

16-0887

Memo

DATE: September 14, 2016

TO: Finance Committee of the City of Manitowoc

FROM: Nic Sparacio
Community Development Director

RE: TIF Project for I-43 Enterprise and Technology Park Wetlands

Greetings Finance Committee Members,

Since this topic was initially discussed at the July meeting of the Finance Committee, I have received two proposals for delineating the wetlands in high priority locations within the I-43 Tech Park. The timing of these proposals is a bit challenging as the delineation season is winding down, and the DNR is expected to declare the season closed by mid to late October. This means that waiting for the October Finance and Council meetings for approval would push the work to next spring. For that reason, I am forwarding this information for your consideration at the September 19 Council meeting. An approval now would keep the project moving forward, but if you are not comfortable with proceeding under these circumstances, I completely understand and will bring it up again next spring.

The two proposals are attached. Both RA Smith and Stantec have served the City of Manitowoc in the past and have performed solid work. Both proposals cover the same basic scope of work with the following key differences:

- Cost
 - RA Smith: \$17,200
 - Stantec: \$9,000 plus additional costs for field work beyond "routine level delineation"
- Phasing
 - RA Smith would phase the work to be completed over this fall and spring of 2017 with the highest priority areas getting completed first.
 - Stantec would phase the work by level of review, sufficiently narrowing the areas in need of full field delineation. Field work would then all be completed this fall.
- Deliverables
 - A full wetland delineation report would be provided by either firm as the final deliverable. DNR concurrence on the findings is included.

As we discussed in July, the funding source for this project would be one or more of the active TIF Districts in the I-43 Tech Park that would benefit from the project. The potential wetlands to be delineated are located within TIF Districts 9 and 12. TID 9 is expected to recover all costs prior to closing and is financially healthy. It's expenditure period goes through May of 2017, so it can be used to support this project. TID 12 is distressed, but it can still make expenditures for projects already listed in the plan document. It's expenditure period goes through August of 2017. Both TID plans include project costs for professional services and environmental studies, so this use of funds would be appropriate. As such, TID 12 could also be used to support the project.

My recommendation would be to hire Stantec to perform the work. I believe their approach of narrowing the scope of work with available data prior to commencing the field work will be more cost effective for us. They have developed this approach in cooperation with DNR, whose concurrence is vital in solving this problem for the City. I am also confident that if any additional charges come in, the RA Smith proposal cost, at \$8,000 more, will not be exceeded by Stantec.

My sense of urgency on this project is based on few factors. One is that I am closing today on an option and right of first refusal for one of the parcels covered in this delineation. Another factor is that a local company is continuing to explore the feasibility of purchasing a parcel west of S 63rd Street for a relocation and expansion project. And a third factor is the ongoing interest I receive for the open parcel between I-43 and Dufek Drive just south of Custer Street. This project does not include lands west of Silver Creek, as I have not had interest in these lands for any developed uses.

Thank you for your consideration.

CC: Steve Corbeille, Finance Director

September 12, 2016

Mr. Nic Sparacio
Director of Economic Development
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Re: I-43 Industrial Park
Proposed Wetland Delineation Services

Dear Mr. Sparacio:

Thank you for the opportunity to propose our professional services for this project. This letter presents our proposed scope, schedule and budget for delineation of specific designated parcels in the I-43 Industrial Park. We have proposed our delineation of those parcels in two phases, with the intent of completing fieldwork delineating the highest priority parcels this fall. If possible, we would also complete the fieldwork on the remaining parcels this fall but if the end of the delineating season prevents that, those delineations would be completed as soon as possible in the spring of 2017.

The following information is offered for your review. If approved for authorization, we will incorporate it into an appropriate and acceptable document format for processing.

- I. PROJECT NAME/SITE ADDRESS: Approximately 87-Acres (Areas A through C) and approximately 67 acres (Areas D through F) located in the I-43 Industrial Park, City of Manitowoc, Manitowoc County, Wisconsin (Sections 27 and 34, T19N, R23E).
- II. DESCRIPTION OF SERVICES TO BE PERFORMED:
 - A) Assured Wetland Delineation: We propose to delineate the location and extent of wetland boundaries within an approximately 87-acre area (Areas A through C) and approximately 67 acre area (Areas D through F) all within the I-43 Industrial Park (Study Area).

Based on an initial desktop review there are two (2) mapped wetlands within the Study Area as well as extensively mapped wetland indicator soils that extend beyond the mapped wetland areas. Due to the potential presence of numerous farmed wetlands within the agricultural portions of the site, a Farm Service Agency (FSA) crop slide review and precipitation analysis must be completed prior to the fieldwork per US Army Corps of Engineers (Corps) and Wisconsin Department of Natural Resources (WDNR) requirements.

During the field study, wetland areas will be identified and their boundaries delineated using the Routine On-Site Determination Method as defined in the 1987 Corps of Engineers Wetland Delineation Manual and in the Northcentral and Northeast Supplement, and will be performed in accordance with Wisconsin Department of Natural Resources (WDNR) requirements. The delineation technique uses a multi-parameter approach, which requires evidence of wetland hydrology, hydric soils, and hydrophytic vegetation. R.A. Smith National, Inc. (RASN) ecologists will also consider topographic conditions and use professional judgment in

Deliver excellence, vision, and responsive service to our clients.

Mr. Nic Sparacio
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performing the work. The boundaries of areas meeting wetland criteria will be flagged in the field and GPS-located.

- B) Report Submittal: The findings from the field delineation will be documented in wetland delineation reports for Areas A through C and Areas D through F. Data sheets, a wetland boundary map, a soils map, aerial photographs, a Wisconsin Wetland Inventory map, and color copies of photographs will be included in the report. FSA Crops Slides and the results of the FSA crop slide review will also be included in the report.

A draft copy of the report will be e-mailed to you in pdf form prior to submittal to the WDNR. We will also provide you with one hard copy if necessary. The report can also be US Army Corps of Engineers as well as for concurrence and a jurisdictional determination, but is generally only submitted to them if a wetland permit is needed.

- III. **COMPLETION SCHEDULE:** RASN will complete the wetland delineation fieldwork for Areas A through C the week of October 17th, 2016 provided the growing season does not end before that. If possible, we will also complete the fieldwork for Areas D through F, but this work will likely need to be completed in the spring of 2017. The draft report for Areas A thorough C will be submitted to you within approximately 6-8 weeks after completion of the wetland delineation fieldwork. The draft report for Areas D thorough F will be submitted to you within approximately 3-4 weeks after completion of the spring 2017 wetland delineation fieldwork
- IV. **PROFESSIONAL FEES:** The above-described services will be provided for a lump sum fee as shown in the table below. Fees will be invoiced monthly on a percent complete basis.

Tasks	Description	Fee
A and B	Assured Wetland Delineation and Report (Areas A through C)	\$ 7,550
A and B	Assured Wetland Delineation and Report (Areas D through F)	\$ 9,650

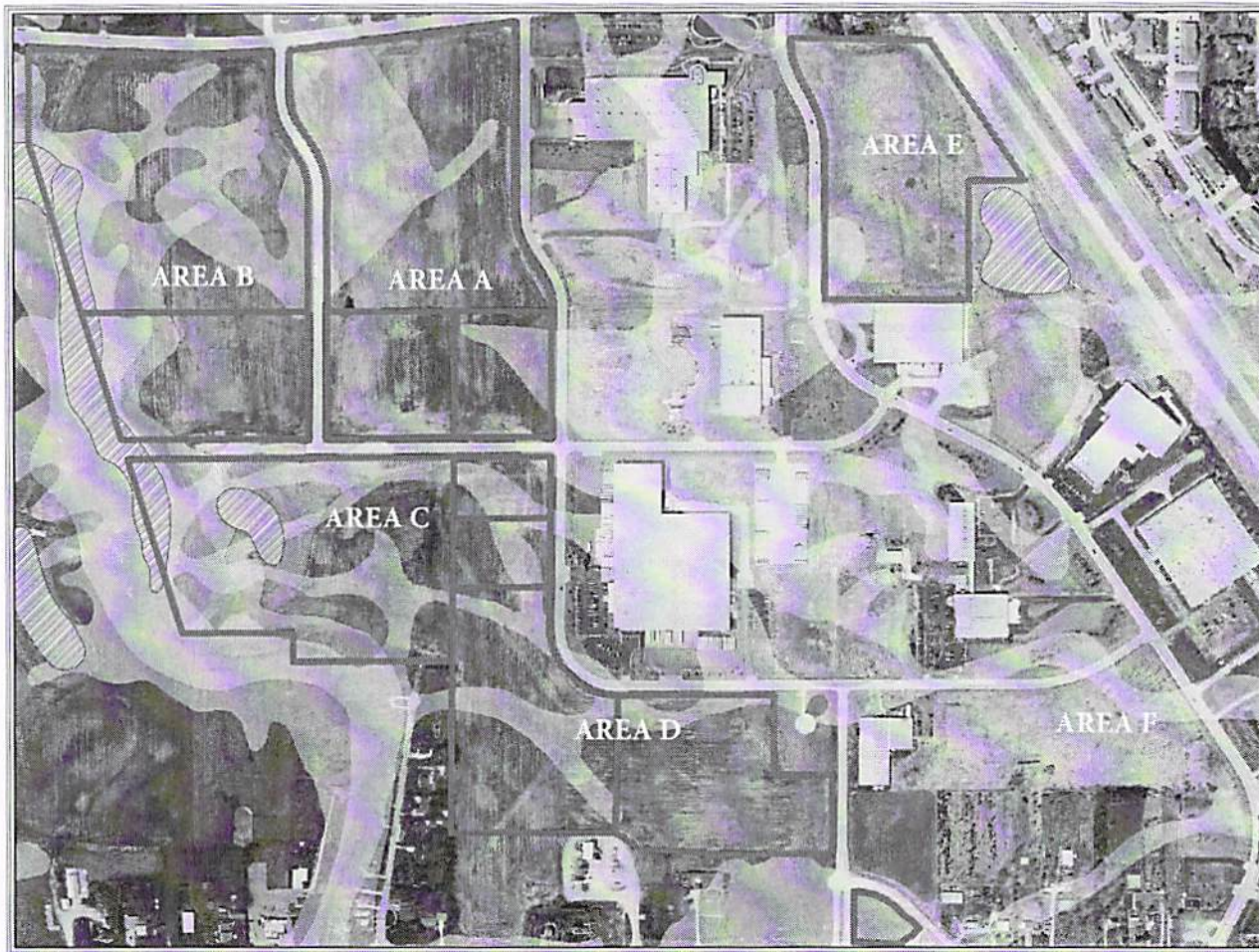
Please contact us with any questions regarding these proposed services.

Sincerely

R.A. Smith National, Inc.






Jeff M. Mazanec, P.E.
Senior Consultant

Jeff.Mazanec@RASmithNational.com
(920) 843-5734



**Available Tech Park
Properties**

Legend

-  Vacant Parcels
-  Wetland polygons
-  Hydric Soils
-  Floodplain

136.67 Total Acres

0 250 500
Feet



Prepared by: City of Madison
Planning Department
Map Number: 101123
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Stantec Consulting Services Inc.
1165 Scheuring Road
De Pere, WI 54115-1001
Phone: 920-592-8400
Fax: 920-592-8444

September 8, 2016 (Revised September 14, 2016)
Proposal No. 556900

Mr. Nicolas Sparacio
Community Development Director
City of Manitowoc
900 Quay St.
Manitowoc, WI 54220
nsparacio@manitowoc.org

**RE: PROPOSAL 556900 FOR ENVIRONMENTAL CONSULTING SERVICES – WETLAND DELINEATION
CITY OF MANITOWOC TECHNICAL PARK DEVELOPMENT, MANITOWOC COUNTY, WISCONSIN**

Dear Nicolas:

Stantec Consulting Services Inc. (Stantec) is pleased to present this proposal for environmental services for the above-referenced Technical Park Development in the City of Manitowoc.

Our staff is uniquely qualified to complete this project. We have worked extensively with local Wisconsin Department of Natural Resources (WDNR) and U.S. Army Corps of Engineers (USACE) staff on similar projects throughout Wisconsin, and feel strongly that our knowledge of the local landscape and reputation with agency staff will streamline approval of our wetland findings.

This proposal includes our understanding, scope of services, cost estimate, project schedule, extra services, and terms and conditions. Stantec will initiate this project immediately upon receipt of an executed Agreement and any required retainer fee.

PROJECT UNDERSTANDING

Stantec understands the project area consists of approximately 140 acres of vacant parcels in the City of Manitowoc east of Interstate Highway 43 (I-43) and north of State Highway 151 (STH-151). More specifically, the project is bounded by W. Custer Street to the north, I-43 to the east, STH-151 to the south, and Silver Creek (waterway) to the West. The project area is located in Sections 27 and 34, Township 19 North, Range 23 East, Manitowoc County, Wisconsin. The City of Manitowoc is proposing expansion of the Technical Park Development Area. A small portion of the project area was delineated in 2011 and requires re-delineation as part of this project. This wetland delineation is intended to identify the extent and spatial arrangement of wetlands within the project area.

SCOPE OF SERVICES

The following scope of work has been developed based on our understanding of this project.

Wetland Delineation

The wetland determination and delineation will be completed using the *Basic Guide to Wisconsin's Wetlands and their Boundaries* (Wisconsin Department of Administration Coastal Management Program 1995), U.S. Army Corps of Engineers (USACE) 1987 *Wetland Delineation Manual*, applicable Regional Supplements to the Corps of Engineers Wetland Delineation Manual, and subsequent guidance documents (USACE 1991, 1992, 1996, & 2015). In our experience, these manuals/documents provide similar guidance on wetland boundary determinations on undisturbed sites and meet the requirements of both the Wisconsin Department of Natural Resources (WDNR) and USACE.



Reference: **PROPOSAL 556900 FOR ENVIRONMENTAL CONSULTING SERVICES – WETLAND DELINEATION**
 CITY OF MANITOWOC TECHNICAL PARK DEVELOPMENT, MANITOWOC COUNTY, WISCONSIN

- Stantec will obtain and review available resources to assist in the wetland delineation such as USGS topographic mapping, Natural Resources Conservation Service (NRCS) soil survey and list of hydric soils, Wisconsin Wetland Inventory (WWI) mapping, and aerial photography.
- This proposal assumes that a routine level delineation will be sufficient at this site, as is the case with most wetland delineations. Problem Area, Atypical Situation, and Comprehensive Methods (as defined in the 1987 manual) often require additional and more detailed information gathering, field sampling and/or reporting. Stantec will contact the Client immediately if the use of these methods is required, which may involve extra services and a higher fee.
- Several parcels in the project area are currently used for agriculture crop production. Areas that are currently, or were recently (less than three years prior to the delineation) under agricultural production must include a FSA Slide Review. All FSA Slide Reviews should include the following:
 - Copies or photos of slides if available
 - A completed wetland documentation form (NRCS form NRCS-CPA-32W)
 - A copy of the draft NRCS Wetland Inventory map if available
- The Client shall provide a map and/or Cadd files to Stantec illustrating the site location, property boundary, and if different, the wetland determination limits within the property. If the property boundaries are not clearly identified, then the Client or their agent shall be present initially to field review the property boundary and wetland determination limits with representatives from Stantec.
- The uppermost wetland boundary will be marked with delineation flagging. The wetland boundary will be located with a hand held Trimble GPS capable of sub-meter accuracy. This level of GPS survey is valuable for planning purposes but does not constitute a certified survey. We will produce a map illustrating the location of the wetland boundary on a recent aerial photograph.
- The wetland delineation methods and results will be documented in a standard wetland delineation report. The report will contain written descriptions of the site and wetlands, surface water features, delineation methods, appropriate figures, completed survey of the wetland boundary, and USACE wetland delineation data sheets.
- The information provided by Stantec regarding wetland boundaries is a scientific-based analysis of the wetland and upland conditions present on a site at the time of the fieldwork. The determination will be performed by experienced and qualified professionals using standard practices and sound professional judgment. The ultimate decision on wetland boundaries and jurisdiction rests with the USACE and, in some cases, the WDNR or a local unit of government. As a result, there may be adjustments to boundaries based upon review by a regulatory agency. An agency determination can vary from time to time depending on various factors including, but not limited to, the agency representative completing the review, the timeliness of the agency review, recent precipitation patterns, and season of the year. In addition, the physical characteristics of the site can change over time, depending on the weather, vegetation patterns, drainage, activities on adjacent parcels, or other events. Any of these factors can change the nature and extent of wetlands on the site.



Reference: PROPOSAL 556900 FOR ENVIRONMENTAL CONSULTING SERVICES – WETLAND DELINEATION
CITY OF MANITOWOC TECHNICAL PARK DEVELOPMENT, MANITOWOC COUNTY, WISCONSIN

Regulatory Coordination, Concurrence, and Mitigation

- This scope of services includes coordinating and participating in one field review to obtain concurrence on the wetland delineation from the appropriate regulatory agencies. WDNR wetland concurrence fees, if applicable, will be the responsibility of the client. Any Wetland Impact Permitting and wetland mitigation services are not included. Regulatory coordination and/or requests for additional information beyond that included in our standard wetland report will be completed as authorized by the Client on a time and materials basis as an extra service.
- Stantec recommends the Client obtain an opinion and authority from regulating government agencies before proceeding with any development or utilization of the property. If the Client proceeds to change, modify or utilize the property in question without obtaining authorization from the regulating governmental agency, it will be done at the Client's own risk and Stantec will not be responsible or liable for any resulting damages.

COST ESTIMATE

Stantec will complete the tasks outlined in the Scope of Services for a **lump sum fee of \$6,900** including reimbursable expenses (mileage, copying charges, etc.). Our fee does not include WDNR fees associated with obtaining concurrence of wetland boundaries. Based on the site size, we estimate WDNR concurrence fees to be \$2,100 which will be paid by the City.

Stantec will complete other tasks, extra services, and/or attend meetings in addition to the outlined scope of services, as authorized by the Client, on a time and materials basis at the following hourly billing rates*:

Associate/Senior Scientist	\$129 -149 / Hour
Staff Scientist	\$ 92 - 121 / Hour
Technician/Administrative	\$ 57 - 85 / Hour
Reimbursable Expenses	Cost + 10%
Mileage	Current IRS Mileage Rate** + 10%

*Hourly billing rates are subject to annual adjustments.

**Due to unstable fuel costs, this rate is subject to application of a surcharge pending IRS rate revisions.

If there are changes to the scope of services that would cause the estimated fees to be exceeded, Stantec will contact the Client for approval to proceed. Stantec will furnish extra services upon request and under separate terms as described below.

PROJECT SCHEDULE

Stantec will initiate this project upon receipt of a signed proposal. A Stantec representative will contact you to coordinate and schedule a time to proceed with the fieldwork. We anticipate fieldwork will be completed in the 2016 growing season. Fieldwork schedules are dependent upon the option selected, site access, weather conditions and growing season. We will continue to work closely with you and project team members to prepare the deliverables in a timely manner and will work to meet your project's schedule.



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Reference: PROPOSAL 556900 FOR ENVIRONMENTAL CONSULTING SERVICES – WETLAND DELINEATION
CITY OF MANITOWOC TECHNICAL PARK DEVELOPMENT, MANITOWOC COUNTY, WISCONSIN

EXTRA SERVICES

Extra services are those services that are not part of the base scope of services provided above, but could potentially be needed for a project of this type. Extra services vary by Option and may include, but are not limited to the following:

- Fieldwork not mentioned in the scope of services for the selected option
- Wetland and Waterway Permitting
- Flora and Fauna Surveys
- Threatened & Endangered Species Surveys
- Collecting and/or providing additional information requested by regulatory agencies
- Project team and regulatory agency meetings/coordination
- Expert witness testimony

PAYMENT TERMS & CONDITIONS

Payment for services and expenses will be due immediately upon receipt of invoices. Final reports will be withheld until all payments are made in full. Invoices for the services performed will be submitted either upon completion of such services or on a monthly basis. Refer to the attached Agreement for additional terms and conditions.

Please send executed Agreement to:

**STANTEC CONSULTING SERVICES INC.
1165 Scheuring Road
De Pere, WI 54115
United States**

Please remit payments to:


**STANTEC CONSULTING SERVICES INC.
13980 Collections Center Drive
Chicago, IL 60693
United States**

The above-stated fee and specified hourly rates proposed for this scope of services are valid for 30 days from the date of this proposal and are subject to annual adjustments. Upon review and acceptance of the proposal and attached Agreement, please return a signed copy of the Agreement to the address shown on the letterhead.

If you have any questions, or require any additional information, please call me at (920) 278-3214 or Jon Guntow at (920) 980-2800. We look forward to working with you on this project.

Sincerely,

STANTEC CONSULTING SERVICES INC.


Jon H. Guntow, PWS, PSS
Senior Scientist

Enclosure: Terms and Conditions

Design with community in mind



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Reference: PROPOSAL 556900 FOR ENVIRONMENTAL CONSULTING SERVICES – WETLAND DELINEATION
CITY OF MANITOWOC TECHNICAL PARK DEVELOPMENT, MANITOWOC COUNTY, WISCONSIN

The Terms and Conditions, and referenced Proposal scope of services and fees are agreed upon:

Consultant: 
Jon Guntow, PWS, PSS
Senior Associate Scientist
Stantec Consulting Services Inc.
1165 Scheuring Road
De Pere, WI 54115

Date: September 14, 2016

Client: _____ Date: _____

Client Name (Printed): _____

Client Address: _____



PROFESSIONAL SERVICES TERMS AND CONDITIONS

Page 1 of 4

The following Terms and Conditions are attached to and form part of the Proposal for Professional Services 556900 dated September 14, 2016 to be performed by STANTEC and together, when the CLIENT authorizes STANTEC to proceed with the services, constitute the AGREEMENT.

DESCRIPTION OF WORK: STANTEC shall render the services described in the Proposal (hereinafter called the "SERVICES") to the CLIENT.

TERMS AND CONDITIONS: No terms, conditions, understandings, or agreements purporting to modify or vary these Terms and Conditions shall be binding unless hereafter made in writing and signed by the CLIENT and STANTEC. In the event of any conflict between the Proposal and these Terms and Conditions, these Terms and Conditions shall take precedence. This AGREEMENT supercedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the PROJECT. All alterations, additions, or deletions to STANTEC's SERVICES or materials to be furnished by STANTEC shall be set forth in a written change order signed by STANTEC. The Change Order shall clearly set forth the adjustment being made to the Contract Price resulting from the change order. In the event that CLIENT orders additional work to be performed and a change order is not executed by the parties, the CLIENT shall be responsible for all costs including without limitation, labor, material, and equipment (collectively the "total costs").

COMPENSATION: Payment is due to STANTEC upon receipt of invoice. Failure to make any payment when due is a material breach of this AGREEMENT and will entitle STANTEC, at its option, to suspend or terminate this AGREEMENT and the provision of the SERVICES. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest. Unless otherwise noted, the fees in this agreement do not include any value added, sales, or other taxes that may be applied by Government on fees for services. Such taxes will be added to all invoices as required.

NOTICES: Each party shall designate a representative who is authorized to act on behalf of that party. All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party.

CLIENT'S RESPONSIBILITIES: The CLIENT shall make available to STANTEC all relevant information or data pertinent to the PROJECT, including PROJECT budget and time constraints, which is required by STANTEC to perform the SERVICES. STANTEC shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the CLIENT, including information and data originating with other consultants employed by the CLIENT whether such consultants are engaged at the request of STANTEC or otherwise. Where such information or data originates either with the CLIENT or its consultants then STANTEC shall not be responsible to the CLIENT for the consequences of any error or omission contained therein. The CLIENT shall give prompt consideration to all documentation related to the PROJECT prepared by STANTEC and whenever prompt action is necessary shall inform STANTEC of CLIENT's decisions in such reasonable time so as not to delay the schedule for providing the SERVICES. When applicable, the CLIENT shall arrange and make provision for STANTEC's safe and secure entry to the PROJECT site as well as other public and private property as necessary for STANTEC to perform the SERVICES.

STANTEC'S RESPONSIBILITIES: In performing the SERVICES, STANTEC will provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices normally provided in the performance of the SERVICES at the time and the location in which the SERVICES were performed. This standard of care is the sole and exclusive standard of care that will be applied to measure STANTEC's performance. There are no other representations or warranties expressed or implied made by STANTEC. STANTEC does not warrant the SERVICES to any third party and the CLIENT shall indemnify and hold harmless STANTEC from any demands, claims, suits or actions of third parties arising out of STANTEC's performance of the SERVICES. In performing the SERVICES under this AGREEMENT, STANTEC shall operate as and have the status of an independent contractor and shall not act as, or be an employee of the CLIENT. The SERVICES performed by STANTEC shall be subject to the inspection and the review of the CLIENT at all times but such inspection and review shall not relieve STANTEC from its responsibility for the proper performance of the SERVICES.

NO PERFORMANCE GUARANTIES: If the SERVICES include the installation of any equipment, product, materials, or goods of any sort, including plants and vegetation, STANTEC makes no representation or warranty regarding the performance thereof, including any warranty of fitness for a particular purpose or of merchantability.

CONFIDENTIALITY: Confidential information shall mean all information disclosed to STANTEC, which relates to the CLIENT's past, present and future business activities. STANTEC shall hold all such confidential information in trust and confidence for CLIENT, and agrees that it will not, during or after the termination of the Agreement, disclose to any person, firm, corporation or entity, nor use for its own business or benefits, any information obtained by it while in the execution of the terms and conditions of this Agreement without the express permission of the CLIENT, except as required by law, ordinance, regulation or governmental order. This provision does not apply to information that is presently a matter of public knowledge or that becomes known to public in the future via publication or becomes otherwise obtainable from any source available to the public. This confidentiality provision supersedes and supplants any other confidentiality agreement or non-disclosure agreement between CLIENT and STANTEC that pertains to the Project and/or SERVICES.

TERMINATION: Either party may terminate the AGREEMENT without cause upon thirty (30) days notice in writing. If either party breaches the AGREEMENT and fails to remedy such breach within seven (7) days of notice to do so by the non-



defaulting party, the non-defaulting party may immediately terminate the Agreement. Non-payment by the CLIENT of STANTEC's invoices within 30 days of STANTEC rendering same is agreed to constitute a material breach and, upon written notice as prescribed above, the duties, obligations and responsibilities of STANTEC are terminated. On termination by either party, the CLIENT shall forthwith pay STANTEC all fees and charges for the SERVICES provided to the effective date of termination.

SUSPENSION OF SERVICES: If the project is suspended for more than thirty (30) calendar days in the aggregate, Stantec shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the PROJECT is suspended for more than ninety (90) days, Stantec may, at its option, terminate this agreement upon giving notice in writing to the CLIENT.

BUILDING CODES, BYLAWS AND OTHER PUBLIC REGULATIONS: Stantec shall, to the best of its ability, interpret building codes, by-laws and other public regulations as they apply to the PROJECT and as they are published at the time SERVICES commence. Furthermore, Stantec shall observe and comply with all applicable laws, ordinances, codes and regulations of government agencies, including federal, state, provincial, municipal and local governing bodies having jurisdiction over the conduct of the SERVICES ("LAWS"). However, it is expressly acknowledged and agreed by the CLIENT that as the PROJECT progresses such building codes, by-laws, other public regulations and LAWS may change or the interpretation of any public authority may differ from the interpretation of Stantec, through no fault of Stantec, and any extra costs necessary to conform to such changes or interpretations during or after execution of the SERVICES will be paid by the CLIENT.

COST AND SCHEDULE OF CONSTRUCTION WORK: In providing opinions of probable cost and project schedule, it is recognized that neither the CLIENT nor Stantec has control over the costs of labor, equipment or materials, or over the Contractor's methods of determining prices or time. The opinions of probable cost or project duration are based on Stantec's reasonable professional judgment and experience and do not constitute a warranty, express or implied, that the Contractor's bids, project schedules, or the negotiated price of the Work or schedule will not vary from the CLIENT's budget or schedule or from any opinion of probable cost or project schedule prepared by Stantec. Exact costs and times will be determined only when bids have been received for the PROJECT and when the construction work has been performed and payments finalized.

ADMINISTRATION OF CONSTRUCTION CONTRACTS: When applicable, Stantec shall provide field services during the construction of the PROJECT only to the extent that such SERVICES are included and defined in this AGREEMENT. The performance of the construction contract is not Stantec's responsibility nor are Stantec's field services rendered for the construction contractor's benefit.

It is understood and agreed by the CLIENT and Stantec that only work which has been seen during an examination by Stantec can be said to have been appraised and comments on the balance of any construction work are assumptions only.

When field services are provided by Stantec, the authority for general administration of the PROJECT shall reside with Stantec only to the extent defined in this AGREEMENT. In such case, Stantec shall coordinate the activities of other consultants employed by the CLIENT, only to the extent that Stantec is empowered to do so by such other consultants' contracts with the CLIENT.

Stantec shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents nor for the acts or omissions of any contractor, subcontractor, any of their agents or employees, or any other persons performing any of the work in connection with the PROJECT. When field services are provided, no acceptance by Stantec of the work or services of a construction contractor or other consultants, whether express or implied, shall relieve such construction contractor or other consultants from their responsibilities to the CLIENT for the proper performance of such work or services and further, Stantec shall not be responsible to the CLIENT or to the construction contractor or to the other consultants for the means, methods, techniques, sequences, procedures and use of equipment of any nature whatsoever, whether reviewed by Stantec or not, which are employed by the construction contractor or the other consultants in executing, designing, or administering any phases of the PROJECT, or for placing into operation any plant or equipment or for safety precautions and programs incidental thereto.

When field services are provided, Stantec will not be designated as the party responsible for the compliance by others on the construction work site with the purposes or requirements of applicable environmental, occupational health and safety, or similar legislation. The CLIENT shall designate a responsible party, other than Stantec, for the coordination and performance of environmental, occupational health and safety activities on the construction work site as required by applicable legislation and associated regulations.

JOBSITE SAFETY: Neither the professional activities of Stantec, nor the presence of Stantec or its employees and subconsultants at a construction site, shall relieve the CLIENT and any other entity of their obligations, duties and responsibilities with respect to job site safety. Subject only to applicable legislation, Stantec and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

ENVIRONMENTAL: Except as specifically described in this AGREEMENT, STANTEC's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater.

Where the SERVICES include storm water pollution prevention (SWPP), sedimentation or erosion control plans, specifications, procedures or related construction observation or administrative field functions, CLIENT acknowledges that such SERVICES proposed or performed by STANTEC are not guaranteed to provide complete SWPP, sedimentation or erosion control, capture all run off or siltation, that any physical works are to be constructed and maintained by the CLIENT's contractor or others and that STANTEC has no control over the ultimate effectiveness of any such works or procedures. Except to the extent that there were errors or omissions in the SERVICES provided by STANTEC, CLIENT agrees to indemnify and hold STANTEC harmless from and against all claims, costs, liabilities or damages whatsoever arising from any storm water pollution, erosion, sedimentation, or discharge of silt or other deleterious substances into any waterway, wetland or woodland and any resulting charges, fines, legal action, cleanup or related costs.

LIMITATION OF LIABILITY: The CLIENT releases STANTEC from any liability and agrees to defend, indemnify and hold STANTEC harmless from any and all claims, damages, losses, and/or expenses, direct and indirect, or consequential damages, including but not limited to attorney's fees and charges and court and arbitration costs, arising out of, or claimed to arise out of, the performance of the SERVICES, excepting liability arising from the sole negligence of STANTEC.

It is further agreed that the total amount of all claims the CLIENT may have against STANTEC under these Terms and Conditions or arising from the performance or non-performance of the SERVICES under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and/or breach of contract, shall be strictly limited to the lesser of professional fees paid to STANTEC for the SERVICES or \$500,000. No claim may be brought against STANTEC more than two (2) years after the cause of action arose. As the CLIENT's sole and exclusive remedy under these Terms and Conditions any claim, demand or suit shall be directed and/or asserted only against STANTEC and not against any of STANTEC's employees, officers or directors.

STANTEC's liability with respect to any claims arising out of this AGREEMENT shall be absolutely limited to direct damages arising out of the SERVICES and STANTEC shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the CLIENT, including but not limited to claims for loss of use, loss of profits and/or loss of markets.

DOCUMENTS: All of the deliverables, reports, field data, maps and other documents prepared by or on behalf of STANTEC in connection with the PROJECT are instruments of service for the execution of the PROJECT. STANTEC retains the property and copyright in these documents, whether the PROJECT is executed or not. These documents may not be relied upon by any party other than the CLIENT nor be used for any other purpose without the prior written consent of STANTEC. In the event STANTEC's documents are subsequently reused or modified in any material respect without the prior consent of STANTEC, the CLIENT agrees to defend, hold harmless and indemnify STANTEC from any claims advanced on account of said reuse or modification.

STANTEC cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). CLIENT shall release, indemnify and hold STANTEC, its officers, employees, consultants and agents harmless from any claims or damages arising from the use of Electronic Files. Electronic files will not contain stamps or seals, remain the property of STANTEC, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without STANTEC's written consent.

INTELLECTUAL PROPERTY: Any work product, inventions, ideas or other original work made, conceived or authored by STANTEC and/or STANTEC's employees, agents or subcontractors, including all input materials and output materials, the media upon which they are located (including cards, tapes, disks and other storage facilities), and all software programs or packages (together with any related documentation, source code or codes, object codes, upgrades, revisions, modifications, and any related materials) which are utilized or developed solely by STANTEC and/or STANTEC's employees, agents or subcontractors, or in cooperation with CLIENT, and which may or may not be either confidential or proprietary, in the course of performance of the SERVICES hereunder, regardless of the stage of completion, shall remain the exclusive property of STANTEC.

FORCE MAJEURE: Any default in the performance of the SERVICES caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract; labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

FIELD SERVICES: STANTEC shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work on the PROJECT, and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents. STANTEC shall not be responsible for the acts or omissions of any contractor, subcontractor, any of their agents or employees, or any other persons performing any of the work in connection with the PROJECT.

USE OF CLIENT'S EQUIPMENT: If CLIENT provides equipment for STANTEC's use in the performance of the SERVICES, STANTEC shall not be liable for the inaccuracy or incompleteness of any data or results or for delay that is caused by or is the result of

the breakage or unavailability of the equipment or as result of CLIENT's failure to calibrate, maintain, operate or schedule said equipment.

GOVERNING LAW/COMPLIANCE WITH LAWS: The AGREEMENT shall be governed, construed and enforced in accordance with the laws of the jurisdiction in which the majority of the SERVICES are performed. STANTEC shall observe and comply with all applicable laws, continue to provide equal employment opportunity to all qualified persons, and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

DISPUTE RESOLUTION: If requested in writing by either the CLIENT or STANTEC, the CLIENT and STANTEC shall attempt to resolve any dispute between them arising out of or in connection with this AGREEMENT by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to laws of the jurisdiction in which the majority of the SERVICES are performed or elsewhere by mutual agreement.

ATTORNEYS FEES: In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this AGREEMENT and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

ASSIGNMENT: The CLIENT and STANTEC shall not, without the prior written consent of the other party, assign the benefit or in any way transfer the obligations under these Terms and Conditions or any part hereof.

SEVERABILITY: If any term, condition or covenant of the AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the AGREEMENT shall be binding on the CLIENT and STANTEC.