



City of Grand Island

Tuesday, January 24, 2017

Council Session

Item G-5

**#2017-12 - Approving Engineering Consulting Agreement for Cell
3 Liner Construction at the Grand Island Regional Landfill**

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Jeff Wattier, Solid Waste Superintendent

Meeting: January 24, 2017

Subject: Approving Engineering Consulting Agreement for Cell 3 Liner Construction at the Grand Island Regional Landfill

Presenter(s): John Collins PE, Public Works Director

Background

The Grand Island Landfill Phase I development is comprised of four cells (Cells 1, 2, 3, and 4) of lateral expansion that are located within a 52 acre landfill footprint. Cell 1 was constructed in 1993 and Cell 2 was constructed in 1998. Landfilling will continue in Cells 1 and 2 until intermediate and final grades are achieved. Cell 3 will be constructed when filling in Cells 1 and 2 nears completion within the next several years. Cell 4 will be constructed when filling in Cell 3 nears completion or as facility operations warrant.

On October 19, 2016 the Engineering Division of the Public Works Department advertised for Engineering Services for Cell 3 Liner Construction at the Grand Island Regional Landfill, with eighteen (18) potential respondents.

Discussion

Three (3) engineering firms submitted qualifications for the engineering services for Cell 3 Liner Construction at the Grand Island Regional Landfill. HDR Engineering, Inc. of Omaha, Nebraska was selected as the top engineering firm based on the pre-approved selection criteria.

- Firm experience and qualifications on similar work (50%)
- Proposed project schedule / approach (40%)
- Past experience working with the City of Grand Island Public Works Department (10%)

Compensation for HDR Engineering, Inc. services will be provided on a time and expense basis not to exceed \$126,570.00.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the agreement with HDR Engineering, Inc. of Omaha, Nebraska, in the amount of \$126,570.00.

Sample Motion

Move to approve the resolution.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR QUALIFICATIONS
FOR
CELL 3 LINER CONSTRUCTION**

RFQ DUE DATE: November 1, 2016 at 4:00 p.m.
DEPARTMENT: Public Works
PUBLICATION DATE: October 19, 2016
NO. POTENTIAL BIDDERS: 15

SUMMARY OF PROPOSALS RECEIVED

HDR
Omaha, NE

Cornerstone Environmental Group
Kansas City, MO

SCS Engineers
Omaha, NE

cc: John Collins, Public Works Director
Marlan Ferguson, City Administrator
Stacy Nonhof, Purchasing Agent

Catrina DeLosh, PW Admin. Assist.
Renae Griffiths, Finance Director
Jeff Wattier, Solid Waste Supt.

P1909

**SHORT FORM AGREEMENT BETWEEN OWNER
AND HDR ENGINEERING, INC.
FOR PROFESSIONAL SERVICES
AGREEMENT NUMBER 1**

THIS AGREEMENT is made as of this _____ day of _____, 2017, between City of Grand Island, Nebraska (“OWNER”) a municipality, with principal offices at 100 East First Street, Grand Island, Nebraska 68801, and HDR ENGINEERING, INC., (“ENGINEER”) a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as the Grand Island Regional Landfill Cell 3 Liner Design and Construction (“Project”);

WHEREAS, OWNER desires to engage ENGINEER to provide professional engineering, consulting and related services (“Services”) in connection with the Project; and

WHEREAS, ENGINEER desires to render these Services as described in SECTION I, Scope of Services.

NOW, THEREFORE, OWNER and ENGINEER in consideration of the mutual covenants contained herein, agree as follows:

SECTION I. SCOPE OF SERVICES

ENGINEER will provide Services for the Project, which consist of the Scope of Services as outlined on the attached Exhibit A.

SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The “HDR Engineering, Inc. Terms and Conditions for Professional Services,” which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

SECTION III. RESPONSIBILITIES OF OWNER

The OWNER shall provide the information set forth in paragraph 6 of the attached “HDR Engineering, Inc. Terms and Conditions for Professional Services.”

SECTION IV. COMPENSATION

Compensation for ENGINEER’S services under this Agreement shall be on the basis of Per Diem. Compensation for this Project is described in attached Exhibit A.

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER'S compensation as Reimbursable Expenses.

Compensation terms are defined as follows:

Per Diem shall mean an hourly rate equal to Direct Labor Cost times a multiplier of three and eighteen hundredths (3.18) to be paid as total compensation for each hour an employee works on the project, plus Reimbursable Expense.

Direct Labor Cost shall mean salaries and wages, (basic and overtime) paid to all personnel engaged directly on the Project. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually as of the first of every year to reflect equitable changes to the compensation payable to Engineer.

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, technology charges, telephone, telex, shipping and express, and other incurred expense. ENGINEER will add five percent (5%) to invoices received by ENGINEER from subconsultants and subcontractors to cover administrative expenses and vicarious liability.

SECTION V. PERIOD OF SERVICE

Upon receipt of written authorization to proceed, ENGINEER shall perform the services within the time periods described in Exhibit A.

Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER'S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER'S compensation shall be equitably adjusted.

SECTION VI. SPECIAL PROVISIONS

None identified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

"OWNER"

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

HDR ENGINEERING, INC.

"ENGINEER"

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
TERMS AND CONDITIONS

Exhibit A
Scope of Services
Grand Island Regional Landfill
Cell 3 Liner Design & Construction Phase Services

SCOPE OF SERVICES

HDR will provide design, bid solicitation and administrative support, and construction services for the Cell 3 Liner at the Grand Island Regional Landfill. This and the understandings listed below serves as the foundation for the scope of services.

Task 1 - Basic Final Design Services

Objective:

The key objective of this task is to review and evaluate data, make decisions necessary to initiate the liner design activities, and incorporate survey(s) into design documents for the liner project.

HDR Activities:

HDR will set up a Dropbox.com folder account for the Cell 3 Liner project for the sharing of files and collaboration throughout design and construction.

HDR will meet with the City to review the project approach, schedule, and confirm or identify other project requirements. This **project initiation meeting** will include a site visit, a meeting agenda and notes (which will serve as the Design Memorandum and basis for subsequent tasks). HDR will use site sequence, roadway, and liner information from the existing facility permit and Cell 2 design drawings, in combination with the pre-design survey provided by the City, to further define design requirements and prepare a concept layout for inclusion in the Design Memorandum. This project initiation meeting will serve to establish the final areas for construction and bidding strategies. Topics to be addressed at the initiation meeting will include the following subjects:

- Confirm liner footprint (extent of area)
- Leachate sump and extraction riser location, control system and data management requirements
- Access during construction – construction contractor, landfill equipment operations and customer traffic
- Access after construction – landfill equipment operations and customer traffic
- Signage requirements
- Soil management and stockpile preferences
- Areas of potentially unsuitable soils (along old drainageway and along current storm water management drainage)
- Management of storm water during and following construction
- Leachate mitigation and management of storm water in completed Cell 3 (rain flap) – coordination with filling operations
- Areas for topsoiling/seeding
- Review latest on bidding environment in 2017 – refine bidding and construction schedule

HDR will evaluate the costs of the permitted 4-foot recompacted clay liner versus a traditional composite liner (2-foot recompacted clay and geomembrane). Cost evaluation will include the cost savings on bulk excavation for the composite liner, along with the additional costs associated for a permit modification.

Immediately after receipt of landfill topographic survey from the City, HDR will initiate a comprehensive utilities survey. The utilities survey will consist of initiating One-call; locating utilities associated with the existing leachate forcemain, manholes and stormwater lift station in the Cell 3 and Cell 4 area, including leachate line cleanouts (edge of Cell 2), electrical poles, transformers and control panels; locating leachate lagoon pipe penetrations; and survey of the alternate entrance roadway on northwest side of the facility. The landfill topographic survey provided by the City and the utilities survey prepared under this task will be utilized for the design in Task 2.

Meetings:

HDR anticipates a project initiation/kick-off meeting with site visit to discuss and finalize the design approach and resolve ancillary issues.

Deliverables:

- Dropbox.com project folder for use in document exchange
- Agenda for meeting and meeting notes (Design Memorandum)
- Utilities survey

Key Understandings:

- The City will provide a topographic survey of the landfill, including the Cells 1, 2, 3 and 4 areas and applicable surrounding area, in AutoCAD (*.dwg) format with data surfaces, breaklines, and coordinate geometry (COGO) points.
- Design drawings from Cell 2 can be relied on as representative of existing conditions for the Cell 3 design. No changes from utilities shown in the Cell 2 design drawings. City will provide data on available on-site electrical service.
- Decisions made in this Task will serve as the basis of design for subsequent tasks.
- HDR's past experience does not suggest the need for additional major permit modifications and approvals, unless the liner system evaluation shows a composite liner more cost effective. Preparation of such major permit modification would be provided as Additional Services under optional Task 1B.
- HDR will assist the City in communicating with NDEQ on potential minor permit modifications. Documentation required for possible minor permit modification is anticipated to be completed as part of the design efforts in Task 2.
- Drawings will be prepared in AutoCAD format (as agreed to by the City). All other documents will be transmitted to the City in PDF, MSWord, MSEXcel formats or other standard business software, as appropriate.
- HDR's subconsultant Benesch will provide surveying services.

Task 1B – Permit Modification (Optional)

This task is implemented only if the liner cost evaluation in Task 1 shows that a composite liner will be more cost effective than the currently permitted alternative 4-foot recompacted clay liner and the City desires to pursue the permit modification.

Objective:

The key objective of this task is to prepare a permit modification package to the NDEQ for a composite liner system (2-foot recompacted clay with geomembrane) for Cells 3 and 4.

HDR Activities:

HDR will facilitate a meeting with NDEQ and the City to refine the permit modification requirements.

Prepare a permit modification to the existing facility permit for composite liner design. The following items are anticipated to be required by NDEQ for this permit modification.

- Permit Application – Revise Section 3.4 Liner Design and 3.9 Soil Balance/Landfill Volume for composite liner design for Cells 3 and 4.
- Appendix A – Operational Plan: Add description of leachate recirculation procedures and application rates over composite liner cells.
- Appendix C – Leachate Management Plan: Prepare HELP model runs for leachate recirculation over Cells 3 and 4. Confirm the leachate drainage layer depth. Complete calculations for leachate pump sizing.
- Appendix I – Construction Quality Assurance Plan: Update the CQA Plan for geomembrane in the liner system.
- Appendix K – Permit Drawings: Update 5 permit drawings for composite liner details.
- Appendix T – Slope Stability: Prepare slope stability calculations for the composite liner.

HDR will electronically submit the draft permit modification documents to the City for review. HDR will attend a review meeting with the City to go over comments and identify final changes to the permit modification. Minutes for the review meeting will refer to the revisions incorporated into the permit documents, where appropriate. Upon receipt of City's comments, the permit modification application will be finalized and prepared for submittal to NDEQ. HDR will respond to NDEQ comments as noted under Key Understandings.

Meetings:

Task kick-off meeting with NDEQ and the City at NDEQ offices in Lincoln, Nebraska. Review meeting with the City at the Transfer Station office. Both meetings will be attended by one (1) HDR personnel.

Deliverables:

- Draft permit modification for City review
- Final permit modification package for submittal to NDEQ
- Responses to NDEQ

Key Understandings:

- City will pay the NDEQ permit modification fee, if required by NDEQ.
- City will provide copy of the permit drawings in AutoCAD.
- NDEQ will have minimal comments on the permit modification submittal. An allowance of \$5000 has been included in the fee to respond to comments.
- NDEQ will public notice the permit modification. A public hearing is not anticipated. If a public hearing is required, HDR can provide assistance to the City as Additional Services if requested.
- The design and bidding schedule in the section below would need to be revised if this optional task is initiated.

Task 2 – Specific Final Design – Cell 3 Liner and Leachate Collection System

Objective:

The key objective of this Task is to complete the design of a constructible lateral expansion of the facility's liner and leachate collection system.

HDR Activities:

Conduct regular progress meetings to obtain City input and inform the City of the progress and any decisions, issues or cost considerations that arise during the course of the design. Documents for review and discussion will be placed in the project Dropbox folder. Communications will include bi-weekly conference calls with City staff during design.

After review of historic data and development of the Design Memorandum, HDR will refine the design and confirm or identify other project requirements and issues. Based on discussion/decisions in the initiation meeting, technical areas of refined design will include:

- Identification of the final liner acreage and areas to be graded
- Refine construction schedule and construction sequencing for new leachate header, abandonment of old leachate header, and extension of the existing lateral leachate line (coordinated with customer and City traffic in the area)
- Bidding strategies and unit bid items that will allow the project area to be optimized based on costs
- Verification of storm water routing integrated with existing control measures, control of silt/erosion, leachate minimization, and management of storm water prior to and after cell being covered with waste
- Access for construction, coordination with City, and laydown/staging areas
- Initial identification of traffic routing and soil stockpiles
- Post-construction roads to the disposal area and relationship to existing and future disposal areas
- Liner terminations, overbuilds and offsets
- Leachate sump, pump, extraction riser and electrical power for pumping requirements design and specifications – HDR will communicate with Southern Power to coordinate electrical service requirements and division of responsibility
- Other design alternatives identified in the project initiation meeting

Review prior design calculations previously developed by others for adequacy in areas of side slopes and leachate pump sizing.

Utilize the City's Front End Documents and prepare applicable supplemental Project Requirements-Special Provisions and specifications for Division 1, technical specifications, drawings and construction contract documents and assist in identifying bidding attributes (for the on-line bidding process). Assist the City in developing the lump sum and unit bid items for the bid form. Supplemental specifications anticipated to be developed and coordinated with the City's General Specifications include:

- Project Requirements-Special Provisions to include project specific terms and conditions, order of construction schedule, project meetings, special considerations and description of bid items
- Supplemental instructions
- Summary of work & job conditions
- Product substitutions
- Submittals

- Environmental protection and special controls
- Product delivery, storage and handling
- Demolition, abandonment, removal and salvage

Provide design documents and technical specifications for City review at required intervals (e.g., 50% and 90% design) and meet with the City following each submittal to review and discuss these documents. Incorporate City comments, as applicable, and revise the design documents. Finalize the design and prepare 100% design level documents for City legal review. Incorporate the City legal review comments and provide final contract documents under Task 3.

During City legal review and just prior to bidding, HDR will conduct a topographic survey of the Cell 3 area of approximately 12 acres to account for soil excavations and pre-grading work completed by the City since completion of the original pre-design survey. This will be utilized to refine the bid form quantities.

Based on the concept level liner cost evaluation completed in Task 1, HDR will prepare opinions of probable construction costs for the Cell 3 liner project at the 50%, 90% and 100% design levels.

On behalf of the City, HDR will notify the NDEQ of the intended liner construction project and anticipated construction schedule. HDR will also identify any pertinent features that vary from the permit.

Meetings:

Progress meetings will include face-to-face meetings at key design milestones (e.g., 50% and 90% design levels) with two (2) HDR personnel. Additional communications will be conducted through conference calls on a bi-weekly basis.

Deliverables:

- Agenda for meetings and meeting notes including distribution to meeting attendees
- Cost Opinions at 50%, 90% and 100% design levels
- Electronic copy of design drawings and specifications at 50% and 90% levels
- Electronic copy of contract deliverables, drawings, and final design level plans and specifications for City legal review
- One (1) hard copy of final contract documents (full-size drawings and specifications) to City
- Pre-bid topographic survey
- Notification letter/communications with NDEQ

Key Understandings:

- Decisions made in Task 1 will serve as the basis of design. Efforts in this task based on current permitted 4-foot recompacted clay liner.
- Drawings will be prepared in AutoCAD format and drawing size 22x34.
- The City will be responsible for preparing the City forms and front-end documents. City will provide a copy of these documents to HDR for coordination with the specifications.
- The contract documents are required to be reviewed by City legal department prior to bid advertisement. The proposed schedule described in section below, allows up to six weeks for legal review. City legal review will not have substantial changes to the contract documents that significantly affect the specifications or drawings.
- Specifications will utilize the standard 6-digit, 50-division numbering system.
- HDR does not anticipate modifications to the City's existing NPDES permit.

- The bid documents (design plans) and related analysis will be submitted to NDEQ, if different from the existing Title 132 permit and submittal required by NDEQ, for inclusion in the existing Grand Island Regional Landfill permit. No additional figures or calculations beyond those prepared for the design will be required.
- No major modifications to the site's existing permit are included in this Task. Based on the recent permit renewal, the area and features of Cell 3 are not anticipated to change significantly during the design process.
- HDR's subconsultant Benesch will provide surveying services.

Task 3 – Bidding Assistance

Objective:

The key objective of this task is to assist the City with bidding of the Grand Island Regional Landfill Cell 3 Liner project and to provide a technical evaluation of bids received.

HDR Activities:

Provide the City with complete drawings and specifications in electronic format for issuance through the City's on-line bidding system.

Assist the City in conducting a pre-bid conference and in soliciting bids for construction, including assisting the City Clerk's Office in answering technical questions from prospective bidders, preparing bid addenda, reviewing and evaluating bids. Lump sum and select unit costs will be used in bidding the project to minimize risk to the parties and to encourage competitive bidding.

Evaluation of bids will include bid tabulation, telephone calls to references of apparent responsible lowest bidder, communications to bidder to confirm availability and schedule, and preparation of recommendation letter.

Meetings:

Pre-bid meeting with one (1) HDR personnel.

Deliverables:

- Electronic copies of contract documents (drawings, specifications including supplemental information) for incorporation in the City's on-line bidding process
- Pre-bid meeting agenda and meeting notes
- Addenda and responses to bidders' questions
- Recommendation letter with bid evaluation and bid tabulation

Key Understandings:

- The City will coordinate with their on-line bidding tool, QuestCDN, for placement of bidding documents on-line.
- Addenda will be provided to the City in electronic format for placement in the City's on-line bidding system. HDR has assumed up to 36 personnel hours to respond to bidder questions and prepare addenda. If efforts appear to exceed these hours, the City will be notified and estimation of additional fee will be provided.
- City will print and distribute hard copies of Contract Documents from the City Clerk's Office for those bidders who walk in and pick up hard copies.
- Bid tabulation will be for internal City use only and will not be published with the recommendation letter.

Additional Services

Additional Services will include construction period services for construction contract administration, observation of Cell 3 liner construction, quality assurance testing and documentation, and preparation of the construction documentation report necessary for the NDEQ to approve the liner construction. Services will include:

- Task 4 – Basic Construction Phase Services
- Task 5 – Resident Construction Observation and Inspection Services

The scope of these services and compensation will be further detailed and defined during bidding assistance period based on final design.

Schedule

Engineering Services associated with this project will commence upon Notice to Proceed from the City of Grand Island. The schedule below provides detail for Tasks 1 through 3 described in Scope of Services; target (calendar) dates have been included to illustrate completion timeframes based upon assumed Notice to Proceed, Advertisement for Bid and Award of Construction Contract. The dates for bid advertisement and receipt of bids may be adjusted to target a desired bidding environment.

ACTIVITY	DATE
Notice to Proceed	January 25, 2017
Background Data Review, Receipt of Survey & Liner System Cost Evaluation	January 25 – February 28, 2017
M Initiation Meeting	February 8, 2017
Draft Design Memorandum	February 9 – 22, 2017
City Review of Design Memorandum	February 22 – March 1, 2017
M Conference Call Review Meeting	March 1, 2017
Design Memorandum and Concept Layout	March 1 – 15, 2017
Final Liner Design & Contract Document Development	March 15 - July 31, 2017
Preparation of 50% Design	March/April 2017
M 50% Review Meeting	April 19, 2017
Preparation of 90% Design Plans and Specifications	April/May 2017
M 90% Review Meeting	May 31, 2017
Preparation of 100% Design Plans and Specifications	June 2017
Final Bid Document Review – City Legal	June 14 – July 26, 2017
Address City Legal Comments	July/August 2017
Advertisement for Bid	August 8, 2017
M Pre-Bid Conference	August 23, 2017
Bid Receipt	September 19, 2017
Contractor Notice of Award/Contract Agreement	October 2017
Cell 3 Liner – Bulk Excavation	October 2017 or March 2018 start
Cell 3 Liner Construction	March 2018 – July 2018
Submission of CQA Report to NDEQ	July/August 2018

Compensation

The following table is provided to illustrate level of service anticipated with Tasks 1 through 3. This table was developed as a result of preliminary discussions and meeting between the City of Grand Island and HDR. The estimated fee for Tasks 1 through 3, not-to-exceed without written authorization of the City, is Ninety-Four Thousand Four Hundred and Thirty dollars (\$94,430.00). The estimated fee for optional Task 1B, if authorized by the City to complete, is Thirty-Two Thousand One Hundred Forty dollars (\$32,140.00).

HDR proposes to invoice the City on a per diem plus Reimbursable Expenses basis pursuant to the Agreement. Compensation terms are defined in the Agreement between the City and HDR.

Grand Island Regional Landfill Cell 3 Liner Design & Construction Engineering Fee Estimate

	Category Totals			TOTAL
	Hours	Labor Fee	Expenses	
Task 1 - Basic Final Design Services	97	\$12,940	\$5,540	\$18,480
Task 2 - Specific Final Design Cell 3 Liner & Leachate Collection	508	\$60,620	\$4,760	\$65,380
Task 3 - Bidding Assistance	76	\$10,340	\$230	\$10,570
TOTAL Tasks 1-3	681	83,900	10,530	94,430
Optional Task 1B - Permit Modification				
TOTAL Optional Task 1B	258	31,780	360	32,140

HDR Engineering, Inc.

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER 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, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any

OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments to ENGINEER within thirty (30) days of OWNER's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support

of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate,

remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$100,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.

RESOLUTION 2017-12

WHEREAS, on October 19, 2016 the Engineering Division of the Public Works Department advertised for Engineering Services for Cell 3 Liner Construction at the Grand Island Regional Landfill; and

WHEREAS, on November 1, 2016 three (3) engineering firms submitted qualifications for such services; and

WHEREAS, based on the pre-approved selection criteria HDR Engineering, Inc. of Omaha, Nebraska was selected as the top engineering firm; and

WHEREAS, the City of Grand Island and HDR Engineering, Inc. wish to enter into an Engineering Services Agreement to provide engineering consulting services for such project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Engineering Services Agreement between the City of Grand Island and HDR Engineering, Inc. of Omaha, Nebraska for engineering services related to Cell 3 Liner Construction at the Grand Island Regional Landfill, in the amount of \$126,570.00, is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, January 24, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
January 20, 2017	☐ City Attorney