

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
APRIL 4, 2023 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
PROFESSIONAL SERVICES AGREEMENT – ◆ RESOLUTION EAST LA VISTA SEWER & PAVEMENT REHABILITATION – AMENDMENT NO. 3	ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

**SYNOPSIS**

A resolution has been prepared authorizing the execution of Amendment No. 3 to the Professional Services Agreement with HGM Associates, Inc., Omaha, Nebraska for construction phase services associated with the East La Vista Sewer and Pavement Rehabilitation Project in an additional amount not to exceed \$774,431.

**FISCAL IMPACT**

The FY23/FY24 Biennial Budget provides funding for this project.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The City's current agreement with HGM Associates Inc. was executed on June 4, 2019, to which a subsequent administrative amendment was executed on November 11, 2019, to study the conditions of the existing sanitary sewer and pavement conditions on the original east side of La Vista, from east of 72<sup>nd</sup> Street to 69<sup>th</sup> Avenue, from south of Harrison Street to 69<sup>th</sup> Street. The 2<sup>nd</sup> Amendment was approved on July 7, 2021, for the final design of the project. The 3<sup>rd</sup> Amendment is to provide construction phase services inclusive of scope items such as: contractor progress meetings; contractor submittal reviews; construction observation, reporting and inspections; construction staking; materials testing; and project closeout items.

A copy of the scope is attached.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH HGM ASSOCIATES, INC., OMAHA, NEBRASKA FOR CONSTRUCTION PHASE SERVICES ASSOCIATED WITH THE EAST LA VISTA SEWER AND PAVEMENT REHABILITATION PROJECT IN AN ADDITIONAL AMOUNT NOT TO EXCEED \$774,431.00.

WHEREAS, the Mayor and City Council have determined that professional services for the construction phase services associated with the East La Vista Sewer and Pavement Rehabilitation Project are necessary; and

WHEREAS, the FY23/FY24 Biennial Budget includes funding for this project; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure council approval prior to authorizing any purchases over \$5,000;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, do hereby approve amendment No. 3 to the professional services agreement with HGM Associates, Inc. to provide construction phase services associated with the East La Vista Sewer and Pavement Rehabilitation Project in an additional amount not to exceed \$774,431.00.

PASSED AND APPROVED THIS 4TH DAY OF APRIL 2023.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, MMC  
City Clerk



March 27, 2023

**Mr. Pat Dowse, P.E.**

City Engineer  
City of LaVista  
9900 Portal Road  
LaVista, Nebraska 68128

Subject: East LaVista Sewer and Pavement Rehabilitation Amendment No. 3  
Phase III Construction Administration Services  
HGM Project No. 702619

Dear Mr. Dowse:

On behalf of HGM ASSOCIATES INC. (HGM) we are pleased to provide Phase III Construction Administration Services for the above referenced project as Amendment No.3 to our agreement dated June 4, 2019. This amendment consists of this letter, the attached Scope of Services labeled as Exhibit A and the attached Manhour & Fee Estimate labeled as Exhibit B.

HGM will provide Basic Engineering Services for Construction Administration. These services are more specifically defined in the attached Scope of Services, Exhibit A. We will also provide Additional Services upon your request and receipt of your written authorization.

HGM will provide these Basic Services on an hourly basis with our total estimated cost to be \$744,431.00. Additional Services will be charged on an hourly basis in accordance with our standard hourly rate schedule.

We anticipate that we will be able to begin work on this project upon receiving your authorization to proceed in the form of your acceptance of this agreement. We estimate that all as-built and project documentation work can then be completed within 60 days of the construction contractors completion of the project. If at any time we are delayed in the performance of these services, we will notify you immediately. Please note that any information to be provided by you as defined under Client's Responsibilities in the attached Scope of Services will need to be furnished to HGM prior to our beginning work.

**City of La Vista**

March 27, 2023

Page 2 of 2

**Please indicate your authorization of these additional services by signing where indicated below and returning one original signed copy to this office; OR, you may then scan a complete set of this document and email in its entirety to HGM. We sincerely appreciate the opportunity to work with you.**

Yours very truly,  
**HGM ASSOCIATES INC. - CONSULTANT**



William J. Glismann, P.E.  
Senior Project Manager



Stephen W. Moffitt, P.E.  
Vice President

Authorization of Additional Services:  
City of LaVista

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Authorized Signature

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Printed Name & Title

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Date

This is an exhibit attached to and made part of the Amendment No. 3, dated March 27, 2023, to the letter agreement dated June 4, 2019 between: CITY OF LA VISTA (CLIENT) and HGM ASSOCIATES INC. (CONSULTANT).

**CONSTRUCTION ADMINISTRATION AND OBSERVATION**  
**FOR EAST LA VISTA SEWER & PAVEMENT REHABILITATION**  
**PROJECT NO. M375(228)**

HGM will furnish Construction Administration and full-time Observation Services during the construction phase of the East La Vista Sewer & Pavement Rehabilitation project.

In the performance of these services, HGM shall not have authority or responsibility to supervise, direct, or control the Contractor's work or the Contractor's means, methods, techniques, sequences, or procedures of construction. HGM shall not have authority or responsibility for safety precautions and programs incident to the Contractor's work or for any failure of the Contractor to comply with laws, regulations, rules, ordinances, codes or orders applicable to the Contractor furnishing and performing the work. The Contractor shall have sole responsibility for safety and for maintaining safe practices and avoiding unsafe practices or conditions. These services shall in no way relieve the Contractor of complete supervision of the work or the Contractor's obligation for complete compliance with the drawings and specifications. Specific services performed by the HGM are as follows:

1. Pre-construction Conference - At the date and time selected by the Owner and at facilities provided by the Owner, conduct a pre-construction conference. HGM will prepare an agenda for the conference, record and distribute meeting minutes to those in attendance. The pre-construction conference will include:
  - a. Discussion of the Contractor's tentative schedule; procedures for transmittal and review of the Contractor's submittals; processing payment applications, frequency of payment, and deadline for submittal of pay request; critical work sequencing; change orders; record documents; and the Contractor's responsibilities for safety and first aid. Procedures for dealing with unforeseen problems will be developed and discussed.
  - b. Discussion of utilities point of contact, utility locations and conflicts, critical work sequencing and scheduling, and procedures for dealing with unforeseen problems.
  - c. Discussion of weekly Progress Meeting time and location.
2. Progress Meetings - HGM will conduct progress meetings as needed during the project construction time frame. HGM Project Engineer will attend and prepare meeting attendance sheets and agendas, record and distribute meeting minutes for a maximum of 6-meetings over the course of the contract.
3. Review Contractor's Submittals - HGM will coordinate Contractor submittals for equipment, materials, and construction with the HGM Project Engineer. All requests for variations from the contract documents will be reviewed with City of La Vista before issuing an approval to the contractor. Such reviews shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.

4. Construction Observation - HGM will furnish full-time Construction Administration and Observation Services during the construction phase of the projects based the dates outlined in Exhibit B, Manhours & Fee Proposal. Full-time Construction Observation will be of the general progress of the work to assist in determining if the work is proceeding in accordance with the plans and specifications. All discrepancies observed during full-time observation will be reported to City of La Vista, and Contractor. The HGM Project Manager shall approve corrective measures prior to correcting work.
5. Construction Reporting – HGM will provide a Weekly Work Report that will be a weekly summary of observed days of the contractor's work. A field diary will be kept as a record of the construction activities and collection of shipping tickets of delivered materials.
6. Pay Requests – Pay requests will be generated by HGM based on the measured quantities of work. HGM will review the quantities with City of La Vista's representative and will verify quantity discrepancies with the Contractor, as needed.
7. Process Change Orders - HGM will coordinate the preparation of change orders that are agreed to by the contract parties. Documentation to support the basis for the claim will be developed, as well as justification for change to the contract price. HGM will review change order requests and they will be discussed with City of La Vista before they are developed in final form.
8. Drawing Interpretation – HGM will provide any contractor questions to City of La Vista through the Project Manager. HGM has assumed only enough staff time to process information from the Contractor to City of La Vista and to document decisions resulting from interpretations provided by City of La Vista.
9. Final Inspection – HGM will schedule a final walk through for the project with the City of La Vista, Owner and Contractors. HGM will conduct the final completion walk through to identify items requiring completion or correction prior to final payment. HGM will prepare the final completion punch list and distribute to City of La Vista and Contractor.
10. Record Drawings – HGM will maintain record drawings and specifications based on site observation and the Contractor's record drawings. This information will be combined and one a copy of the record drawings will be provided to City of La Vista at the completion of the project.
11. Construction Staking – HGM will provide the following construction survey staking services.
  - a. Verify project control
  - b. Mark Removals – 14 Phases
  - c. Stake Paving Hubs – Phases A, B & C.
12. Construction Testing – Thiele Geotech will provide material testing and earthwork compaction testing in accordance with their attached scope of services.

13. Storm Water Pollution Prevention Plan (SWPPP) - HGM will provide the following SWPPP Inspection Services:

- a. Prepare NPDES permit application and submit to NE Department Environment & Energy.
- b. Prepare and Submit Grading Permit / SWPPP Application through the Papillion Creek Watershed Partnership (PCWP) website.
- c. Set up Reporting Information on Papillion Creek Watershed Partnership website (PERMIX).
- d. Perform SWPPP Inspection of site in accordance with NDEQ and PCWP requirements. Inspection of site to be done weekly and after all rainfall events greater than  $\frac{1}{2}$  inch.
- e. Submit Inspection Reports electronically on the Papillion Creek Watershed Partnership website.
- f. Prepare project closeout documents for SWPPP final submittal.
- g. Inspection period shall be from start of construction until final closeout of SWPPP after vegetation has been established. Closeout estimated to be October 2024.

14. Project Management – Project management services will be provided including:

- a. Contact utilities, distribute a project map, and schedule a utility meeting (if required),
- b. Contract management and invoicing,
- c. Other general project management tasks as required for the project based on the current scope and construction completion schedule of 30 - working days.

15. Project Close-Out – HGM will compile the following files and paperwork to submit to City of La Vista.

- a. As-built Plan
- b. Itemized project costs
- c. Electronic Files of the following:
  - i. As-built drawings - pdf files
  - ii. Project daily inspection reports – pdf
  - iii. Project test reports – pdf
  - iv. As-built certification form – pdf
  - v. Itemized project costs - pdf

## **EXHIBIT "B"**

City of La Vista - East La Vista Construction Phase Services

3/16/2023

## **MANHOUR AND FEE ESTIMATE CONSTRUCTION ENGINEERING / OBSERVATION**

**Working Day Calculation (See Next Tab)****2023      2024      Totals**

449 Contract Calendar Days

241      74      315

4/3/23 Start Date

5/31/24 End Date

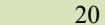
314 Working Days (Mon-Sat)

193      62      255

65 Calendar Weeks

35      11      45

Winter days from 12/1/2023 thru 3/17/2024 are excluded

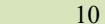
**Construction Observer**Preconstruction Phase  20 hours

Distribute Leaflets

Attend precon meeting

Review and approve construction schedule

Take, document and provide precon photos

Construction Phase - 1  10 hrs/day      6 days/wk

Maintain field documents

Input daily entries into Daily Report form

Monitor contractor for compliance

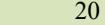
Review traffic control daily

Observe and record change order work

Mark removals per City standards

Document manhole conditions using provided software

Provide 2nd Observer for 25% of working days

Post Construction  20 hours

Final Walkthrough

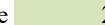
Preprare Punchlist

Verify all work completed and approved

Material Testing - included above

Perform on site tests

Acquire and record material certifications

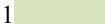
**Construction Manager**Preconstruction Phase  20 hours

Create Information Leaflets

Arrange and direct precon meeting

Review and approve construction schedule

Provide PR contact to repond to public

Construction Phase - 1  4 hrs/day      6 days/wk

Establish document management system

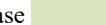
Direct weekly meetings, take minutes

Process change order paperwork

Provide PR contact to repond to public

Act as Construction Observer when required

Overlap with other projects or Observer III

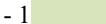
**Project Manager**Preconstruction Phase  6 hours

Manage resources

Contract administration

Attend precon meeting

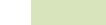
Review and approve construction schedule

Construction Phase - 1  3 hrs/wk

Manage resources

Contract administration

Provide Engineering Assistance

Post Construction  12 hours

Final Walkthrough

Manage resources

Contract administration

Material Testing - Included above

Manage resources

Contract administration



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**ATTACHMENT A**  
**SCOPE OF SERVICES FOR**  
**HGM – EAST La VISTA SEWER**  
**CONSTRUCTION PHASE SERVICES**

The general scope of this work includes construction phase services for the sanitary sewer rehabilitation work associated with the East La Vista project.

**TASK 1 – PROJECT ADMINISTRATION:**

1. TREKK's in-house project management, administration, budget tracking, and monthly billing (based on 2 months).

**TASK 2 – CONSTRUCTION PHASE SERVICES:**

1. Review project submittals (up to 2 @ 1hr per month).
2. Attend Monthly Progress Meetings during construction (up to 2 @ 1 per month).
3. Attend public meeting (up to 1 @ 3 hr/each).
4. Respond to RFI's, SDI's and Contractor coordination during construction (up to 6 request at 1 hr/each).
5. Site visits in response to Contractor questions (up to 6 visits @ 2 hr/each).
6. Substantial Completion Inspection (up to 1 visit up to 6 hrs).
7. Final Completion Inspection (up to 1 visit up to 6 hrs).
8. Perform post construction CCTV review (up to 16 hrs).

**ITEMS NOT INCLUDED IN THE SCOPE:**

1. Construction Staking,
2. Construction Materials Testing.
3. Construction Observation.
4. Other items not listed in the scope above.



### 2023 Fee Estimate Worksheet

Project Name & Number HGM - East La Vista CPS Fee

WORK TASK DESCRIPTION	Project Principal	Project Manager	Senior Professional Engineer	Project Engineer I	Project Designer III	Senior Administration	Survey Manager (PLS)	Utility Locator	Survey Crew	Mileage	Direct Expenses			Labor Sub-Total	Direct Exp	Sub-Total	TOTAL	
	Fee Billing Rate	\$235.00	\$176.00	\$235.00	\$145.00	\$120.00	\$105.00	\$145.00	\$115.00	\$185.00	\$ 0.685	Description	Quantity	Cost/Unit	Sub-Total			
<b>Task 1 - Project Administration</b>															\$ 1,384.00	\$ -	\$ 1,384.00	
Project Administration (based on 2 months)	2	4	0	0	0	2	0	0	0						\$ -			
<b>Task 2 - Construction Phase Services</b>															\$ 11,010.00	\$ 184.95	\$ 11,194.95	
Monthly Progress Meetings - (Up to 2 @ 1 hr per month)	2														\$ -			
Public Meetings - (Up to 1 @ 3 hrs/each)	3														\$ -			
RFI's/Coordination with Contractor (Up to 6 request at 1 hr/each)	1														\$ -			
Site Visits in response to Contractor questions (up to 6 visits @ 2hr/each)	6														\$ -			
Substantial Completion	1														\$ -			
Final Completion	1														\$ -			
CCTV Review	2														\$ -			
<b>TOTAL MAN-HOURS / QUANTITY</b>	20	4	0	12	42	2	0	0	0	270								
<b>UNIT RATE</b>	\$235.00	\$176.00	\$235.00	\$145.00	\$120.00	\$105.00	\$145.00	\$115.00	\$185.00	\$ 0.685					\$ -	\$ 12,394.00	\$ 184.95	\$ 12,578.95
<b>TREKK DESIGN GROUP FEE TOTAL</b>	<b>\$ 4,700.00</b>	<b>\$ 704.00</b>	<b>\$ -</b>	<b>\$ 1,740.00</b>	<b>\$ 5,040.00</b>	<b>\$ 210.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 184.95</b>								

**Proposal for Material Testing Services  
East La Vista Sewer and Pavement Rehabilitation  
72<sup>nd</sup> and Harrison St.  
La Vista, Nebraska  
January 23, 2023**

Thiele Geotech, Inc. is pleased to submit our proposal for material testing services for the referenced project. The following sections detail services that may be provided. A listing of applicable unit rates is attached in Exhibit A and the contract terms are attached in Exhibit B.

**SCOPE OF SERVICES – MATERIALS TESTING**

Material testing on this project may consist of the following services:

1. Observation of site stripping and proof-rolling
2. Compaction tests on structural fill and backfill
3. Compaction tests on pavement subgrades
4. Test concrete materials and make cylinders
5. Sample asphalt materials and periodically monitor laydown compaction
6. Appurtenant laboratory tests on soil, concrete, and asphalt materials
7. Engineering consultation, reports, and project management

Test procedures, requirements, frequency, and locations will be as set forth in the plans and specifications or as directed by the Architect/Engineer or field representative. Testing will be conducted on an "on-call" basis.

**ESTIMATED COST & BILLING**

Material testing services will be billed at the unit rates listed in Exhibit A. Any tests not listed will be billed at our normal fee schedule rates in effect at the time of the test. Based on the number of tests in Exhibit A, the total cost for testing services is estimated at \$93,873. This cost estimate is not intended as a not-to-exceed or lump-sum cost. The number of tests performed is highly dependent upon numerous factors beyond our control, including weather conditions, the contractor's schedule and performance, and the amount of discretionary testing requested. Consequently, the actual cost may be higher or lower than the estimated cost. We will bill only for the tests actually performed, and not on any lump sum or minimum cost basis.

**EXHIBITS**

Exhibit A - Unit Rate Schedule  
Exhibit B - General Conditions

**THIELE GEOTECH, INC.**

By: 

Robert E. Matlock, SVP

13478 Chandler Road

Omaha, Nebraska 68138-3716

402/556-2171    Fax 402/556-7831

CLIENT: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**COST ESTIMATE**  
**East La Vista Sewer and Pavement Rehabilitation**

<b>Description</b>	<b>Estimated Quantity</b>	<b>Unit Rate</b>	<b>Estimated Cost</b>
<b>Sanitary Sewer</b>			
Compaction Test (ea.)	331.0	50.00	16,550.00
Trip Charge - Zone 1 Metro Area (/trip)	67.0	80.00	5,360.00
<b>Driveway and Sidewalk</b>			
Compaction Test (ea.)	21.0	50.00	1,050.00
Trip Charge - Zone 1 Metro Area (/trip)	11.0	80.00	880.00
Concrete Test Set (slump/air/temp/cast 4-4"x8" OR 3-6"x12" Cyl)	31.0	110.00	3,410.00
Compressive Strength of Cylinder (ea.)	124.0	24.00	2,976.00
Trip Charge - Zone 1 Metro Area (/trip)	45.0	80.00	3,600.00
<b>Concrete Paving</b>			
Compaction Test (ea.)	154.0	50.00	7,700.00
Trip Charge - Zone 1 Metro Area (/trip)	31.0	80.00	2,480.00
Concrete Test Set (slump/air/temp/cast 4-4"x8" OR 3-6"x12" Cyl)	24.0	110.00	2,640.00
Compressive Strength of Cylinder (ea.)	96.0	24.00	2,304.00
Trip Charge - Zone 1 Metro Area (/trip)	16.0	80.00	1,280.00
Pavement Core (includes patch) (ea.)	14.0	94.00	1,316.00
Measured Length of Core (ea.)	14.0	17.00	238.00
Trip Charge - Zone 1 Metro Area (/trip)	2.0	80.00	160.00
<b>HMA Overlay</b>			
HMA Gyratory (% AC, Gradation, MLD, MTD) /(set)	20.0	570.00	11,400.00
Coarse Aggregate Angularity (ea.)	20.0	120.00	2,400.00
Fine Aggregate Angularity (ea.)	20.0	120.00	2,400.00
Engineering Technician (/hr.)	30.0	98.00	2,940.00
Trip Charge - Zone 1 Metro Area (/trip)	20.0	80.00	1,600.00
Pavement Core (includes patch) (ea.)	20.0	94.00	1,880.00
Core Compaction and Measured Length (ea.)	20.0	44.00	880.00
Trip Charge - Zone 1 Metro Area (/trip)	5.0	80.00	400.00
<b>Miscellaneous</b>			
Senior Project Engineer (/hr.)	77.0	208.00	16,016.00
Standard Proctor (ea.)	3.0	215.00	645.00
Modified Proctor (ea.)	3.0	240.00	720.00
Atterberg Limits (/set)	6.0	108.00	648.00
Total			93,873.00

## GENERAL CONDITIONS

**1. SCOPE OF WORK:** Thiele Geotech, Inc. (including its officers, directors, employees and subconsultants, hereafter referred to as TG) shall perform the services described in the contract and shall invoice the client for those services at the Fee Schedule rates. Any cost estimates stated in this contract shall not be considered as firm figures unless specifically stated in this contract. If unexpected site conditions are discovered, the scope of services may change. TG will provide additional services at the contract Fee Schedule rates.

**2. ACCESS TO SITES, PERMITS, AND APPROVALS:** The client shall furnish TG with right-of-access to the site in order to conduct the planned exploration. Unless otherwise agreed, the client will also secure all necessary permits, approvals, licenses, and consents necessary to the performance of the services hereunder. While TG will take reasonable precautions to minimize damage to the property, it is understood by the client that, in the normal course of work, some damage may occur, the restoration of which is not part of this agreement.

**3. UTILITIES:** In the performance of its work, TG will take reasonable precautions to avoid damage or injury to subsurface utilities or structures. This includes requesting locates of utility owned lines and services. The client agrees to hold TG harmless and indemnify TG for any claims, payments, or other liability, including attorney fees, incurred by TG for damage to any privately owned subsurface utilities or structures which are not correctly identified to TG.

**4. UNANTICIPATED HAZARDOUS MATERIALS:** It shall be the duty of the client to advise TG of any known or suspected hazardous substances which are or may be related to the services provided; such hazardous substances including but not limited to products, materials, or wastes which may exist on or near any premises upon which work is to be performed by TG. If TG observes or suspects the existence of hazardous materials during the course of providing services, TG may, at its option, suspend further work on the project and notify client of the conditions. Services will be resumed only after a renegotiation of scope of services and fees. In the event that such renegotiation cannot occur to the satisfaction of TG, TG may, at its option, terminate this contract. It is understood and agreed that TG does not create, generate, or at any time take possession or ownership of hazardous materials as a result of its exploration services.

**5. REPORTS AND INVOICES:** TG will furnish up to 3 copies of reports to the client. Additional copies will be provided at the expense of the client. TG may submit invoices to the client monthly and upon completion of services. Payment is due upon presentation of invoices and past due 30 days from the invoice date. Client agrees to pay a finance charge on past due invoices of 1.25 percent per month, but not exceeding the maximum rate allowed by law.

**6. OWNERSHIP OF DOCUMENTS:** All reports, boring logs, data, notes, calculations, estimates, and other documents prepared by TG as instruments of service shall remain the property of TG.

**7. SAMPLE DISPOSAL:** Unless otherwise agreed, test specimens or samples will be disposed immediately upon completion of the test.

**8. CONFIDENTIALITY:** TG will hold confidential all business or technical information obtained from the client or generated in the performance of services hereunder and identified in writing by the client as confidential. TG will not disclose such information without the client's consent except to the extent required for; 1) performance of services under this contract; 2) compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) compliance with any court order or other governmental directive; and/or 4) protection of TG against claims or liabilities arising from performance of services under this contract. TG's obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others. TG's technical and pricing information are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of TG.

**9. STANDARD OF CARE:** Services performed by TG under this contract will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing

under similar conditions. No other warranty, express or implied, is made or intended by the proposal for services or by furnishing oral or written reports of the findings made. The client recognizes that TG does not owe any fiduciary responsibility to the client. The client further recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, tests, or explorations are made by TG, and that the data, interpretations, and recommendations of TG are based solely upon the data available to TG. TG will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

**10. LIMITATION OF LIABILITY:** In recognition of the relative risks, rewards, and benefits to both the client and to TG, the risks have been allocated such that the client agrees to limit TG's liability to the client and all other parties claiming to have relied on TG's work provided through the client to \$50,000 or TG's total fee for services rendered on this project, whichever is greater. This limitation of liability is a business understanding between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action except for willful misconduct or gross negligence.

**11. CONSEQUENTIAL DAMAGES:** Neither party, including their respective contractors or subconsultants, shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages. This 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.

**12. CLAIMS:** Client agrees that any claim for damages filed against TG by Client or any contractor or subcontractor hired directly or indirectly by Client will be filed solely against TG or its successors or assigns, and that no individual person shall be made personally liable for damages, in whole or in part. All claims by Client shall be deemed relinquished unless filed within one year after substantial completion of TG's services under this agreement.

**13. TERMINATION:** This contract may be terminated by either party upon 7 days prior written notice. In the event of termination, TG shall be compensated by client for all services performed up to and including the termination date and for the completion of such services and records as are necessary to place TG's files in order and/or protect its professional reputation. If either party terminates this contract, these General Conditions shall survive termination and shall remain enforceable between the parties.

**14. DISPUTE RESOLUTION:** In an effort to resolve any conflicts that arise during or following this project, the client and TG agree that all disputes between them arising out of or related to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The client and TG also agree to include a similar mediation provision in all agreements with independent contractors and consultants thereby providing for mediation as the primary method for dispute resolution for all parties on the project.

**15. PRECEDENCE:** These standards, terms, and conditions shall take precedence over any inconsistent or contradictory language contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding TG's services.

**16. ASSIGNMENT:** Neither party under this contract may transfer or assign any rights under or interests in this contract without the prior written consent of the other party.

**17. PROVISIONS SEVERABLE:** In the event that any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.