\$ 1,600
6) Construction Administration	Lump Sum	1	\$ 19,500	\$ 19,500
7) Construction Observation and Documentation, Field Testing, and Quality Control and Assurance	Per Day	30	\$ 1,150	\$ 33,750
8a) Standard Proctor / Permeability / Atterberg Limits Testing	Each	2	\$ 1,035	\$ 2,070
8b) Shelby Tube Permeability Testing	Each	10	\$ 375	\$ 3,750
8c) Nuclear Density Test Equipment Rental	Each	4	\$ 400	\$ 1,600
9) Prepare and Submit Construction Observation Report	Each	1	\$ 5,930	\$ 5,930
10) DNR Site Walkover	Each	1	\$ 1,020	\$ 1,020
<b>Total</b>				<b>\$ 96,520</b>

**Notes:**

1. The fee for Task 7 above is based on BARKER LEMAR providing 30 days of construction observation, testing, and quality assurance. However, the Client will only be billed the actual number of days that BARKER LEMAR is on site and/or performing these aforementioned activities. For the purpose of this proposal "per day" shall be defined as a 10-hour work day, Monday through Saturday, not including holidays. Days will be billed in half day increments, with more than six (6) hours considered a full day, and six (6) hours or less, considered a half day. Half days will be billed at \$750.00.
2. Iowa Law requires hard copies of bid documents to be made available at no charge to interested parties. If hard copies are requested, BARKER LEMAR will provide the documents and invoice the Client \$50 per set plus shipping.

## 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. A health and safety plan will be developed for the site. The costs will be adjusted accordingly if site specific conditions require more stringent health and safety procedures. BARKER LEMAR staff will adhere to the Barker Lemar Companies' Confined Space Program in all circumstances which may require worker entry into confined spaces and permit-required confined spaces to perform routine tasks associated with the performance of contracted services for the Client. This Program is designed to provide the minimum safety requirements in accordance with the Occupational Safety and Health Administration's (OSHA) Confined Space Standard, 1910.146.

## **7.0 CONDITIONS**

Items to be provided by the Client include the right-of-entry to conduct field tasks as outlined in this proposal or other on-site activities requested by the Client. 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. We have enclosed our Terms and Conditions that should be considered part of this proposal.

BARKER LEMAR field staff does not work on Saturdays or Sundays; this provision will be written into the Project Manual and will be discussed during the pre-bid meeting.



## **CONFIRMATION OF NOTICE TO PROCEED**

Proposal No. 164306

*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 ("Work") for the Client at its facility located in Muscatine County, Iowa:

The scope of services is described as Phase 5 Cell Construction Services, 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 of \$96,520, as shown on Table 2. Our invoices will be submitted monthly and will reflect the percentage complete of each task as of the date of the invoice for lump sum tasks, the number of units complete for unit tasks, and the time and materials for T&M tasks. Should extraordinary conditions be encountered during the project that require significant changes or an increase in the scope of work, we will contact you and proceed further only with your authorization. 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, please sign and return this page via email, mail, or fax at (515) 256-0152. If you have any questions regarding this information, please contact us at (515) 256-8814.

Sincerely,

FOR BARKER LEMAR ENGINEERING CONSULTANTS

FOR MUSCATINE COUNTY SOLID WASTE MANAGEMENT  
AGENCY



David G. Phillips, P.E.

DATE: 3/16/17

Design Engineer

dphillips@barkerlemar.com

Kristy Korpi

DATE: \_\_\_\_\_

Solid Waste Manager



For Stephanie S. Stolz, P.E.

DATE: 3/16/2017

Director of Operations

sstolz@barkerlemar.com

Copies: Addressee (2)  
File  
Electronic File

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## TERMS AND CONDITIONS

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### 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.



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.