



PROFESSIONAL SERVICES AGREEMENT

For

CITY OF AURORA, ILLINOIS

MASTODON LAKE LOMR

HR GREEN Job# 191805

Prepared for:

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THIS **AGREEMENT** is between City of Aurora, Illinois (hereafter "CLIENT") and HR GREEN, INC. (hereafter "COMPANY").

1.0 Project Understanding

1.1 General Understanding

COMPANY completed the Mastodon Lake Stormwater Plan in the winter of 2019/2020. The Stormwater Plan included a study of the floodplain surrounding Mastodon Lake and Little Doe Lake. One of the goals of the Stormwater Plan was to lower the Base Flood Elevation (BFE) of Mastodon and Little Doe Lakes to remove properties from the floodplain. The study concluded that the regulatory BFE as mapped are higher than what was determined based on a revised hydrologic and hydraulic analysis as part of the Stormwater Plan. One of the recommendations of the plan included preparing a Letter of Map Revision (LOMR) for the Mastodon and Little Doe Lakes. The remapped BFEs will also assist the regulatory requirements for future projects for compensatory storage.

The watershed tributary to Mastodon Lake and Little Doe Lake is greater than one square mile and therefore the Illinois Department of Water Resources – Office of Water Resources (IDNR-OWR) will need to approve the hydrologic calculations. The Federal Emergency Management Agency (FEMA) is responsible for mapping special flood hazard areas (SFHA) in the United States. In Illinois, the Illinois State Water Survey (ISWS) completes reviews of Letters of Map Change on FEMA's behalf. Both the IDNR-OWR and the ISWS will need to review and approve the LOMR application in order for it to become effective.

COMPANY created a 2D XP SWMM model as part of the Stormwater Plan. This modeling platform is accepted by the reviewing agencies. This model will be used in applying for a LOMR for the existing conditions floodplain.

This Agreement includes professional engineering services to be provided by the COMPANY to prepare a LOMR application for Mastodon and Little Doe Lakes.

1.2 Design Criteria/Assumptions

The following assumptions have been included in this proposal:

- The updated Bulletin 70 rainfall data, which will be formally adopted in January 2020, will be required for this study.
- A review by the IDNR-OWR will be required to certify the hydrology.
- There are no outstanding floodplain violations associated with this floodplain.
- The modeling completed during the Mastodon Lake Stormwater Plan will serve as the basis for the LOMR modeling.
- The LOMR will be submitted based on the current site conditions and therefore a Conditional Letter of Map Revision (CLOMR) is not necessary for this project.
- A public notification will be required as part of the LOMR processing.
- Coordination with the Kane County Environmental And Water Resource Division will be required for signatures as portions of the floodplain are outside of the City of Aurora's limits.
- Coordination with the following agencies will not be required:
 - a) United states Army Corps of Engineers (USACOE)

- b) Kane-DuPage Soil and Water Conservation District (KDSWCD)
- c) Illinois Environmental Protection Agency (IEPA)

2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

2.1 Project Administration

COMPANY will conduct project management through the duration of the project. This task will also include weekly email updates to CLIENT, scheduling, budget management, coordination with Kane County, IDNR-OWR and FEMA.

2.2 Research

FEMA has a process to request PDF copies of hydrologic and hydraulic data for the current Flood Insurance Study (FIS). The request will be made through the FIS Data Requests program and is assumed to be a Category 1 request.

COMPANY will file one (1) Category 1 request with FEMA to obtain the current FIS data. It is assumed that the current regulatory model is in a TR-20 format.

There is no fee if the data request comes from a municipality. Therefore, it is recommended that the CLIENT submit this request. COMPANY will prepare the request and the CLIENT will submit the request.

2.3 Survey

2.3.1 Storm Sewer Survey

Survey will include up to 50 existing storm sewer structures within the project limits. Storm sewer structures will be surveyed including rim elevation, invert pipe size, direction and elevation as observed at unlocked manholes. The manholes are located along the trunk line of the storm sewer draining Mastodon Lake. The survey will extend from the intersection of Melrose Avenue and Fifth Street to Mastodon Lake. It has been noted that the GIS data for the storm sewer appears provided in previous studies does not include every manhole along this sewer. This survey of the trunk line is to confirm GIS information.

2.3.2 UAV Flight

COMPANY will utilize an unmanned aerial vehicle to fly the necessary mission to collect high resolution aerial imagery to allow creation of one foot contours over the unobscured areas. Obscured areas include tree canopies, high grass, and other ground vegetation. COMPANY will set ground control referenced to IL State Plane coordinate system East Zone – NAD83(2011) and NAVD88. Flight will reference aerial ground control set by the COMPANY. It is assumed that this survey will take place after the snow cover has melted and prior to the trees budding.

The UAV mission may include some overlap onto adjoining owners' property. The COMPANY's FAA certified Remote Pilot will monitor the flight path and adhere to FAA rules and regulations relating to unmanned aerial system flights. COMPANY is not responsible for contacting

adjoining owners that may fall within this flight path. Notification of owners is at the discretion of the CLIENT. COMPANY will provide a template letter for CLIENT to distribute. The FAA does not require notifications.

2.3.3 Obscured Area Topographic Survey

COMPANY will perform a supplemental topographic (elevation) survey of the areas obscured during the unmanned aerial survey. This supplemental survey will include ground elevations only, improvements and features will not be surveyed.

2.3.4 Site Topographic Survey Base Map

COMPANY will generate an AutoCAD 2019 drawing of the existing digital elevation model generated from the aerial imagery and obscured area topographic survey. One (1) foot contours will be generated with the elevations referenced to NAVD88 (U.S. Survey Feet).

COMPANY will complete an aerial topographic survey of the existing regulatory floodplain area. The aerial survey will be accurate to less than one inch.

This task does not include:

- Plat of Dedication
- Plat of Easement
- Plat of Highways
- Boundary Survey
- Right of way survey
- Tree survey
- Bathymetric Survey
- As-Built plans of future improvements
- Culvert/Bridge survey
- Ground survey other than control, storm sewer structures and obscured areas.

2.4 LOMR Application for Existing Conditions

COMPANY will prepare a LOMR Application for the Stillwater floodplain located around Mastodon Lake and Little Doe Lakes. It is assumed that the following sub tasks will be required:

- HYDROLOGY and IDNR-OWR SUBMITTAL – COMPANY will complete hydrologic calculations using the updated Bulletin 70 rainfall data. The hydrologic calculations will be completed within XP SWMM software and will be submitted to the IDNR-OWR for their concurrence on the flows. The IDNR-OWR must review and approve the hydrologic calculations for floodplains draining more than one (1) square mile in Illinois. A submittal to the IDNR-OWR will be made to obtain their concurrence with the hydrologic calculations.
- HYDRAULICS – COMPANY will utilize data obtained during the research phase and the survey phase to update previously completed hydraulic modeling of the site. COMPANY will utilize the XP SWMM model completed as part of the Mastodon Lake Stormwater Plan to model the existing floodplain. COMPANY will create a duplicate effective model, corrected effective and an existing conditions model. The corrected effective model will be completed to update errors in the FIS.
- PUBLIC NOTIFICATIONS – Public notifications will not be required by FEMA as part of the LOMR process as the project does not involve a floodway and will not raise the flood

elevation in any locations. It is assumed that CLIENT will want to notify impacted residents regardless of FEMA requirements. COMPANY will use templates provided by permitting agencies to prepare a notification to impacted property owners. COMPANY will use Kane County tax records to determine the property owners of the adjacent properties and will develop an Adjacent Property Owner Exhibit. COMPANY will provide notification letters to CLIENT and CLIENT will be responsible for distributing the letters.

- ANNOTATED MAPPING – COMPANY will map the results of the existing conditions hydraulic model to create an annotated map that meets FEMA guidelines.
- LOMR FEMA SUBMITTAL – COMPANY will complete and submit the MT-2 form to FEMA. COMPANY will coordinate with CLIENT and Kane County Environmental and Water Resources Division to obtain the necessary signatures to complete the forms. A portion of the floodplain is outside of the Aurora City Limits and therefore Kane County must sign the application forms too.

It is assumed that the IDNR-OWR and FEMA may request further information, clarification or modifications to the submittal. COMPANY has assumed that one (1) additional submittal will be required to process the LOMR application with both the IDNR-OWR and FEMA. COMPANY cannot guarantee approval, or timeline for the review or approval of the LOMR application.

FEMA currently charges a fee of up to \$8,250.00 for the review and processing of LOMRs. This LOMR is an update based on existing conditions and not based on any fill or improvements. Therefore, it is anticipated that there will be no fee required for the LOMR review. If FEMA will require a fee for review, COMPANY will inform CLIENT of the fees and CLIENT will pay the fees directly to the reviewing agency.

The IDNR-OWR charges fees for permit reviews and issuing public notices. The IDNR-OWR permit fees are capped at \$5,000 per permit. Upon IDNR-OWR determination of applicable review fees, COMPANY will inform CLIENT of the fees and CLIENT will pay the fees directly to the IDNR-OWR. This fee is not included in the cost of the contract.

3.0 Deliverables and Schedules Included in this Agreement

3.1 Deliverables:

COMPANY will provide CLIENT with digital copies of each submittal to FEMA including the digital copies of the hydraulic modeling.

3.2 Schedule:

- | | |
|-----------------------------------|-----------------|
| • Project kick off | February 2020 |
| • Survey existing conditions | March 2020* |
| • Research | March, 2020 |
| • Submit Hydrology to IDNR-OWR | May 2020 |
| • Submit LOMR Application to FEMA | November 2020** |
| • Public Notifications | November 2020 |
| • Anticipated LOMR approval | February 2021 |

*It is assumed that the survey will take place after the snow has melted and prior to the trees budding and leaf cover obstructing aerial topographic survey.

**Submittal of LOMR Application to FEMA is contingent upon IDNR-OWR concurrence of the hydrology.

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this agreement:

- Bathymetric Surveying services
- Geotechnical services
- Environmental soil sampling and testing
- Preliminary and final design engineering services
- Permitting Application
- Funding applications
- Archeological and/or Cultural Surveys
- Condition assessment of existing utilities to remain
- Utility conflict review via exploratory excavation
- Traffic Studies and/or Roadway Geometric Design
- Right-of-Way Plats and/or Plats of Easement
- Appraisals and Negotiations
- ALTA/NSPS Land Title Surveys
- Plat of Highways
- Plat of Dedication

Supplemental services not included in the agreement can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

Not Applicable

6.0 Client Responsibilities

The following services are expected to be provided by the CLIENT

- Provide requested signatures and information for completing MT-2 forms.
- Active participant in meetings including review of supporting documents provided ahead of meetings.
- Timely review of submitted information.
- Provide notification to affected stakeholders for aerial survey.
- Distribute notification letters to affected stakeholders regarding the change in BFE.

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the agreement is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non salary expenses directly attributable to the project such as: (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.

7.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis. Invoices shall be due and payable within 45 days after approval by the City Council, and in accordance with the Illinois Prompt Payment Act. Retainer, if applicable, shall be credited on the final invoice.

7.3 Extra Services

Any service required but not included as part of this Agreement shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

TASK	Description	Labor Costs	Direct Costs	Total Costs
Task 1	Project Management	\$3,636.00	\$34.00	\$3,670.00
Task 2	Research	\$1,704.00	-	\$1,704.00
Task 3	Survey	-	-	-
	Aerial Data Collection	\$5,366.00	\$17.00	\$5,383.00
	Traditional Survey (Required)	\$6,702.00	\$118.00	\$6,820.00
Task 4	Modeling & LOMR application	\$22,140.00	-	\$22,140.00
TOTAL FOR PROJECT		\$39,548.00	\$169.00	\$39,717.00

Time and Material Not to Exceed Fee of \$39,717

8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality and in accordance with applicable federal, state and local laws and the rules and regulations of the Illinois Environmental Protection Agency in force at time of this agreement.

8.2 Entire Agreement

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

8.3 Time Limit and Commencement of Work

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The work will be commenced immediately upon receipt of this signed Agreement.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this Agreement, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the CLIENT.

8.5 Book of Account

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

8.6 Insurance

CLIENT reserves the right to review and adjust the insurance carried by COMPANY conditioned upon a mutual determination of changes in risk exposures.

8.7 Termination or Abandonment

Either party has the option to terminate this Agreement. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this Agreement may be terminated upon seven days written notice. If any portion of the work is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned.

8.8 Waiver

Either party's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

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

8.10 Successors and Assigns

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

8.11 Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the COMPANY. The COMPANY's services under this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against the COMPANY because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Illinois without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Kane County Circuit Court.

8.13 Dispute Resolution

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and COMPANY agree that all disputes between them arising out of or relating to this Agreement shall first be attempted to be resolved with a meeting of the managers in charge of the project.

8.14 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.15 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall be the property of CLIENT. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times.

8.16 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and COMPANY shall not be responsible for any loss, damage or liability arising from any acts by CLIENT, its agents, staff, consultants employed by others, or other third parties who are not employees of the COMPANY.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose in the event they are altered in any manner by the CLIENT. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

8.17 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees that COMPANY shall not be responsible for any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of services. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT's failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.18 Opinion of Probable Construction Cost

COMPANY shall submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of his or her opinions of cost, and in recognition of that fact, the CLIENT waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.19 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY'S expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, COMPANY shall not be responsible for any loss, damage or liability arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30 day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate AGREEMENT. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.20 Information Provided by Others

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

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to waive claims for any damages, liabilities, or costs, arising out of or connected with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this contract unless indicated in the Scope of Work.

8.21 Force Majeure

Parties agree that neither party is responsible for damages arising directly or indirectly from any delays for causes beyond their control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the parties shall negotiate reasonable adjustment in schedule and compensation.

8.22 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the General Contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the General Contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.23 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional engineering services. The compensation to be paid COMPANY for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to waive any and all claims against COMPANY, its officers, directors, employees, and consultants, for direct damages, and expenses arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalies, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY will notify CLIENT and may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this Agreement shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the

Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.24 Limitation of Liability

The CLIENT agrees, to the fullest extent permitted by law, to limit the liability of COMPANY and COMPANY's officers, directors, partners, employees, shareholders, owners and subconsultants to the CLIENT for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of COMPANY and its officers, directors, partners, employees, shareholders, owners and subconsultants to all those named shall not exceed COMPANY'S total fee received for services rendered on this project or \$1,000,000.00, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8.25 Design Without Construction Observation

To the extent COMPANY provides design services without construction observation services under this agreement, it is agreed that the professional services of COMPANY do not extend to or include the review or site observation of the contractor's work or performance and the CLIENT assumes all responsibility for interpretation of the contract documents and for construction observation. It is further agreed by the CLIENT that the COMPANY shall not be responsible for any claim or suit whatsoever, including but not limited to all payments, expenses or costs involved, arising from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. COMPANY agrees to be responsible for its employees negligent acts, errors or omissions.

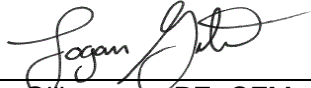
8.26 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CLIENT is a municipal entity as defined by said Act, and the CLIENT requires project financing information for the services performed under this AGREEMENT, the CLIENT will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CLIENT will rely on the advice of such advisor. A sample letter can be provided to the CLIENT upon request.

This Agreement is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the Agreement. Services will not begin until COMPANY receives a signed agreement. COMPANY's services shall be limited to those expressly set forth in this Agreement and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the Agreement shall be the last date entered below.

Sincerely,


HR GREEN, INC.



Date: March 3, 2020

Logan Gilbertsen, PE, CFM
Lead Engineer/Project Manager

Approved by:
Printed/Typed
Name:



Ajay Jain, PE, CFM

Title: Vice President, Practice Leader

Date: March 31, 2020

CITY OF AURORA, IL

Accepted by:
Printed/Typed
Name:

Title:

Date:
