Jess L. Greenwood, P.E.
Public Works Director – County Engineer

2140 Pioneer Road
Red Wing, MN 55066
Office: (651) 385.3025

TO: Honorable County Commissioners
Scott Arneson, County Administrator

FROM: Jess L. Greenwood, Public Works Director

RE: 01 September 2026 County Board Meeting
Solid Waste Management Plan Update

Date: 27 August 2026

Summary
It is requested that the County Board review a proposal from Short Elliot Hendrickson Inc (SEH) to update the Solid Waste Plan and to determine a funding source to pay for this work.

Background
The current Goodhue County Solid Waste Management Plan was approved by the Board of Commissioners on April 26, 2016 with an effective date of August 23, 2016 and was effective for a period of 10 years which means the current plan has expired and needs to be updated.

Solid waste management plans are required by every county in Minnesota. Specific rules and timelines vary depending on whether the county is inside or outside the Twin Cities metropolitan area. All plans must be approved by the Minnesota Pollution Control Agency (MPCA) and must prioritize the waste hierarchy, which emphasizes waste reduction, recycling, and reducing reliance on landfill deposition.

Minnesota Statute 115A.46 (Regional and Local Solid Waste Management Plans) mandates that plans describe existing waste generation, collection systems, and disposal facilities. It also requires a 10-year projection of disposal capacity needs and an evaluation of alternatives to land disposal.

State statute requires counties to integrate specific operational strategies directly into their local plans through these mandatory core components:

- **Recycling Implementation Strategy (**Minn. Stat. § 115A.551, Subd. 3**)**: Counties must embed a clear strategy to meet state-mandated recycling goals. This includes providing financial incentives for waste reduction and source separation.
- **Public Education (**Minn. Stat. § 115A.552, Subd. 3**)**: Counties must outline their promotional and educational programs to ensure businesses and residents understand local recycling and reduction protocols.
- **Household Hazardous Waste (**Minn. Stat. § 115A.96, Subd. 6**)**: The plan must lay out institutional mechanisms for the safe management, collection, and disposal of household hazardous waste.
- **Land Disposal Restrictions & Certificate of Need (**Minn. Stat. § 115A.917**)**: The plan serves as the legal basis for the state to issue a "Certificate of Need" if a county requires additional landfill capacity.

In addition to those specific operational strategies, each counties plan must detail the following according to Minnesota Rules Chapter 9215:

- **Waste Data:** Total volume and composition of waste generated by residents and businesses.
- **Reduction & Recycling Goals:** Specific targets for waste reduction over the life of the plan, alongside established recycling and organics programs.
- **Specialty Waste Programs:** Strategies for managing household hazardous waste, electronics, appliances, and demolition debris.
- **Disposal Evaluations:** Current infrastructure in use (such as waste-to-energy facilities or landfills) and an evaluation of alternatives to landfilling.
- **Local Enforcement:** Local ordinances, licensing requirements, and funding mechanisms to ensure compliance.

Once a county's solid waste plan is formally approved, cities within the county cannot enter into waste agreements or implement programs that conflict with the county's established plan without explicit consent.

The last plan that was developed for Goodhue County was done in conjunction with MPCA staff. The MPCA has indicated that they no longer have the staffing or time available to write these plans and that the County will need to either write the plan themselves or work with a consultant. Due to current staffing levels, Public Works staff do not have the time availability to produce a solid waste plan that requires an immense amount of data collection and time allocation.

County staff have had discussions with the MPCA and representatives from SEH to determine a potential path forward. SEH has been working with Goodhue County for several years to aid with all things related to solid waste including, but not limited to the following: the Bench Street Landfill monitoring, reporting, and closure; the Wanamingo Demolition Landfill monitoring, reporting, and closure plans; household hazardous waste matters, recycling, waste haulers, and annual reporting data gathering. Within the last few years, SEH has completed solid waste plans for other Minnesota counties including most recently a plan for Steele County. MPCA staff mentioned that these plans were well written and met the intent of Minnesota Rules and State Statutes. For these reasons and our successful working relationship with SEH and their overall knowledge of how solid waste is managed in Goodhue County it would be prudent and fiscally responsible to continue working with them to update the Goodhue County Solid Waste Management Plan.

The expiration of the current plan was not something that staff had realized during the budgeting process for FY 2026 and therefore do not have adequate funding available in the current operating budget to account for expenses related to consulting the development of a new solid waste plan. The proposal that SEH provided to the County had a cost of $29,000 with an additional $3,000 optional task that would provide for public information meetings and resolution assistance. It is unknown, at this point, if the optional task would be needed and will be determined through the process of plan development. At a recent budget discussion on August 25, 2026, the Waste Management fund balance ratio showed that adequate funds exist to cover the proposed expenses detailed in the SEH proposal for services to produce a new 10-year solid waste management plan.

Without a solid waste management plan in place, Goodhue County would be violating State law and would not be receiving SCORE dollars that help fund current operations. Presently, Goodhue County receives approximately $164,000 annually in SCORE funding. Some ramifications of not having an approved solid waste management plan include but are not limited to the following:

- **Loss of State Funding & Grants** – SCORE funding would be withheld and the County would be blocked from receiving state funding or bonding dollars for solid waste related activities.
- **Loss of Local Regulatory Authority** – Inability to license waste haulers, set disposal fees, and mandate recycling targets. Local ordinances lose their legal backing. Individual cities within the county could enact conflicting waste collection and management policies.
- **Administrative & Environmental Penalties** – The MPCA can issue formal administrative orders and corrective actions against the county board. Financial penalties can reach up to $25,000 per violation depending on the severity and duration of the infraction. If a county continually fails to have an adequate plan, the State can step in and dictate regional waste management requirements, forcing the county to adopt policies it did not design which could have major financial implications.

With the current plan having an expiration date that will have been surpassed at the time of writing this report, staff asked the MPCA what should be expected and were told that as long as the County is actively working on updating the solid waste management plan and expect to produce a final document in a reasonable timeframe that the County could continue business as usual and still expect to receive SCORE funding for FY 2027.

<u>Alternatives</u>

- ➢ Authorize staff to award the proposal to SEH and fund the expense through the usage of available waste management fund balance.
- ➢ Do nothing and forego receiving SCORE dollars from the State of Minnesota amongst other potential ramifications for not having an approved solid waste management plan.

<u>Recommendations</u>

- ➢ It is the recommendation of staff to award the proposal to SEH and fund the expense through the usage of available waste management fund balance dollars.

Agreement for Professional Services

This Agreement is effective as of August 4, 2026, between Goodhue County, Mn (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **2027 Solid Waste Management Plan**

Client's Authorized Representative: Dick Thompson
Address: 2140 Pioneer Rd, Red Wing, Minnesota 55066, United States
Telephone: 351.385.3107 **Email:** dick.thompson@goodhuecountymn.gov

Project Manager: Trevor Romanko
Address: 3535 Vadnais Center Drive, St. Paul, Minnesota 55110
Telephone: 651.256.0433 **Email:** tromanko@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 01.01.26), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

Consultant will provide Solid Waste Planning Services for Client. Services primarily include updating the Client's Comprehensive Solid Waste Management Plan (SWMP) and obtaining approval of the SWMP from the Minnesota Pollution Control Agency (MPCA). Based on review of the current SWMP and additional information provided by the Client, the scope of services was developed using the current SWMP, the MPCA checklist, and the Consultant's knowledge of solid waste issues in Goodhue County and throughout the state. The updated SWMP will need to meet the requirements provided on the detailed checklist developed by the MPCA to assist in their review of the document. Consultant will also propose to modify the format of the existing SWMP by grouping like topics and organized to be more user friendly.

The following are the primary goals for the updated SWMP:

- Document solid waste generation and collection rates.
- Update demographics and population/waste projections.
- Document and discuss the result of solid waste implementation efforts.
- Address waste abatement or diversion issues and directives established by the Governor's Select Committee on Recycling and the Environment (SCORE).
- Perform technical and economic analysis regarding land disposal development issues in the County and future issued raised with the elimination of the Wanamingo Demolition Debris Landfill.
- Clarify system planning needs and options for decision makers.

Portions of the SWMP will also need to be updated to reflect collection efforts provided by the Client-run recycling center, City of Red Wing Solid Waste Campus, and city- and privately-run collection sites throughout the County.

The following sections summarize the tasks identified to meet the needs of the Project.

Task 1 - Project Management

Throughout the Project, the Project Manager will direct Consultant-related activities including:

- Communicate project directives from Goodhue County representatives to Consultant team members.
- Prepare internal work plans, identify tasks, assign staff, and establish schedules and budgets.
- Coordinate internal quality control reviews for assurance of project completeness.
- Review monthly invoices and prepare status reports of project progress, as necessary.

Task 2 - Data Collection/Site Visit/Meetings

In reviewing the existing SWMP and the MPCA checklist, data will need to be collected from a number of sources. As part of this task, Consultant proposes obtaining information through discussions with Client staff, conducting a site visit, correspondence with the MPCA, and research of public databases.

The primary source of information will need to be obtained from Client files and SCORE records provided by the MPCA. Historical waste stream information for the Wanamingo Demolition Landfill are on file with SEH, however, other waste streams including MSW, recycling programs, household hazardous materials and other County programs will need to be reviewed and incorporated into the Plan. Information regarding costs, budgets, and funding will also need to be updated. In reference to changes to the current integrated solid waste management system, Consultant will meet with Client staff to determine the preferred approach. Consultant will work with MPCA staff to identify key concerns and possible options to address those concerns. Any research completed by other entities will be reviewed in reference to their applicability to Client's solid waste management system.

Consultant will obtain the information from the Minnesota State Demographer, U.S. Census Bureau, Minnesota Land Management Information System, Minnesota Department of Employment and Economic Development, and Bureau of Economic Analysis) in order to update data regarding population, economic conditions, and land use. Consultant will review information from recent MPCA waste characterization studies regarding waste generation trends. Consultant will also actively research current and new technologies through online and technical resources to identify possible options for specific waste flows within the County that may help achieve higher recycling goals or reduction in greenhouse gas emissions.

Task 3 - Comprehensive Solid Waste Management Plan

As indicated above, Consultant plans to reformat the 2016 Comprehensive SWMP to meet the outline requirements in the MPCA Checklist. Based on the data compiled as part of Task 2, the SWMP will be updated to address the following plan sections as outlined in the MPCA Checklist:

1. Executive Summary
2. Background Information
   - Demographic, Geographic, and Regional Information
   - Local and Regional Planning
   - Solid Waste Collection and Generation (including construction and demolition debris)
   - Major Solid Waste Generators
   - Existing Solid Waste Systems
   - Alternatives to Proposed System
3. Proposed Integrated Solid Waste Management Plan
   - Solid Waste Education
   - Solid Waste Reduction
   - Waste Diversion Programs - Reuse and Recycle
     - ✓ Recycling Programs
     - ✓ Solid Waste Tire Management Programs
     - ✓ Electronic Products
     - ✓ Major Appliances
     - ✓ Automotive Products (mercury switches, fluids and filters, batteries)
     - ✓ HHW Management
   - Compost Programs
     - ✓ Yard Waste Management Programs
     - ✓ Source-Separated Organic Materials Composting
     - ✓ MSW Composting Facilities
   - Solid Waste Incineration and Energy Recovery
   - Land Disposal
     - ✓ MSW Land Disposal Facilities
     - ✓ Demolition Debris Management
4. Solid Waste Administration
   - Solid Waste Ordinance and Licensing
   - Solid Waste Staffing
   - Solid Waste Program Funding

- Plan Review and 10-year Update
- Development of Numeric Goal Volume Table
- Development of Solid Waste Program Budget
- Environmental and Public Health Impacts
- Alternatives to Proposed System
- Solid Waste Facility Siting Program
- Public Participation Program
- Multi-County Planning

5. Solid Waste System Evaluation and 10-year Implementation Plan

Once completed, a preliminary draft will be provided to Client for review. Any comments will be incorporated into the plan prior to submittal to the MPCA proposed for early 2027.

Task 4 - Comment Response/Plan Revisions/Final SWMP

Once the Draft SWMP is submitted to the MPCA for review, the schedule and needs of the remaining tasks are less defined. The MPCA may contact Client via phone or written correspondence with questions, additional information requests, or general comment. Based on the level of comments received from the MPCA, verbal or written response may be necessary and multiple revisions to the plan completed before it is finalized. The estimated costs allow for sufficient involvement for verbal and written correspondence and several revisions. In addition, any discussions with the MPCA regarding the Comprehensive SWMP will also be addressed.

Once the Comprehensive SWMP has been reviewed and approved by the MPCA,

Task 5: Optional Task

Once the Comprehensive SWMP has been reviewed and approved by the MPCA, Client must place the plan on public notice. As part of the public notice process, the MPCA or Client may decide to hold a public meeting to address informational requests or to discuss solid waste options. We have included Consultant assistance as needed to prepare and attend one public meeting.

Schedule: Client's current SWMP, dated April 26, 2016, has an effective date of August 23, 2016, and is effective for a period of 10 years (e.g., an expiration date of August 23, 2026). The new SWMP being completed as part of this agreement must be updated and approved by the MPCA by August 23, 2027.

However, per Client discussions with the MPCA, an understanding has been agreed upon that allows for submittal and approval of a new SWMP before April 1, 2027 under the assumption that work is being done to update and submit a new SWMP for approval.

Therefore, submittal of the final draft SWMP to the MPCA is proposed for February 2027, but the final is dependent on MPCA coordination and interim approvals.

Payment: The services will be completed under the signed contract agreement and authorization to proceed. Consultant will perform the services in accordance with the standards of care and diligence normally practiced by consulting firms performing services of a similar nature. Consultant will submit invoices to Client on a monthly basis as appropriate for the time and materials incurred during that billing period. Compensations for the services will be based on time and materials. The fee is hourly with the estimated fee subject to a not-to-exceed amount of **$29,000** including expenses and equipment, without written authorization. Expenses include, but are not limited to, subcontractor costs, equipment, technology, reproduction costs, and postage.

If authorized by the Client, Fee of an **additional $3,000** maybe utilized to assist with *Optional Task 5*.

The cost estimate to complete the services outlined above is summarized as follows:

Task No.	Task Description	Total Hours	Total Labor	Other Expenses	Total
1	Project Management	20	$2,700.00		$2,700.00
2	Data Collection	40	$7,000.00	$600.00	$7,600.00
3	Comprehensive Solid Waste Management Plan (Existing/Proposed)				
	Executive Summary	4	$600.00		$600.00
	Background Information (Demographics, Existing System)	24	$4,000.00		$4,000.00
	Proposed Integrated Solid Waste Management System	40	$6,000.00		$6,000.00
	Solid Waste Administration	24	$4,000.00		$4,000.00
	Plan Review and 10-year Update	4	$600.00		$600.00
	Subtotal	**156**	**$24,900.00**	**$600.00**	**$25,500.00**
4	MPCA Comments/Plan Revisions/Publication	16	$3,000.00	$500.00	$3,500.00
	Plan Total	**172**	**$27,900.00**	**$1,100.00**	**$29,000.00**
5	*Optional Task*				
	Public Information Meetings/Resolution Assistance	*16*	*$2,500.00*	*$500.00*	*$3,000.00*

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1**.**

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

Short Elliott Hendrickson Inc.		**Goodhue County, MN**	
By:	Brian Bergstrom	By:	
Full Name:	Brian Bergstrom	Full Name:	
Title:	Principal	Title:	

Exhibit A-1

Payments to Consultant for Services and Expenses Using the Hourly Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services but instead are reimbursable expenses required in addition to hourly charges for services and shall be paid for as described in this Agreement:

1. Transportation and travel expenses.

2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.

3. Lodging and meal expense connected with the Project.

4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.

5. Plots, Reports, plan and specification reproduction expenses.

6. Postage, handling and delivery.

7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.

8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.

9. All taxes levied on professional services and on reimbursable expenses.

10. Other special expenses required in connection with the Project.

11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

General Conditions

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement (“Services”). 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 Consultant. The Consultant’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 Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant’s obligation to render Services hereunder will be for a period which may reasonably be required for the completion of said Services.
2. If Client has requested changes in the scope, extent, or character of the Project or the Services to be provided by Consultant, the time of performance and compensation for the Services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant’s control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform the Services in accordance with professional skill and care, then Consultant shall be entitled to an equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant’s effort required to perform its services under this Agreement exceeds the stated fee for the Services, then Consultant shall promptly notify the Client regarding the need for additional Services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional Services and to an extension of time for completion of additional Services absent written objection by Client.
2. Additional Services, including delivery of documents, or information not expressly included as deliverables, shall be billed in accord with agreed upon rates, no less than Consultant’s standard rates.
3. The Consultant shall not be required to sign any documents, no matter by whom requested, that require a certification, guarantee, or warranty of conditions not fully known to be true or accurate by the Consultant, or that would impose liability beyond the scope of this Agreement. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant’s signing any such certification, guarantee, or warranty.

D. Suspension and Termination

1. If Consultant’s services are delayed or suspended in whole or in part by Client, or if Consultant’s services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon seven days written notice or, at its option, accept an equitable adjustment of compensation provided for elsewhere in this Agreement to reflect costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days’ written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the Services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for Services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client’s requirements for the Services provided by Consultant and access to all public and private lands required for Consultant to perform its Services.
2. Client shall provide its own legal, accounting, financial and insurance counseling, and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant’s Services, such as previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning; deeds; and other land use restrictions; as-built drawings; and electronic databases and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide written notice to Consultant within seven (7) days of when the Client observes or otherwise becomes aware of any changes in the Project or any defect or alleged defect in Consultant’s Services. Client shall examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements, and other documents presented by Consultant within ten (10) business days of receipt and render the necessary decisions and instructions in writing so that Consultant may provide Services in a timely manner. Client's failure to provide timely notice of defects or timely review and approval shall constitute a waiver of any claims related to such defects or delays caused by late review.
4. Client shall require all utilities with facilities within the Project site to locate and mark said utilities upon request, relocate and/or protect said utilities to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review, and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant’s reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others directed or hired by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose. Consultant 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 or others directed or hired by the Client.
6. Client agrees to reasonably cooperate, when requested, to assist Consultant with the investigation and addressing of any complaints made by Consultant’s employees related to inappropriate or unwelcomed actions regarding the Project. This shall include, but not be limited to, providing access to Client’s employees for Consultant’s investigation, attendance at hearings, responding to inquiries and providing full access to Client files and information related to Consultant’s employees, if any. Client agrees that Consultant retains the absolute right to remove any of its employees from Client’s facilities if Consultant, in its sole discretion, determines such removal is advisable. Consultant, likewise, agrees to reasonably cooperate with Client with respect to the foregoing in connection with any complaints made by Client’s employees.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to suspend performance of Services and to retain deliverables and Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of suspending Services or withholding deliverables or Instruments of Service until all invoices are paid in full, and Client shall be responsible for any additional costs incurred by Consultant due to such suspension and subsequent remobilization. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding Services, deliverables, or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney’s fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant’s agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant’s profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its Services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor’s failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor’s acts or omissions, nor for its means, methods, or procedures of construction. Consultant’s Services do not include review or evaluation of the Client’s, contractor’s or subcontractor’s safety measures, or job site safety or furnishing or performing any of the Contractor’s work. Site Safety is the responsibility of the contractor.

3. Consultant's Opinions of Probable Construction Cost are provided if agreed upon in writing and made on the basis of Consultant's experience and qualifications. Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

B. Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter, or disposer of hazardous or toxic substances. Therefore the Client agrees to hold harmless, indemnify, and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims; losses; damages; liability; and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.
2. Client agrees that it will waive any claim against Consultant related to severe weather events that exceed those addressed by existing codes and standards. Consultant's sole liability will be based on actual damages to the extent caused by Consultant's failure to meet applicable codes. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from Consultant's original interpretation through no fault of Consultant and that additional costs necessary to conform to such changes or interpretations after execution of this Agreement may be subject to an equitable adjustment in Consultant's compensation and schedule.
3. If hazardous substances are found on the project site, then Consultant may stop work until Client has remediated the site.

C. Limitations on Liability

1. To the fullest extent permitted by law, Consultant's total liability to Client for any and all claims, losses, or damages arising out of or related to this Agreement or the Project, whether based on negligence, errors, omissions, strict liability, breach of contract, or warranty, shall not exceed the lesser of (i) the total compensation paid to Consultant under this Agreement or (ii) $500,000. If Client requests higher limits, such change must be agreed to in writing, and Consultant's fee shall increase by at least 1% for each additional $500,000 of liability, up to a maximum limit of $5,000,000.
2. To the extent permitted by applicable law, neither Party shall be liable to the other for consequential damages, including without limitation lost rentals; increased rental expenses; loss of use; loss of income; lost profit, financing, business, or reputation; and loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by unforeseen severe weather events, breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them. Consultant expressly disclaims any duty to defend Client for any alleged actions or damages.
3. It is intended by the parties to this Agreement that Consultant's Services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.
4. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, not later than the earliest of: (a) the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion; (b) the date of issuance of Consultant's final invoice for acts or failures to act occurring after Substantial Completion; or (c) the date when Consultant's Services are substantially completed. The parties acknowledge that this provision may shorten the time period otherwise available under applicable law for bringing claims, and each party knowingly and voluntarily agrees to this shortened limitations period. This provision shall not apply to claims for fraud, willful misconduct, or intentional misrepresentation. Notwithstanding the foregoing, in no event shall any claim be brought more than two (2) years after the cause of action has accrued as defined herein, regardless of when the injury or damage is discovered.
5. The parties agree, to the fullest extent permitted by law, to waive any and all rights against each other and any of their contractors, subcontractors, consultants, subconsultants, construction managers, owner's representatives, employees, directors, officers, agents and assigns for any and all damages, including without limitation bodily injury, death, damage to real and personal property, and all consequential damages including delay and lost profits covered by any insurance applicable to the Project or the site upon which the Project is located.

D. Assignment

1. Aside from Consultant's assignment of amounts owed under this Agreement, neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.
2. Parties acknowledge that Consultant has subsidiaries or affiliates that hold necessary registrations, certifications or special skills or resources that may be needed for the proper performance of the Services. Consultant may subcontract or assign all or part of the Services to any of its subsidiaries or affiliates; provided, however, that Consultant shall remain liable for the performance, obligations and responsibilities of such services under this Agreement.

E. Dispute Resolution

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or the Services (except for unpaid invoices which are governed by Section III) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise in writing.
2. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the State in which the Project is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care.
3. Any dispute not settled through mediation shall be settled through litigation in the state and county where the Project at issue is located.

SECTION V – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computer software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service"). Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Notwithstanding anything to the contrary, Consultant shall retain all of its rights in its proprietary information including without limitation its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be work product or work for hire and Consultant shall not be restricted in any way with respect thereto. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its Services, Client shall have the right in the form of a nonexclusive license to use Instruments of Service delivered to Client exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of Services, including subpoenas directed from or on behalf of Client are available to Client subject to Consultant's current rate schedule. Consultant shall not be required to provide CADD files or documents unless specifically agreed to in writing as part of this Agreement.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. To the extent permitted by law, any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify, and hold harmless Consultant from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.