

**CITY OF LA VISTA**  
**MAYOR & CITY COUNCIL**  
**OCTOBER 1, 2019 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
PROF. ENGINEERING SERVICES – OFFSTREET PRKG. DIST. NO. 2, STRUCTURE NO. 2	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN PUBLIC WORKS

**SYNOPSIS**

A resolution has been prepared authorizing the execution of a Professional Services Agreement with Olsson, Inc. to provide surveying and geotechnical engineering services for the proposed Parking Structure No. 2 in Offstreet Parking District No. 2 in an amount not to exceed \$8,940.

**FISCAL IMPACT**

The FY19/20 Biennial Budget includes funding for this project.

**RECOMMENDATION**

Approval

**BACKGROUND**

Olsson, Inc. was previously retained to provide engineering services in the 84<sup>th</sup> Street public improvement project redevelopment project as a result of a consultant selection process. The proposed Parking Structure No. 2 is located in this redevelopment area and requires close coordination with the public infrastructure around the structure. It is in the best interests of the City to engage Olsson, Inc. to provide the surveying and geotechnical engineering services for the parking structure. These services are needed to facilitate the design of Structure No. 2 by DLR under a separate agreement. A detailed scope of services was prepared by Olsson, Inc. This document was carefully reviewed by City staff and Project Advisor, HDR, Inc. The complete agreement is available for review.

**RESOLUTION NO.**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH OLSSON, INC. FOR SURVEYING AND GEOTECHNICAL ENGINEERING SERVICES FOR THE PROPOSED PARKING STRUCTURE NO. 2 IN OFFSTREET PARKING DISTRICT NO. 2 IN AN AMOUNT NOT TO EXCEED \$8,940.00.

WHEREAS, the City Council of the City of La Vista has determined that surveying and geotechnical engineering services are necessary for the proposed Parking Structure No. 2 in Offstreet Parking District No. 2; and

WHEREAS, the FY 19/20 Biennial Budget includes funding for these services; and

WHEREAS, the agreement has a not-to-exceed cost of \$8,940.00 for the scope of services;

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, authorizing the execution of a professional services agreement with Olsson, Inc. for surveying and geotechnical engineering services for the proposed Parking Structure No. 2 in Offstreet Parking District No. 2 in an amount not to exceed \$8,940.00.

PASSED AND APPROVED THIS 1ST DAY OF OCTOBER, 2019.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

September 9, 2019

City of La Vista, NE  
Attn: John Kottmann  
9900 Portal Road  
La Vista, NE 68128

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
at La Vista City Centre (the "Project")  
La Vista, NE

Dear Mr. Kottmann:

It is our understanding that City of La Vista, NE ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the Client basic services for the Project as more specifically described in Scope of Services attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses in accordance with Reimbursable Expense Schedule attached to this Agreement if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

## **SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson would expect to begin performing its services under the Agreement promptly upon your signing. Olsson will coordinate with DLR regarding scheduling of survey services for the project.

Olsson will endeavor to start its services on the Anticipated Start Date upon written kick off of the project from the client and to complete its services on the Anticipated Completion Date as agreed upon with the client and coordination with DLR. Anticipated Completion Dates for Survey Services are October 15, 2019 and Geotechnical Services are November 1, 2019. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

## **COMPENSATION**

**Fixed Fee Phases:** Client shall pay to Olsson for the performance of the Scope of Services a fixed fee as outlined in the Scope of Services attached hereto, plus reimbursable expenses in accordance with the Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

**Hourly Plus Expense Phases:** Client shall pay to Olsson for the performance of the Additional Services, the actual time of personnel performing such services, and all actual reimbursable expenses in accordance with Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date, if additional services are approved in writing.

## **TERMS AND CONDITIONS OF SERVICE**

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 45 days from the date set forth above, unless changed by us in writing.

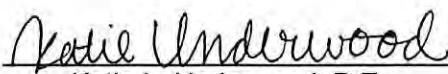
OLSSON, INC.

By



Eric Williams

By



Katie L. Underwood, P.E.

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**CITY OF LA VISTA, NE**

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

Attachments

Scope of Services

Exhibit A

Rate Schedule

Reimbursable Expense Schedule

General Provisions

## SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated **September 9, 2019** between **City of La Vista, NE** ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

### GENERAL

Olsson shall perform for Client professional services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as Client's professional representative for the Project, providing professional consultation and advice and furnishing customary services incidental thereto.

### SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

#### DUE DILIGENCE

##### Boundary and Topographic Survey

- Topographic Survey
  - Topographic features shall be surveyed to create a surface represented by 1 foot contours. Improvements within the limits shall be located, including: buildings, roads, structures, pipes, fences, gravel surfaces, concrete surfaces, asphalt surfaces, trees, and utilities. The Topographic Survey limits are as follows:
    - Limits as shown on the attached **Exhibit "A"**.
  - A Utility-One-Call shall be made for the site. Utilities that are marked shall be located. Above ground visible utilities shall be located. Olsson will not be responsible for underground utilities not marked by the utility locate, also underground structures or tanks that are not visible on the surface of the site. An attempt shall be made to obtain utility maps from the utilities listed on the Utility-One-Call. If maps are provided those utilities shall be placed on the survey. Manholes shall be inverted to get the pipe size and flow lines elevations.

##### Geotechnical Exploration

###### 1. Project Understanding

Olsson understands the City of La Vista is constructing a new 4-story parking garage on Lot 7, La Vista City Centre Replat Three. The FedEx building that previously occupied this property was razed and removed in August of 2018. The property is currently occupied by a surface parking lot. A review of historical aerial photos dating back to the late 1950's indicates the site was developed in the late 1990's or early 2000's.

This exploration and report will provide final geotechnical design parameters for site grading, earthwork, and construction of the future parking garage. Pat Carlson with Kimley-Horn provided maximum building loads of 750 kips for isolated columns and 100 pounds per square foot for floor slab loads.

During the preparation of this proposal, a preliminary site plan was provided by DLR for our review. Based on topographic information available, we anticipate minimal cut or fill to reach design grades. If cut or fill depths vary significantly from those estimated by Olsson, please contact us at your earliest convenience so that we can review the scope of this proposal and determine if modifications to the boring depths, locations, or quantities are necessary. If modifications to this proposal are necessary, Olsson will review the suggested modifications with the Client and provide a revised scope and fee, as appropriate for the project design.

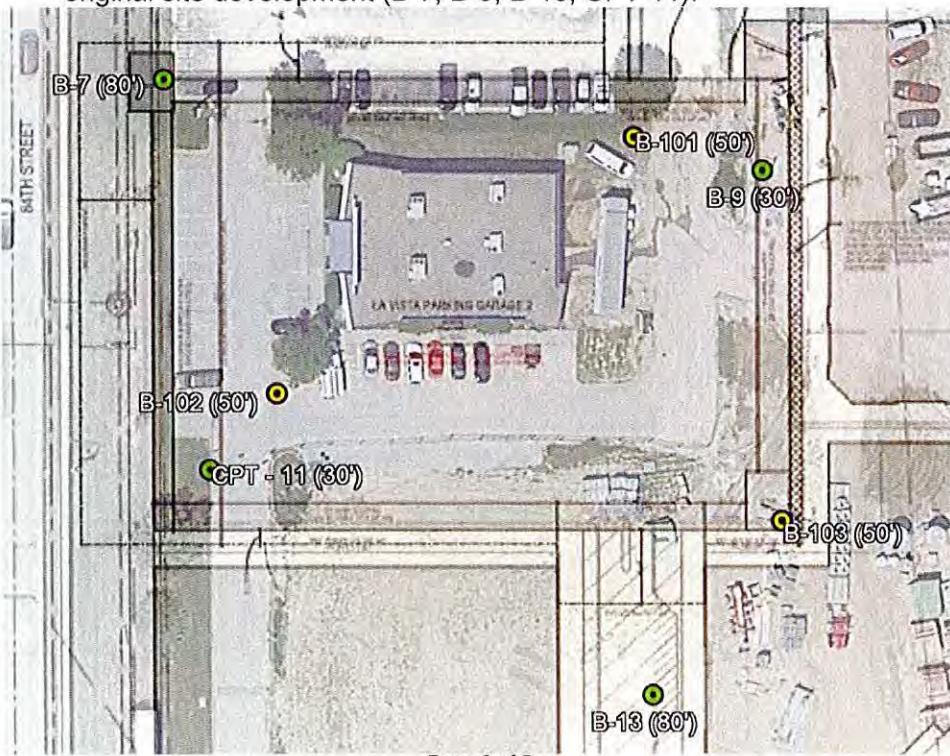
A review of soil borings B-7, B-9, B-13, and CPT-11 from Olsson's *Report of Geotechnical Exploration La Vista City Centre Project* dated September 21, 2016 indicated the soils in this area to consist of 23.0 to 28.0 feet of loess (Peoria and Loveland) underlain by glacial till. The loessial soils were described as firm to very stiff, moist to wet lean clays. Glacial soils were described as stiff to very stiff, moist to wet lean clay with varying sand content. Six feet of fill soil was encountered in boring B-7.

Olsson shall perform professional services as requested by Client pursuant to the provisions provided herein. These services will include Professional Consultation Services incidental thereto.

## GEOTECHNICAL INVESTIGATION

### 1. Field Exploration

- We propose to use a truck-mounted drill rig to complete three (3) soil boring to depths of 50 feet each for this geotechnical exploration. The soil borings will be advanced to the depths proposed or to practical auger refusal, whichever is shallower. This proposal is based on a total drilling footage of 150 linear feet.
- Boring locations and depths referenced in this proposal are shown on the following aerial photo/site plan overlay. The yellow pins indicate the proposed boring locations (B-101, B-102, B-103) for this exploration. The green pins indicate the soil borings completed during the geotechnical exploration for the original site development (B-7, B-9, B-13, CPT-11).



- We will contact the Nebraska 811 service to locate underground public utilities.
- Private utilities, if present, should be located and marked by the Client prior to the arrival of our drilling equipment and crew. Olsson cannot be responsible for damage to unknown or improperly located utilities or service connections.
- Sampling of soils will be completed in general accordance with ASTM D-1586 and ASTM D-1587 procedures.
- We will obtain groundwater measurements in the test borings at the time of drilling and again after completing the drilling operations. Once groundwater measurements are complete the borings will be filled with auger cuttings and patched with like surface materials.
- Soil boring locations will be determined using GPS coordinates, from client provided survey documents, or from measured distances from permanent site features.

## **2. Laboratory Services**

- As soil conditions dictate, laboratory testing may include visual soil classification (ASTM D-2488), unconfined compression (ASTM D-2166), thin-walled tube density (ASTM D-2937), moisture content (ASTM D-2216), Atterberg limits (ASTM D-4318), Standard Proctor (ASTM D6-98), one-dimensional consolidation/swell (ASTM D-2435), or mechanical sieve analyses (ASTM D-422).

## **3. Engineering Analysis and Report Preparation**

- Olsson geotechnical engineers will review Olsson's Report of Geotechnical Exploration La Vista City Centre Project dated September 21, 2016, to help develop recommendations for new foundations, earthwork, and construction.
- If required for lightly loaded structures, the report for this project will include recommendations for the design of shallow spread foundations including the maximum allowable soil bearing pressure. Recommendations for spread foundations would also include minimum footing sizes and the required frost depth or minimum bearing depth.
- Preliminary analysis and evaluation will be provided for an intermediate foundation system. If an intermediate foundation system is utilized, our recommendations would include compacted stone columns with general bearing pressures for shallow foundations supported by the intermediate stone column system. These systems would be designed by a specialty contractor.
- If required, Olsson will provide geotechnical design recommendations for the use of deep foundations for building support based on the information obtained during this exploration. Recommendations will include, but are not limited to:
  - Pile type and allowable compressive and uplift capacity.
  - Friction parameters.
  - L-Pile parameters for evaluating lateral resistance, by others, for the soil types and conditions encountered.
  - Minimum pile spacing requirements.
  - Construction or installation parameters.
- Remedial measures such as core-out and replacement of unsuitable soils, preloading, or surcharging would be addressed if these types of subgrade improvement are considered necessary in areas of new construction.
- Recommendations will be provided regarding the thickness, moisture, and compaction criteria for backfill or structural fill. Soil excavation criteria in accordance with OSHA standards will be included or referenced.

- Discussion of anticipated groundwater concerns, along with recommendations for addressing these concerns during construction, if required.
- Analysis of the soils encountered regarding shrink/swell characteristics as well as a review of potential on-site borrow sources anticipated for reuse as structural fill.
- Recommendations will be provided regarding the preparation of subgrade soils supporting concrete floor slabs including an evaluation of the laboratory test results to provide an estimated modulus of subgrade reaction.
- Seismic considerations including soil profile types.
- Lateral earth pressure parameters will be provided for the design of below grade foundation walls. Active, passive and at-rest parameters will be provided as well as the coefficient of sliding resistance and wall movements necessary to develop these pressures.

### **CONSTRUCTION SERVICES-UPON REQUEST ONLY**

The following Construction Services are anticipated for this project. Olsson will plan to coordinate with the Client after the final site plan and construction drawings are completed, and construction contract is awarded, to amend the contract accordingly to include any of the requested construction services that may be needed:

- Construction Administration
- SWPPP Inspections
- PCSMP Observation / Record Drawings
- On-Site Construction Observation / Testing / Inspections.
- Off-Site Public Improvements Construction Observation / Testing / Inspections / Reporting / As-built Record Drawings as required by the City of La Vista.

### **COMPENSATION**

Phase	Task Description	Fee Amount	Fee Type
<b>DUE DILIGENCE</b>			
110	Boundary and Topographic Survey	\$ 2,000.00	Lump Sum
135	Geotechnical Exploration	\$ 6,940.00	Lump Sum
	<b>Sub-Total <sup>(1)</sup></b>	\$ 8,940.00	
	<b>TOTAL CONTRACT <sup>(1)</sup></b>	\$ 8,940.00	

(1)Includes reimbursable expenses.

#### **Project Assumptions**

We have made several assumptions in the preparation of this proposal. These assumptions are as follows:

- Civil plans are provided under separate contract.
- All permit fees will be by Client or their representatives.
- Any meetings necessary meetings with DLR for the scope noted above are included in the total fee amount.

#### **Exclusions**

The following services are **not** included in this proposal but can be provided by Olsson as an additional service if requested:

- Entitlements.
- Construction Documents.
- As-built drawings/certifications.
- Additional easement legal descriptions and exhibits outside the scope of the proposal and fees.
- Items not specifically included in the Scope of Services above.

OPEN AIR AND ALLOWABLE OPEN AREA BASED ON FIRE SEPARATION DISTANCE						
Direction	Perimeter (LF)	Door Height (FT)	Per Area (SF)	Allowable Openings (SF)	Actual Max Opening Area (SF)	Notes
North	57	11	627	100%	627	375.1
North	75	11	825	25%	206	44.1
West	75	11	825	25%	206	125.2
South	17	11	187	100%	187	18.7
South	58	11	643	100%	643	34.1
South	66	11	1,815	100%	1,815	182
East	160	11	1,762	100%	1,762	176
Total	894		8,844		2,757	
					31.1%	

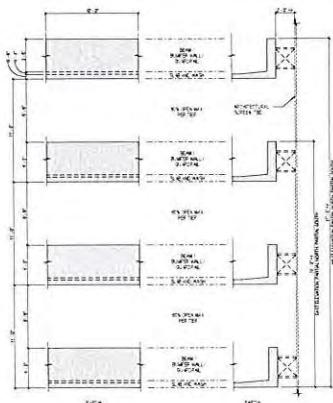
**Notes:**

1. 60% is based on Beam, Bumper Wall and Guardrail. See Schematic Elevation and Section.
2. N Open will be reduced by screening.
3. Required to be a Minimum of 25% 2012 IBC 406.5.2
4. Allowable Opening Area based on Fire Separation Distance 2012 IBC Table 708.8
5. Reference 2012 IBC 406.5 for Open Parking Garages

**EXHIBIT A  
APPROXIMATE  
TOPOGRAPHY LIMITS**

**DLR Group**  
Architects

**NOT FOR  
CONSTRUCTION.**



## OLSSON BILLING RATE SCHEDULE

### 2019 LABOR RATES

<u>Description</u>	<u>Range</u>
Principal.....	109 - 381
Project Manager.....	103 - 189
Project Professional.....	94 - 168
Assistant Professional.....	47 - 143
Designer.....	84 - 178
CAD Operator.....	32 - 116
Survey.....	43 - 171
Construction Services.....	40 - 189
Administrative/Clerical.....	29 - 130

**Note:**

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule
2. Rates subject to change based upon updates to Billing Rates for upcoming year.

## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.58/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated June 21, 2016 between La Vista Community Development Agency ("Client") and Olsson Associates, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

**2.1** Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

**2.2** If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

**2.2.1** Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

**2.2.2** Services to make measured drawings of or to investigate existing conditions of facilities.

**2.2.3** Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

**2.2.4** Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

**2.2.5** Providing renderings or models.

**2.2.6** Preparing documents for alternate bids requested by Client.

**2.2.7** Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

**2.2.8** Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

**2.2.9** Services necessary due to the Client's award of more than one prime contract for the Project(s), services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

**2.2.10** Services in connection with staking out the work of contractor(s).

**2.2.11** Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

**2.2.12** Preparation of operating and maintenance manuals.

**2.2.13** Services to redesign some or all of the Project(s).

**2.2.14** Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

**2.2.15** Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

**2.3** Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

**2.3.1** Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

**2.3.2** Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or Indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings,探井 or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or

utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials,

encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

3.11 Except as expressly provided in the Scope of Services, providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and

programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign preprinted form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Construction Cost Estimate": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that

the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 'Record Documents': Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default.

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall

grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

Deleted

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ('Work Product'), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### 7.3 Construction Cost Estimate

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Construction Cost Estimate provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Construction Cost Estimate. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3.

If Olsson's Construction Cost Estimate was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Construction Cost Estimate was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Construction Cost Estimate, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost

to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Construction Cost Estimate.

### 7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

### 7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

### 7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

### 7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

### 7.8 Confidentiality

In performing this Agreement, the parties may disclose to each other written or oral non-public, confidential or proprietary information, including but not limited to, information of a business, planning, marketing or technical nature and models, tools, hardware and software, and any documents, reports, memoranda, notes, files or analyses that contain, summarize or are based upon any proprietary or confidential information (hereafter referred to as the "Information").

7.8.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information

confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the 'Disclosing Party') unless Client is a public entity and the release of Information is required by law or legal process.

7.8.2 The existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.8.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.8.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.8.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.8.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.8.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.8.3.5 is received from a third party not subject to any confidentiality obligations.

7.8.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.8.5 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.8.6 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.8.7 The obligations of confidentiality set forth herein shall survive termination of this Agreement, but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

## 7.9 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.9.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.9.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.9.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.9.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.9.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.9.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and

against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

**7.9.5.2** In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.10 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

#### **7.11 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

#### **7.12 Assignment**

**7.12.1** Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.12.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

**7.12.2** Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

**7.12.3** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be

for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

#### **7.13 Indemnity**

**7.13.1** Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

**7.13.2** Notwithstanding anything in this Agreement to the contrary:

1. Any terms or conditions of this Agreement in which Client agrees to indemnify, release, or hold harmless Olsson shall be subject to the Nebraska Political Subdivisions Tort Claims Act, including liability limitations thereunder; and
2. Any agreement of a party ("Indemnitor") to indemnify, defend, release, or hold harmless any other party ("Indemnitee") shall be limited to claims, liabilities, costs, or expenses solely and proximately caused by the Indemnitor's negligence and shall be limited to and not exceed coverages or amounts provided or paid pursuant to insurance policies maintained by Indemnitor.,

#### **7.14 Limitation on Damages**

**7.14.1** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

**7.14.2** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

**7.14.3** Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law with respect to any liabilities, injuries, claims, losses, expenses, damages, or claims expenses covered by insurance policies maintained by Olsson, Olsson's total liability to the Client for any and all such injuries, claims, losses, expenses,

damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's insurance limits. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s),

whether subsequent to or prior to the execution of this Agreement.

#### **7.15 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-

741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **7.16 Insurance**

Olsson agrees to provide the following:

Workers' Compensation	Statutory – per state law
Employer's Liability	\$1,000,000/Each Accident
General Liability	\$2,000,000/Occurrence \$5,000,000/Aggregate
Automobile Liability Single Limit for BI/PD	\$1,000,000 Combined
Professional Liability	\$3,000,000 Each Claim & Aggregate

#### **7.17 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

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