City of Grand Island

Tuesday, September 8, 2015

Council Session

Item G-8

#2015-239 - Approving Acceptance of Coal Combustion Residual Rule Consulting Services Proposal from HDR Engineering

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

From: Timothy G. Luchsinger, Utilities Director
Stacy Nonhof, Assistant City Attorney

Meeting: September 8, 2015

Subject: Authorization of Engineering Services for the Platte Generating Station CCR Program Implementation

Presenter(s): Timothy G. Luchsinger, Utilities Director

Background

On April 17, 2015 the U.S. Environmental Protection Agency (EPA) published the final rule for the regulation and management of Coal Combustion Residual (CCR) under the Resource Conservation and Recovery Act (RCRA). The rule becomes effective on October 19, 2015. In general, CCR required compliance activities include publication of public information on the web, signage, groundwater sampling, and impoundment structural and safety assessment for the Platte Generating Station.

Discussion

Platte Generating Station personnel have reviewed the regulations and determined consulting services will be needed to meet the initial CCR Rule compliance schedule. HDR is providing professional consultant services regarding CCR to Omaha Public Power District, Hastings Utilities, Fremont Utilities and the Public Power Generation Agency. The following areas need to be addressed:

Task 100 - CCR Fugitive Dust Control Plan

Task 200 - CCR Weekly Inspection Checklist, Training and Annual Inspection

Task 300 – Groundwater Monitoring System Assessment

Task 400 – Update Groundwater Sampling and Analysis Plan

The engineer's estimate for this project was $60,000.00. To ensure timeliness and consistency among other electric utilities in Nebraska it is that recommended HDR Engineering be the designated as the sole source, and their proposal to perform the engineering services to meet the Coal Combustion Residuals program implementation for

Platte Generating Station for a total cost not to exceed $59,960.00 in accordance with their standard terms and conditions be authorized.

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 authorize HDR, Inc., of Omaha, Nebraska, as the sole source, and that their proposal to perform the engineering services to meet the Coal Combustion Residuals program implementation for Platte Generating Station for a total cost not to exceed $59,960.00 in accordance with their standard terms and conditions be authorized.

Sample Motion

Move to approve HDR, Inc., of Omaha, Nebraska, as the sole source, and that their proposal to perform the engineering services to meet the Coal Combustion Residuals program implementation for Platte Generating Station for a total cost not to exceed $59,960.00 in accordance with their standard terms and conditions be authorized.

EXHIBIT A
Scope of Services
City of Grand Island, Platte Generating Station
Fossil Fuel Combustion Ash Disposal Area
CCR Compliance Assessment and Documentation 2015

SCOPE OF SERVICES

The City of Grand Island (City) owns and operates a permitted fossil fuel combustion ash disposal area (Monofill) at the Platte Generating Station located approximately two miles south of the City. The Monofill only accepts coal combustion residuals (CCR) from the City's fossil fuel power plant. The City has recently completed their Nebraska Title 132 permit renewal application for the Monofill. Maximum re-use will be made of all past permit documents for the CCR rule requirements.

On April 17, 2015 the U.S. Environmental Protection Agency (EPA) published the final rule for the regulation and management of coal combustion residuals (CCR) under the Resource Conservation and Recovery Act (RCRA). The rule – effective on October 19, 2015 – applies to electric utilities and independent power producers that fall within NAICS code 221112, and the facility produces or stores CCR materials in impoundments or landfills. This regulation applies to the City's existing Monofill. The CCR rule has specific documentation and deadlines for CCR landfills and surface impoundments. The table below lists the required assessments, plans, and documents for a CCR landfill. The following scope of services detail the activities necessary to complete the tasks that should be started in 2015 to meet the first deadlines of the CCR rule and current requirements of the Nebraska Department of Environmental Quality (NDEQ). The CCR compliance activities for 2016 and 2017 can be provided as additional services.

2015	2016	2017
CCR Fugitive Dust Control Plan	Start background sampling for CCR rule Appendix III & IV constituents	Complete background sampling by 3rd quarter 2017 and initiate detection monitoring program by October 17, 2015
Weekly Inspection Checklist and Training	Closure Plan (will affect drawings, cost estimates and financial assurance)	Begin evaluating groundwater monitoring data for statistically significant increases
Annual Inspection and Report	Post-Closure Plan (will affect cost estimates and financial assurance)	Annual Groundwater Monitoring and Corrective Action Report
Groundwater Monitoring System Design Certification	Run-on and Run-off Control System Plan	Unstable Area Demonstration (can be delayed to 2018)
Groundwater Sampling and Analysis Plan*	Monofill Permit Modifications (to incorporate CCR compliance documents)	
	Annual Fugitive Dust Control Report	

* Although the CCR rule deadline for this plan does not occur until 2017, it should be updated before the eight rounds of background sampling starts. It is recommended to be completed in 2015 so that City can begin background sampling by early 2016.

Task 100 – CCR Fugitive Dust Control Plan

Objectives: To develop fugitive dust control plan for the existing Monofill as required by the CCR regulation published April 17, 2015.

HDR Activities:

1. HDR will consolidate the dust control language from the existing NDEQ Title 132 permit into a draft plan. HDR will the review the portion of the plant's air quality permit related to fugitive dust control and any additional site-specific protocols for incorporation into a draft CCR Fugitive Dust Control Plan.
2. HDR will visit the site and plant personnel to identify any areas of concern on-site with CCR fugitive dust control, verify fugitive dust control practices, and identify any additional practices. Input will be obtained from the City on the following for CCR rule compliance:
    - Explanation of how dust control measures selected are applicable and appropriate for site conditions
    - Procedures to log citizen complaints
    - Description of procedures to follow to periodically assess effectiveness of control plan

    Information and procedures from the City will be incorporated into the draft CCR Fugitive Dust Control Plan. The draft plan will be submitted to the City for review and comments.
3. HDR will incorporate City comments and finalize the CCR Fugitive Dust Control Plan for the Monofill.
4. HDR will provide a certification from a qualified professional engineer that the initial CCR fugitive dust control plan meets the requirements of the CCR rule (Section 257.80).
5. HDR will draft the notification letter to NDEQ on the availability of the CCR fugitive dust control plan as required by the CCR rule (Section 257.106). The City will put on City letterhead, sign and submit to NDEQ.

Task Deliverables:

- Draft and Final CCR Fugitive Dust Control Plan
- Certification of final plan
- Draft notification letter

Planned Meetings: Project kick-off meeting at site with one HDR personnel.

Key Understandings:

1. City will provide a copy of any site protocols or operating procedures for fugitive dust control at the site and copy of the portion of the air quality permit applicable to fugitive dust. City will provide description of any additional fugitive dust control practices utilized at the site.
2. City will provide electronic copies of the latest NDEQ Title 132 permit documents and drawings for the ash monofill.
3. Plan will be provided in Microsoft Word and PDF format. Certification will be provided in PDF format. Draft notification letter will be provided in Microsoft Word.
4. City will post the CCR fugitive dust control plan and certification on their CCR web site by the October 19, 2015 deadline. The City will submit notification to NDEQ.

Task Schedule:

Site Visit/Kick-off Meeting	by September 10, 2015
Draft CCR Fugitive Dust Control Plan	September 18, 2015
Comments received from City	September 28, 2015
Final CCR Fugitive Dust Control Plan	October 9, 2015
PE Certification & draft notification letter	October 9, 2015
City post to CCR website and notification	by October 19, 2015

Task 200 – CCR Weekly Inspection Checklist, Training and Annual Inspection

Objectives: To develop weekly inspection checklists for the ash monofill, provide training and conduct initial annual inspection and reporting required by the CCR rule.

HDR Activities:

1. HDR will develop a weekly inspection checklist for the Monofill in accordance with the CCR rule. The inspection checklist will need to cover any appearances of actual or potential structural weakness and any other conditions which are disrupting or have potential to disrupt the operation or safety of the disposal area. The checklist is anticipated to include the following features for inspection of proper operation and maintenance:
    - Placement of CCR
    - Dust control
    - Stormwater run-on and run-off controls
    - Liner systems
    - Leachate collection systems
    - Final cover systems, if installed in phases
    - Groundwater monitoring systems
2. HDR will prepare a draft weekly checklist for City review and comment. Checklist will be finalized and provided to City for their use.
3. HDR will assist in training City personnel with completion of initial weekly inspection. Training is anticipated to include a PowerPoint presentation followed by a step-by-step site inspection. Two HDR personnel will assist with the training for one day.
4. HDR will conduct the initial annual inspection of Monofill. Annual inspections are to be conducted to ensure that the design, construction, operation and maintenance of the CCR unit are consistent with recognized and generally accepted good engineering standards. Annual inspection will be conducted by a qualified professional engineer. Annual inspections must include:
    - Review of available information regarding status and condition of the CCR unit, including weekly inspections and all files available in the operating record.
    - Visual inspection to identify signs of distress or malfunction of unit and appurtenant structures.
5. HDR will prepare initial annual inspection report for Monofill to identify and discuss findings of the inspection as well as discuss potential remedies for addressing any deficiencies discovered during the inspection. The inspection report must include:
    - Any changes in geometry of the structure since the previous annual inspection.
    - Approximate volume of CCR contained in the unit at the time of the inspection.
    - Any appearances of actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit.

- Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection.

This initial annual inspection is anticipated to include a discussion of the current geometry of the CCR unit instead of changes in geometry.

6. HDR will submit draft report to the City for review and comment. Comments will be incorporated and initial annual inspection report will be finalized.
7. HDR will draft the notification letter to NDEQ on the availability of the annual inspection report as required by the CCR rule (Section 257.106). The City will put on City letterhead, sign and submit to NDEQ.

Task Deliverables:

- Draft and final weekly checklist for existing ash Monofill
- PowerPoint presentation for training
- Draft and final Initial Annual Inspection Report
- Draft notification letter

Planned Meetings:

One (1) day site visit to train City personnel.
One (1) day site visit for annual inspection.

Key Understandings:

1. City will provide copies of all weekly inspections performed, maintenance and corrective actions that will occur for Monofill from October 2015 through December 2015. City will identify and make available files in the operating record regarding status and condition of the Monofill.
2. City will provide most recent surveyed volume calculations and CCR quantities disposed in the existing Monofill since the last survey. City will also provide quantities of CCR disposed through the date of the inspection.
3. City will provide access to the site and all structures and features related to the Monofill.
4. The weekly inspections will be conducted by qualified City personnel and recorded in the facility's operating record. City will correct problems and deficiencies discovered during the weekly inspections in a timely manner and document all corrective measures taken.
5. The weekly inspection checklist will be utilized during the annual inspection. The annual inspection site visit will need to occur when there is no snow to impede the visual inspection.
6. City will place the annual inspection report into the facilities' operating records, post to the website, and comply with submitting the notification requirements to the NDEQ.
7. Discussion of potential remedies in the annual inspection report does not include evaluations or designs of features.
8. Any deficiencies or release identified during the annual inspection will be remedied by City as soon as possible. City will need to prepare the documentation detailing the corrective measures taken.
9. City personnel may accompany HDR during the annual site inspection.
10. Annual Inspection Report and certification will be provided in PDF format. Checklist will also be provided in Microsoft Word or Excel format. Draft notification letter will be provided in Microsoft Word.

Task Schedule:

Draft weekly checklist	September 14, 2015
Review comments from City	September 28, 2015
Final weekly checklist	October 9, 2015
Training – weekly inspection	by October 9, 2015
Annual inspection site visit	by December 15, 2015 (before heavy snowfall)
Draft Annual Inspection Report	December 31, 2015
Final Annual Inspection Report	January 12, 2016
PE Certification & draft notification letter	January 12, 2016
City post to CCR website and notification	by January 19, 2016

Task 300 – Groundwater Monitoring System Assessment

Objectives: To evaluate the existing groundwater monitoring systems at the Monofill relative to the CCR rule.

HDR Activities:

1. The site has existing groundwater monitoring wells around the Monofill developed for the NDEQ Title 132 permit. HDR will review the site investigations documentation, hydrogeologic setting, and historic groundwater contours to understand and characterize site geologic and hydrologic conditions. HDR will evaluate the existing monitoring wells and piezometers for well design, boring logs, depths and locations of these wells. Based on site-specific data, HDR will determine the groundwater flow rate and direction, and propose the locations and depths of any new upgradient and/or downgradient wells to represent the water quality in the uppermost aquifer and meet compliance with the CCR rule.
2. HDR will recommend monitoring well design and specifications for new wells to be installed, if determined necessary.
3. If new monitoring wells are recommended to be installed, HDR will observe well(s) installation and development to confirm that they were constructed in accordance with the design. HDR will review the construction documentation (boring logs, well diagrams and surveyed location) for completeness.
4. HDR will provide summary documentation report and certification from a qualified professional engineer that the groundwater monitoring systems been designed and constructed to meet the requirements of the CCR rule (Section 257.91).
5. HDR will draft the notification letter to NDEQ on the availability of the groundwater monitoring system certification as required by the CCR rule (Section 257.106). The City will put on City letterhead, sign and submit to NDEQ.

Planned Meetings:

- On-site observation of well installation with one HDR personnel, assuming 3 days.
- All other communications will be through email and telephone.

Task Deliverables:

- Monitoring wells location maps
- Monitoring well design figure and specifications
- Documentation report and Certification of groundwater monitoring system
- Draft notification letter

Key Understandings and Assumptions:

1. The City will provide a copy of all hydrogeologic investigations at the site, and all records for the design, installation, development and decommissioning of any monitoring wells and piezometers. If installation documentation of an existing monitoring well cannot be found, then such well may need to be decommissioned and replaced. Figures of the monofill site showing locations and identification of existing groundwater monitoring wells should be provided in AutoCAD.
2. City will provide copies of semi-annual groundwater monitoring reports and groundwater contour maps from the past several years for the site.
3. City will complete the installation and development of any additional monitoring wells in accordance with the recommended well design and decommissioning of any wells. Copies of construction documentation, surveyed locations, and any decommissioning documentation will be provided to HDR.
4. HDR has assumed up to 3 days on-site for well(s) installation. If monitoring well installation extends beyond 3 days, the additional days of on-site observation will be provided as additional services.
5. Figures, specifications, reports and certifications will be provided in PDF format. Draft notification letter will be provided in Microsoft Word.

Task Schedule:

Review of existing hydrogeo data	September 30, 2015
Proposed monitoring well locations	September 30, 2015
Monitoring well design and specification	October 12, 2015 (if required)
Installation of monitoring wells	by December 1, 2015*
Certification of groundwater monitoring system & draft notification letter	December 31, 2015*
City post to CCR website and notification	by January 30, 2016

*Note: By CCR rule, the certification of groundwater monitoring system is due by October 17, 2017. System of wells should be defined and installed before the 8 rounds of background sampling are performed. Although quarterly sampling is preferred, the 8 rounds of background sampling are not required to be quarterly.

Task 400 – Update Groundwater Sampling and Analysis Plan

Objective: To revise the existing Groundwater Sampling and Analysis Plan for the federal CCR rule requirements.

HDR Activities:

1. HDR will review the existing Groundwater Sampling and Analysis Plan in the Title 132 permit for descriptions of sample collection, sample preservation and shipment, analytical procedures, chain of custody control, quality assurance/quality control, and statistical analysis.
2. HDR will add descriptions of sample collection, preservation and analytical procedures for all new detection and assessment monitoring constituents listed in Appendix III and IV of the CCR rule. Description will include the procedures for obtaining the eight independent background samples for each well. A figure will be updated to include locations of existing wells, new monitoring wells installed, if any, and decommissioning of any wells resulting from Task 300.

3. HDR will add a description for determining groundwater flow rate for each sampling event and identify source of data from hydrogeologic investigations report.
4. HDR will review the recent semi-annual groundwater monitoring reports for the site and the current statistical procedures to determine compliance with the CCR rule. The statistical procedures will either remain the same (if they comply), be modified, or an appropriate statistical method specified in the CCR rule will be selected and described. HDR will provide a certification from a qualified professional engineer that the selected statistical method is appropriate for evaluating the groundwater monitoring data (Section 257.93).
5. A draft plan will be submitted to the City for review and comments. HDR will conduct a conference call with the City to discuss comments and edits. Revisions will be incorporated into a final Groundwater Sampling and Analysis Plan.
6. HDR will prepare the cover letter for City to place on City letterhead, sign and submit letter and updated Groundwater Sampling and Analysis Plan to the NDEQ. HDR will respond to subsequent NDEQ comments as described under Key Understandings, unless otherwise authorized by the City.
7. HDR will draft the notification letter to NDEQ on the availability of the selection of statistical method certification as required by the CCR rule (Section 257.106). The City will put on City letterhead, sign and submit to NDEQ.

Task Deliverables:
- Draft and Final Groundwater Sampling and Analysis Plan.
- Certification of selected statistical method.
- Draft notification letter.

Planned Meetings: Conference call.

Key Understandings:
1. The City will provide HDR with electronic copies (Microsoft Word) of the latest Groundwater Sampling and Analysis Plan from the NDEQ Title 132 permit for the Monofill and copies of the semi-annual groundwater monitoring reports for the past two years. Any figures should be provided in AutoCAD.
2. HDR understands the CCR rule requirements and the differences with Nebraska's current Title 132 permitting requirements.
3. The Groundwater Sampling and Analysis Plan will be provided in Microsoft Word and PDF format. Statistical method certification will be provided in PDF format. Draft notification letter will be provided in Microsoft Word.
4. This task does not include the sampling of the monitoring wells, laboratory analysis, or the statistical analysis. Those activities are assumed to be completed by the City or others under contract with the City. HDR can provide sampling and analysis as additional services.
5. The updates to the Groundwater Sampling and Analysis Plan will need to be completed prior to the City starting the CCR rule-required 8 rounds of background sampling. The groundwater monitoring system, groundwater sampling and analysis program, background sampling, and initiation of the detection monitoring program are required to be completed with notification and posting to the CCR website by October 17, 2017 for existing CCR landfills.

6. For permit modification purposes, 8 professional hours are allocated to respond to NDEQ comments on the submittal. Additional hours to respond will be paid for by the City as additional services.
7. Submittal to NDEQ is assumed to be a minor modification and not be public noticed.

Task Schedule:

Draft GW Sampling and Analysis Plan	December 1, 2015
Review Conference Call	December 15, 2015
Final GW Sampling and Analysis Plan	December 31, 2015
Certification of selected statistical method & draft notification letter	December 31, 2015
City post to CCR website and notification	within 30 days of placing in operating record

* Schedule is coordinated with Task 300 to be in place prior to City starting the 8 rounds of background sampling.

EXHIBIT B
Schedule

All schedules and deliverable will be established and agreed upon prior to commencement of services. Engineering Services associated with this project will commence upon Notice to Proceed from the City of Grand Island. The schedule for each task is outlined within the tasks above. The CCR rule contains specific compliance deadlines for completion of assessments, documentation, plans, certifications and CCR website. HDR will meet this schedule with a timely receipt of a Notice to Proceed.

EXHIBIT C
Compensation

II. COMPENSATION

Compensation for these Services shall be on a per diem basis with an agreed maximum amount of Fifty-Nine Thousand Nine Hundred Sixty dollars ($59,960.00) without additional City authorization. The following table contains a breakdown of the estimated fee by task for this project.

Task Description		Estimated Total Fee
Task 100	CCR Fugitive Dust Control Plan	$7,690
Task 200	CCR Weekly Inspection Checklist, Training and Annual Inspection	$17,200
Task 300	Groundwater Monitoring System Assessment	$18,720
Task 400	Updated Groundwater Sampling and Analysis Plan	$16,350
	TOTALS	**$59,960**

Per Diem shall mean an hourly rate equal to Direct Labor Cost times a multiplier of 3.1 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.

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, computer usage, telephone, telex, shipping and express, and other incurred expense.

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 prompt payments in response to ENGINEER's invoices.

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 of the 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.

R E S O L U T I O N 2015-239

WHEREAS, on April 17, 2015 the U.S. Environmental Protection Agency (EPA) published the Final Rule for the Regulation and Management of Coal Combustion Residual (CCR) under the Resource Conservation and Recovery Act (RCRA); and

WHEREAS, the Rule becomes effective on October 19, 2015; and

WHEREAS, personnel at the Platte Generating Station reviewed the regulations and determined consulting services will be needed to meet the initial CCR Rule compliance schedule; and

WHEREAS, to ensure timeliness, high quality and consistency among other electric utilities in Nebraska it is recommended HDR Engineering of Omaha, Nebraska, be the sole source; and

WHEREAS the total amount of this project is a not to exceed fee in the amount of $59,960.00, which is below the Engineer's Estimate.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that HDR, Inc., of Omaha, Nebraska as the sole source for providing Engineering Services for the Platte Generating Station CCR program implementation, in the amount not to exceed $59,960.00, is hereby approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 8, 2015.

_____
Jeremy L. Jensen, Mayor

Attest:

_____
RaNae Edwards, City Clerk

Approved as to Form ¤ _____
September 4, 2015 ¤ City Attorney