City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MJP-W

FROM: Randall M. Krauel, Director of Public Works RMK

DATE: June 5, 2018

SUBJECT: Library/City Hall Project
Phase 1 ESA Update Proposal

A Proposal has been requested and received from Barker Lemar Engineering Consultants to update the 2016 Phase I Environmental Site Assessment (ESA) at 627 N. Adams Street. A copy of the Proposal is attached.

The purpose of the Phase 1 ESA is to assess real estate within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and petroleum products in order to qualify for the innocent landowner defense to CERCLA liability. The 2016 Phase I ESA is technically stale after 180 days. The recommendation is to update the Assessment within 180 days of closing to make it valid as of the date of closing.

The proposed scope of services is detailed in the Proposal and summarized as follows:

1. Interviews
2. Historical use information and records review.
3. Site reconnaissance
4. Report

The schedule for report completion is six weeks following notice to proceed.

Compensation to perform the scope of services is based on a lump sum by task with a total of $3,085.00 plus $290.00 if a lien search is required.

RECOMMENDATION: Mayor and City Council consideration and passage and approval of the Resolution Accepting the Proposal of Barker Lemar Engineering Consultant for a Phase I Environmental Site Assessment Update.

RMK:ds

attachments (2)

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE PROPOSAL OF BARKER LEMAR ENGINEERING CONSULTANTS FOR A PHASE I ENVIRONMENTAL SITE ASSESSMENT UPDATE.

WHEREAS, the City of Carroll is desirous of developing a Library/City Hall Project; and,

WHEREAS, development of the Project requires a Phase I Environmental Site Assessment Update; and,

WHEREAS, Barker Lemar Engineering Consultants has submitted a Proposal to perform a Phase I Environmental Site Assessment Update.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll Iowa, that the Proposal of Barker Lemar Engineering Consultants for a Phase I Environmental Site Assessment Update for the Library/City Hall Project is approved and the Mayor is authorized and directed to sign the Proposal on behalf of the City.

Passed and approved by the Carroll City Council this 11th day of June, 2018.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

BARKER LEMAR
ENGINEERING CONSULTANTS

June 4, 2018

Eric P. Jensen
Mayor, City of Carroll
112 E. 5th Street
Carroll, IA 51401

RE: Proposal: Phase I Environmental Site Assessment Update
627 N. Adams Street
Carroll, IA
BARKER LEMAR Proposal No. 185538

Dear Mayor Jensen:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide this proposal to update the 2016 Phase I Environmental Site Assessment (ESA) as defined by ASTM Standard 1527-13 for the site, which consists of a commercial lot. The purpose of the Phase 1 ESA, as defined by the ASTM standard is to assess commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and petroleum products in order to qualify for the innocent landowner defense to CERCLA liability. The goal of this process is to identify *recognized environmental conditions* (RECs).

The user of the report, or their representative, should provide BARKER LEMAR with any knowledge of environmental liens or activity and use limitations on the property and any specialized knowledge that is material to recognized environmental conditions prior to the site reconnaissance.

1.0 SCOPE OF SERVICES

Section 4.6 of the ASTM Standard 1527-13 - Continued Viability of Environmental Site Assessment states:

> *"...provided that the following components of the inquiries were conducted or updated within 180 days of the date of purchase or the date of the intended transaction:*
> *(i) interviews with owners, operators, and occupants;*
> *(ii) searches for recorded environmental cleanup liens;*
> *(iii) reviews of federal, tribal, state, and local government records;*
> *(iv) visual inspections of the property and of adjoining properties; and*
> *(v) the declaration by the environmental professional responsible for the assessment or update."*

BARKER LEMAR proposes the following scope of services:

- A reconnaissance of the above referenced site;
- A cursory review of property adjacent to the site;
- Interviews with pertinent site personnel or other persons with historical knowledge of the site;
- An historical review of the site including any information that has become available since the previous Phase I was completed;

- A record search and review of available federal, state, and local regulatory documents concerning the site that has become available for the site;
- A review of pertinent environmental reports (including all available UST/LUST reports from the IDNR and site-specific documents as available) that have become available for the site;
- An updated Phase I ESA report, which presents conclusions and findings.

The activities will be performed in accordance with American Society of Testing and Materials (ASTM) E-1527-13 Phase I guidelines. The details of each of these tasks are outlined in the following sections.

1.1 INTERVIEWS

Barker Lemar will contact those persons previously interviewed to determine if anything has changed since their previous interview.

BARKER LEMAR, as needed, may also contact the following types of local government agencies in the area in which the property is located in order to enhance and supplement the federal and state sources identified:

- the local fire department that serves the property,
- the local/state health agency that serves the property area,
- the local/state agency having jurisdiction over hazardous waste disposal or other environmental matters,
- the local agency responsible for the issuance of building permits or groundwater use permits that document the presence of activity use limitations.

While people interviewed during the course of this environmental assessment shall be asked to answer in good faith and to the extent of their knowledge, BARKER LEMAR will not be held accountable for the incompleteness or accuracy of their response.

1.2 HISTORICAL USE INFORMATION AND RECORDS REVIEW

Barker Lemar will review documents that have become available since the previous Phase I was completed.

1.3 SITE RECONNAISSANCE

The objective of the site reconnaissance, or site visit, is to obtain information indicating the likelihood of RECs in connection with the property. The site reconnaissance shall include visual and/or physical observation of the property and the periphery of any structure(s) located on the accessible property to the extent not obstructed by obstacles, including bodies of water, adjacent buildings, ground and/or snow cover, and lack of access. It will include an assessment of accessible common areas expected to be used by occupants or the public (such as lobbies, hallways, utility rooms, recreation area, maintenance and repair areas) and a representative sample of occupant spaces shall be visually and/or physically observed. This generally does not include under floors, above ceilings, or behind walls. Current and past uses of the subject site and geologic, hydrogeologic, hydrologic, and/or topographic conditions shall be noted to the extent that they can be reasonably ascertained during the site reconnaissance.

A cursory review of current and past uses of adjoining properties and surrounding areas shall also be noted to the extent that they can be reasonably ascertained during the site reconnaissance. Adjacent

properties shall not be accessed during the site reconnaissance, and observation of these properties shall be limited to what is readily observable from the subject site or public right-of-ways or from information identified during interviews or record review.

1.4 PHASE 1 ESA SUMMARY REPORT

An updated report will be prepared documenting any changes to the available information since the previous Phase I ESA was completed. The Phase I report will include a summary of findings and recommendations associated with environmental issues that may affect planned development activities.

2.0 LIMITATIONS

Services not set forth in section 1.0, scope of services, are excluded from this proposal. BARKER LEMAR has no responsibility to perform such excluded services and has no liability associated with the non-performance of such services.

3.0 SCHEDULE

BARKER LEMAR will begin these services subsequent to receiving the signed confirmation of notice to proceed, or the Client's verbal authorization followed by the signed notice to proceed. A verbal assessment of initial findings will be provided within 4 to 6 weeks. Barring circumstances beyond BARKER LEMAR control, BARKER LEMAR anticipates completion of Phase I ESA Report within 6 weeks.

4.0 COMPENSATION

BARKER LEMAR agrees to perform the above scope of services on a lump sum by task basis. Total compensation for scope of services proposed: $3,085. Compensation detail per task is shown in table below. Although compensation is shown by task, the compensation for individual tasks are not independent of each other, and elimination of any task or part of a task shall justify a review and potential adjustment of the compensation for the remaining scope of services. BARKER LEMAR invoices will be submitted monthly and will reflect the percentage complete of each task as of the date of the invoice. The compensation for the proposed scope of services is valid for 60 days following the date of this proposal. Payment terms are as described the attached terms and conditions. Should conditions be encountered that require a significant change in the scope of services, compensation, or schedule, BARKER LEMAR will contact Client and proceed only with Client authorization, followed by a signed change order.

5.0 USER PROVIDED INFORMATION

The client (user of the report) shall provide the following information to BARKER LEMAR, if available, to assist in identification of recognized environmental conditions in connection with the property:

- Recorded land title records;
- Lien records and activity and use limitations;
- Specialized knowledge or experience that is material to recognized environmental conditions;
- Relationship of the purchase price to fair market value;
- Commonly known or reasonably ascertainable information about the property that identifies conditions of releases or threatened releases;
- Obvious indicators of contamination at the property.

6.0 EXCLUSIONS

The above fees do not include the following non-scope items:

- Asbestos Abatement Measures;
- Mold surveys;
- Wetlands surveys;
- Cultural Resource Investigations;
- Radon sampling and reporting; and/or
- Intrusive sampling.

If any of these services are required by the client, BARKER LEMAR will provide a separate proposal to cover these services.

7.0 CONDITIONS

The proposed assessment does not include chemical analysis and does not provide analytical data to infer the presence of asbestos, radon, and/or the condition of subsurface soils, surface water, or groundwater at the site. The limitations of this assessment should be recognized. Items to be provided by the client include the right-of-entry to conduct the assessment and access to pertinent documents discussed in this proposal. If there are any restrictions or special requirements regarding this site or assessment, these should be made known to BARKER LEMAR before commencing the assessment work. Diagrams of the site, if available, should be provided to BARKER LEMAR. The client should also provide, if available, title records, any knowledge of environmental liens or activity and use limitations to the property, and any prior environmental reports. A User Questionnaire will be provided to the Client and should be returned at the time of notice to proceed. We have enclosed our Terms and Conditions, which are to be considered part of our proposal.

8.0 GENERAL COMMENTS

The review, conclusions, and recommendations presented in the summary report will be based solely on the information collected as described in this proposal. The client should be aware that a non-intrusive Phase I ESA, such as the one proposed for this site, will not completely eliminate the risk of on-site presence or release of environmental hazards. No environmental site assessment can wholly eliminate uncertainty regarding the potential for recognized environmental conditions in connection with a property. Performance of a Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the potential for recognized environmental conditions in connection with a property, and this practice recognizes reasonable limits of time and cost.

BARKER LEMAR cannot under any circumstances warrant or guarantee that not finding indicators of the release of hazardous materials means that hazardous material releases have not occurred. Additional assessment, including intrusive testing, monitoring, and chemical analyses can reduce risks, but no techniques commonly employed can eliminate these risks altogether. The client should recognize the limitations of this assessment when evaluating the potential environmental risks associated with the subject site.

The proposed work shall be for use solely by the client for the specific application discussed. The summary report shall not be relied upon by, or transferred to, any other party without the express written authorization of BARKER LEMAR ENGINEERING CONSULTANTS.

If this proposal meets your approval, please sign the notice to proceed on the following page and return one copy for our files.

BARKER LEMAR
ENGINEERING CONSULTANTS

CONFIRMATION OF NOTICE TO PROCEED

Proposal No. 185538

The above proposal and attached Terms and Conditions are understood and accepted.

BARKER LEMAR agrees to perform and complete the following services for the Client at its facilities located at 627 N. Adams Street, Carroll, Iowa.

The scope of services is described as Updated Phase I ESA and will include other technical and/or administrative services as outlined in this proposal.

BARKER LEMAR agrees to perform the above scope of services for a total compensation estimated to be $3,085, as shown on the table below. Client will be invoiced for the percent of project completed at the time of the invoice. The compensation for the proposed scope of services is valid for 60 days following the date of this proposal.

If this proposal meets with your approval, sign two originals of this confirmation of notice to proceed, retain one original for Client files, and return one original or copy via email, fax to 515-256-0572, or U.S. mail to BARKER LEMAR Engineering Consultants, 1801 Industrial Circle, West Des Moines, IA 50265.

If you have questions regarding any of the information above please contact us at 515.256.8814.

BARKER LEMAR ENGINEERING CONSULTANTS

Leah Calvert

Leah Calvert, P.G.
Professional Geologist
6/4/2018
lcalvert@barkerlemar.com

Mary Thomsen

Mary Thomsen
CEO
6/4/2018
mthomsen@barkerlemar.com

CITY OF CARROLL

Eric P. Jensen

Mayor, City of Carroll

CHECK HERE FOR ADDITIONAL:

☐ Lien/AUL Search per site ($290/per estimate)
Actual cost plus 15% will be invoiced

Copies: Addressee (2)

BARKER LEMAR
ENGINEERING CONSULTANTS

TABLE 1
COMPENSATION DETAIL
PHASE I ENVIRONMENTAL SITE ASSESSMENT UPDATE
627 N. ADAMS STREET, CARROLL, IOWA
PROPOSAL NO. 185538

SCOPE ITEM	UNITS		RATE		TOTAL COMPENSATION
Mobilization	1	$	380 /mob	$	380
Site Reconnaissance	3	$	95 /hour	$	285
Historical & Regulatory Records*	1	$	420 /each	$	420
EDR Lien Search**	0	$	290 /site	$	If required
Phase I ESA	1	$	2,000 /report	$	2,000
TOTAL POTENTIAL COMPENSATION:				**$**	**3,085**

*Estimate. Fees will be actual cost plus 15%
** Lien search conducted via 3rd party if an abstract or title record search is not available for review.
*** Expedited completion of the Phase I report can be completed for additional cost, if required.

BARKER LEMAR

ENGINEERING CONSULTANTS

TERMS AND CONDITIONS

PAYMENT TERMS

Payment is due upon receipt of our invoice. If payment is not received within 30 days from the invoice date, Client agrees to pay a finance charge on the principal amount of the past due account of 1 ½% per month. If 1 ½% per month exceeds the maximum allowed by law; the charge shall automatically be reduced to the maximum legally allowable. In the event the Client requests termination of the services prior to completion, a termination charge in an amount not to exceed 30% of all charges incurred through the date services are stopped plus any shutdown costs may, at the discretion of Barker, Lemar & Associates, Inc., be made. If during the execution of the services, Barker, Lemar & Associates, Inc., is required to stop operations as a result of changes in the scope of services such as requested by the Client or requirements of third parties, additional charges will be applicable. Client is responsible for all cost of the collection of unpaid accounts, including reasonable attorney fees.

INSURANCE

Barker, Lemar & Associates, Inc. maintains Workers' Compensation and Employers Liability Insurance in conformance with applicable state law. In addition, we maintain Commercial General Liability Insurance with combined Single Bodily Injury and property damage limits of $1,000,000 and Automobile Liability Insurance with combined Single Bodily Injury and property damage limits of $1,000,000. A certificate of insurance can be supplied evidencing such coverage, which contains a clause providing that 10 days written notice be given prior to cancellation. Cost of the above coverage is included in our quoted fees. If additional coverage or increased limits of liability are required, Barker, Lemar & Associates, Inc. will endeavor to obtain the requested insurance and charge separately for costs associated with additional coverage or increased limits.

LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and Barker, Lemar & Associates, Inc., the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants shall not exceed the applicable insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Client agrees that Barker, Lemar & Associates, Inc.'s liability for any damage on account of any error, omission, or other professional negligence by Barker, Lemar & Associates, Inc. will be limited to a sum not to exceed $50,000 or the amount presently due Barker, Lemar & Associates, Inc. for services rendered hereunder, whichever is greater.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Barker, Lemar & Associates, Inc., their respective officers, directors, partners, employees, contractor or sub consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. The mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Barker, Lemar & Associates, Inc. shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and sub contracts with others involved in this project. Barker, Lemar & Associates, Inc. is not liable for consequential damages.

Barker, Lemar & Associates, Inc. shall not be responsible for any acts or omissions of the Contractor, any sub contractor, any entity performing any portions of the Work or any agents or employees of any of them. Barker, Lemar & Associates, Inc. does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

POLLUTION CLAIMS

Client hereby understands and agrees that Barker, Lemar & Associates, Inc. has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Client's premises, or in connection with or related to this project with respect to which Barker, Lemar & Associates, Inc. has been retained to provide professional engineering services. Barker, Lemar & Associates, Inc.'s total liability to Client resulting from any release or threatened release of any hazardous waste, substance, pollutant or contaminant, whether or not directly or indirectly generated by Barker, Lemar & Associates, Inc.'s performance of the work hereunder (including any injury to persons or property or death resulting there from), shall not exceed the amount due Barker, Lemar and Associates, Inc. for services rendered hereunder. This limitation applies to all liabilities, including indemnification liabilities, whether based on contract, tort (including negligence), and strict liability or otherwise. This limitation of liability does not in any way limit or affect Client's obligations to indemnify and hold Barker, Lemar & Associates, Inc., its owners, officers, directors, and employees harmless. This limitation of liability shall not apply to the extent it is held that the loss or damage arose from Barker, Lemar & Associates, Inc.'s gross negligence or intentional misconduct. In addition, Client agrees to limit Barker, Lemar & Associates, Inc.'s liability to the same extent that Client's liability is limited pursuant to its contract with its client (if one exists).

DOCUMENTS

Barker, Lemar & Associates, Inc.'s liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. Barker, Lemar & Associates, Inc. makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by Barker, Lemar & Associates, Inc. under this Agreement. In no event shall Barker, Lemar & Associates, Inc., its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.

STANDARD OF CARE

In providing services under this Agreement, Barker, Lemar & Associates, Inc. shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same or similar locality. Barker, Lemar & Associates, Inc. makes no warranty, express or implied, as to its professional services rendered under this Agreement.

RIGHT-OF-ENTRY

Unless otherwise agreed, Client will furnish right-of-entry on the property for Barker, Lemar & Associates Inc. to make the planned borings, surveys, tests, and/or explorations. Barker, Lemar & Associates Inc. will take reasonable precautions to limit damage to the property caused by our operations, but we have not included in our fee the cost of restoration of damage that may result. If Client desires Barker, Lemar & Associates Inc. to restore the property to its former condition, we will accomplish this, to the extent reasonably possible, and add the cost to the proposed fee.

SITE VISITS

Barker, Lemar & Associates, Inc. shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and Barker, Lemar & Associates, Inc., in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of Barker, Lemar & Associates, Inc.'s work but rather are to allow the Consultant to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, Barker, Lemar & Associates, Inc. shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by Barker, Lemar & Associates, Inc. as Additional Services in accordance with the terms of this Agreement.

Barker, Lemar & Associates, Inc. shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

SAMPLING OR TESTING OF LOCATION

The fees do not include costs associated with surveying of the site or the accurate horizontal and vertical locations of tests, unless otherwise specifically agreed to by the parties. Field test or boring locations described in Barker, Lemar & Associates, Inc.'s report contemplated by these Terms and Conditions or shown on sketches are based on specific information furnished by others or estimates made in the field by our technicians. Such dimensions, depths, or elevations should be considered as approximations unless otherwise stated in the reports contemplated by these Terms and Conditions.

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

SAMPLE DISPOSAL AGREEMENT

Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests unless otherwise regulatory required. Upon written request, Barker, Lemar & Associates, Inc. will retain test specimens or drilling samples for mutually acceptable storage charge and period of time.

DAMAGE TO EXISTING MAN-MADE OBJECTS

It shall be the responsibility of the Client or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects and underground utilities relative to field tests or boring locations. Barker, Lemar & Associates, Inc.'s field personnel are trained to recognize clearly identifiable stakes or markings in the field and without special written instruction to initiate field testing drilling and/or sampling within a reasonable distance of each designated location. If Barker, Lemar & Associates, Inc. is cautioned, advised, or given data in writing that reveal the presence or potential presence of underground or over ground obstructions, such as utilities, Barker, Lemar & Associates, Inc. will give special instructions to its field personnel. As evidenced by Client's acceptance of this proposal, Client agrees to indemnify and save harmless from all claims, suits, losses, personal injuries, death, and property liability resulting from unusual subsurface conditions or damages to subsurface structures, including utility lines, owned by Client or third parties, occurring in the performance of the proposed services, whose presence and, exact locations were not revealed to Barker, Lemar, & Associates, Inc. in writing, and to reimburse Barker, Lemar & Associates, Inc. for expenses in connection with any such claims or suits, including reasonable attorney fees.

DISPOSAL

Barker, Lemar & Associates, Inc. is not, and has no authority to act as, a handler, generator, operator, treated, storer, transporter or disposer of hazardous waste, substances, pollutants or contaminates found or identified at the site. Barker, Lemar & Associates, Inc. shall have no responsibility for the transportation, storage, treatment or disposition of contaminated or potentially contaminated waste materials of any kind, which are directly or indirectly generated from Barker, Lemar & Associates, Inc.'s performance of the work in accordance with these Terms and Conditions. Client shall be responsible for the disposal of any such waste materials.

SAFETY

Should Barker, Lemar & Associates, Inc. provide periodic observations or monitoring services at the job site during construction, Client agrees that in accordance with generally-accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's procedures conducted by Barker, Lemar & Associates, Inc. is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

CONSTRUCTION COST OPINIONS

Opinions of probable cost for the facilities considered and designed under this Agreement are prepared by Barker, Lemar & Associates, Inc. through exercise of its experience and judgment in applying presently available cost data, but it is recognized that Barker, Lemar & Associates, Inc. has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that Barker, Lemar & Associates, Inc. cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from Barker, Lemar & Associates, Inc.'s opinion of probable construction costs.

OWNERSHIP OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations, and estimates, prepared by Barker, Lemar & Associates, Inc., are instruments of service pursuant to these Terms and Conditions and shall be the sole property of Barker, Lemar & Associates, Inc. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned to Barker, Lemar & Associates Inc. upon demand and will not be used by Client for any purpose whatsoever. Client further agrees that under no circumstances shall any documents produced by Barker, Lemar & Associates Inc., pursuant to these Terms and Conditions, be used at any location or for any project not expressly provided for in these Terms and Conditions without the written permission of Barker, Lemar & Associates, Inc. At the request and expense of Client, Barker, Lemar & Associates, Inc. will provide Client with copies of documents created in the performance of the work for a period not exceeding five years following submission of the report contemplated by these Terms and Conditions.

SUCCESSORS AND ASSIGNS

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

SEVERABILITY

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

WAIVER

Barker, Lemar & Associates, Inc.'s waiver of any term, condition, or breach of any term, condition, covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

GOVERNING LAW

These Terms and Conditions shall be governed in all respects by the laws of the State of Iowa. Any litigation to be filed by either party to the contract shall be filed in Polk County, Iowa District Court or Federal Court for the Southern District of Iowa.

ENTIRE AGREEMENT

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