

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
CANE CREEK WATER AND SEWER DISTRICT
BOARD OF DIRECTORS

MEETING DATE: January 18, 2012

SUBJECT: Engineering Agreement with Davis & Floyd
Wastewater Treatment Study

PRESENTER: Marcus Jones, P. E.

ATTACHMENTS: Yes
1. Proposed Agreement with Davis & Floyd

SUMMARY OF REQUEST:

With the selection of Davis & Floyd as the most qualified responding Engineer for the Wastewater Treatment Study, during the Board's December 5, 2011 meeting, staff has negotiated a proposed agreement with Davis & Floyd for \$98,960. The scope of services is to perform the Wastewater Treatment Study for the Cane Creek Water and Sewer District and possible expansion areas into Henderson County.

BOARD ACTION REQUESTED:

Authorize the County Engineer to execute the proposed Wastewater Treatment Study agreement with Davis & Floyd for \$98,960.

Suggested Motion:

I move that the Board authorize the County Engineer to execute the proposed Wastewater Treatment Study agreement with Davis & Floyd for \$98,960.



Engineering
Architecture
Environmental & Laboratory Services

Davis & Floyd, Inc. (hereinafter referred to as "D&F")
Proposal/Agreement

DATE:	Agreement Number:	PROJECT NAME: Wastewater Treatment Study
D&F JOB NUMBER:		PROJECT LOCATION: Henderson County, North Carolina

CLIENT: Cane Creek Water and Sewer District (CCWSD)

CLIENT CONTACT: Marcus Jones, P.E., Director of Engineering
PHONE: 828.694.6526 **FAX:**

AGREEMENT TERMS

SCOPE OF SERVICES (ATTACH ADDITIONAL SHEETS IF NECESSARY):

See Attachment Exhibit A. Project scope shall include the study of the wastewater treatment options for the CCWSD service area and potential future service areas outside the CCWSD, and as generally defined in the Request for Qualifications dated October 10, 2011.

TIME OF PERFORMANCE:

See Attachment Exhibit A

COMPENSATION/TERMS OF PAYMENT (ATTACH ADDITIONAL SHEETS IF NECESSARY):

See Attachment Exhibit A

D&F ADDRESS FOR CORRESPONDENCE/NOTICES:

1305 N. Center Street
Hickory, NC 28601

PHONE: 828.322.2290

FAX:

ATTACHMENTS (AS CHECKED)

SCOPE OF SERVICES **COMPENSATION**

OTHER (SPECIFY) Exhibit B

13 **TOTAL NO. OF ADD'L SHEETS ATTACHED**
(Including General Conditions)

ACCEPTED ON BEHALF OF CLIENT:

SIGNATURE:

DATE:

PRINT NAME & TITLE: Marcus A. Jones, P.E., Dir. of Engineering

GENERAL CONDITIONS ATTACHED
(AS CHECKED):

- PROFESSIONAL SERVICES**
- ENVIRONMENTAL AUDITS AND SITE ASSESSMENTS**
- ENVIRONMENTAL REMEDIATION SERVICES**
- PETROLEUM FACILITY AND STORAGE TANK SERVICES**
- CONSULTING SERVICES**
- OTHER**

SUBMITTED BY DAVIS & FLOYD, INC.

SIGNATURE:

DATE:

PRINT NAME & TITLE: Guy E. Slagle, Jr, Vice Pres.

Exhibit A
Scope of Services
Wastewater Treatment Study
Cane Creek Water & Sewer District

Section 1: Project Scope

The scope of the project is the study of the wastewater treatment options for the CCWSD to include potential future service areas outside the CCWSD as described in the Request of Qualifications issued by the CCWSD dated October 10, 2011 and as further described in the attached Exhibit B Detail Planning Worksheet dated January 5, 2012.

Section 2: Additional Services by Davis & Floyd

If authorized by the OWNER, the ENGINEER will perform additional services of the following types which are not considered normal or customary Basic Services.

- A. Assistance to the OWNER in litigation
- B. Preparation of special documents or reports as may be required by state and federal agencies that may have jurisdiction over the project. This would include but not be limited to environmental assessments, wetland surveys, wildlife surveys, archeological surveys, and pilot studies.

Section 3: Period of Service

- A. The ENGINEER's period of service shall begin upon the authorization of the OWNER for each phase of work and shall continue until the final phase is completed.
- B. If the OWNER request modifications of changes in the scope of the PROJECT, the time of performance, outlined in Paragraph C below, shall be appropriately adjusted.
- C. Time estimates:
 - 1. Study Phase - 180 days

Section 4: Payments to the Engineer

- A. The OWNER shall pay the ENGINEER for Basic Service of the ENGINEER under section 1 a lump sum amount of Ninety Eight Thousand Nine Hundred Sixty dollars (\$98,960) for the scope of work as described in Section 1 of this Agreement.
- C. The OWNER agrees to pay the ENGINEER for services under Section 2, Additional Services at direct labor cost incurred by the ENGINEER times a factor of 3.2 plus expenses.
- D. Progress payments shall be made to the ENGINEER in proportion to the services performed each phase of the Basic Services.
- E. Payment shall be due to the ENGINEER for services and expenses upon receipt of invoice. A service charge of one percent per month will be added on accounts outstanding over 30 days of invoice.

**Exhibit B
Detail Planning Worksheet**

Wastewater Treatment Study

Cane Creek WSD, Henderson County, North Carolina

Date: January 5, 2012

TASK	LABOR REQUIREMENT						TOTAL Hours
	Project Director Hours	Project Manager Hours	Senior Engineer Hours	Project Engineer Hours	Engineer Tech. Hours	Admin. Hours	
	ENGINEERING STUDY PHASE						
TASK 1: Develop Planning Criteria	6	14	6	8	2	2	38
TASK 2: Determine Existing Condition	2	10	19	22	4	0	57
TASK 3: Project Future Condition	2	5	11	21	4	2	45
TASK 4: Develop Alternative Delivery Systems	5	16	28	74	26	0	149
TASK 5: Evaluation of Alternatives	2	6	25	66	36	2	137
TASK 6: Alternative Selection	5	7	5	12	4	0	33
Subtotal Engineering Study Phase	22	58	94	203	76	6	459
FINANCIAL ASSESSMENT PHASE							
TASK 1: Economic Analysis for Regional & Stand-Along Alternative	1	6	12	24	0	1	44
TASK 2: Identify & Evaluate Ownership & Management Alternatives	6	11	10	0	0	0	27
TASK 3: Identify & Evaluate Financing Alternatives	3	10	8	16	4	0	41
TASK 4: Identify & Evaluate Legal & Regulatory Issues	3	12	18	14	0	1	48
TASK 5: Develop Financial Model	8	29	78	12	0	2	129
Subtotal Financial Assessment Phase	21	68	126	66	4	4	289
FINAL REPORT	1	7	10	16	8	5	47
Total Hours	44	133	230	285	88	15	795
Hourly Rate	\$175	\$155	\$130	\$105	\$90	\$60	
Labor Cost Engineering Study Phase	\$3,850	\$8,990	\$12,220	\$21,315	\$6,840	\$360	\$53,575
Labor Cost Financial Assessment Phase	\$3,675	\$10,540	\$16,380	\$6,930	\$360	\$240	\$38,125
Labor Cost Final Report Phase	\$175	\$1,085	\$1,300	\$1,680	\$720	\$300	\$5,260
Expense Allowance							\$2,000
Total Project Budget							\$98,960

Detail Planning Worksheet

Wastewater Treatment Study

Cane Creek WSD, Henderson County, North Carolina

TASK DESCRIPTION	LABOR REQUIREMENT						TOTAL Hours
	Project Director	Project Manager	Senior Engineer	Project Engineer	Engineer Tech.	Admin.	
	Hours	Hours	Hours	Hours	Hours	Hours	
ENGINEERING STUDY PHASE							
TASK 1: Develop Planning Criteria							
1. Develop study objectives, scope, deliverables, & schedule	1	8	4	8	2	1	24
2. Kick-off meeting with Steering Committee (SC)	5	6	2	0	0	1	14
Subtotal	6	14	6	8	2	2	38
TASK 2: Determine Existing Condition							
1. Receive & review previously prepared reports & information	0	2	6	8	2	0	18
2. Coordinate with DENR to determine regulatory requirements	0	0	1	2	0	0	3
3. Compile & review historical population and wastewater flow data	0	1	2	4	2	0	9
4. Review current design & performance of MSD wastewater system	0	2	6	8	0	0	16
5. Review current cost of service for treatment provider (MSD)	0	1	4	0	0	0	5
6. Review current service agreements	2	4	0	0	0	0	6
Subtotal	2	10	19	22	4	0	57
TASK 3: Project Future Condition							
1. Identify future wastewater service areas	0	0	1	2	0	0	3
2. Review future service area population	0	0	1	2	0	0	3
3. Project future wastewater flow & characteristics	0	1	2	2	0	0	5
4. Project future industrial wastewater flow	0	0	1	1	0	0	2
5. Evaluate future discharge requirements w/ DENR	0	0	1	4	0	0	5
6. Conduct work session with CCWSD (Conf. Call)	2	2	2	4	0	0	10
7. Prepare Task Technical Memorandum TM for Task 2 & 3	0	2	3	6	4	2	17
Subtotal	2	5	11	21	4	2	45

Notes:

1. This study is confined to wastewater transmission and treatment. Wastewater collection has been addressed in the Watershed Study

Detail Planning Worksheet

Wastewater Treatment Study

Cane Creek WSD, Henderson County, North Carolina

TASK DESCRIPTION	LABOR REQUIREMENT						TOTAL Hours
	Project Director	Project Manager	Senior Engineer	Project Engineer	Engineer Tech.	Admin.	
	Hours	Hours	Hours	Hours	Hours	Hours	
TASK 4: Develop Alternative Delivery Systems							
1. Develop regional (MSD) & stand-alone service delivery alternatives	0	4	8	16	4	0	32
2. Conduct workshop w/ SC to reduce number of alternatives for evaluation	5	6	0	6	2	0	19
3. Develop preliminary design & layout for each alternative	0	4	12	40	16	0	72
4. Develop phasing strategy for each alternative	0	0	4	8	4	0	16
5. Review alternatives with CCWSD (Conf. Call)	0	2	4	4	0	0	10
Subtotal	5	16	28	74	26	0	149
TASK 5: Evaluation of Alternatives							
1. Prepare capital cost estimates for each alternative	0	1	8	24	24	0	57
2. Prepare O&M cost estimates for each alternative	0	1	4	16	8	0	29
3. Perform net present value (NPV) cost analysis	0	1	2	8	0	0	11
4. Perform non-economic alternative evaluation	0	1	6	4	0	0	11
5. Develop alternative ranking	1	0	1	2	0	0	4
6. Prepare Task TM for Task 4 & 5	1	2	4	12	4	2	25
Subtotal	2	6	25	66	36	2	137
TASK 6: Alternative Selection							
1. Review alternative ranking w/ Steering Committee	5	6	4	12	4	0	31
2. TAC selects <i>regional & stand-alone alternative</i> for further evaluation	0	1	1	0	0	0	2
3. Public meeting to present findings of Engineering Study	0	0	0	0	0	0	0
Subtotal	5	7	5	12	4	0	33

Detail Planning Worksheet

Wastewater Treatment Study

Cane Creek WSD, Henderson County, North Carolina

TASK DESCRIPTION	LABOR REQUIREMENT						TOTAL Hours
	Project Director	Project Manager	Senior Engineer	Project Engineer	Engineer Tech.	Admin.	
	Hours	Hours	Hours	Hours	Hours	Hours	
FINANCIAL ASSESSMENT PHASE							
TASK 1: Economic Analysis for Regional & Stand-Alone Alternative							
1. Develop 20 year economic model for transmission & treatment cost	0	4	8	12	0	0	24
2. Develop unit cost for transmission	0	0	0	2	0	0	2
3. Develop unit cost for treatment	0	0	0	2	0	0	2
4. Prepare Task TM	1	2	4	8	0	1	16
Subtotal	1	6	12	24	0	1	44
TASK 2: Identify & Evaluate Ownership & Management Alternatives							
1. Conduct work session with Steering Committee	6	6	0	0	0	0	12
2. Identify ownership & management responsibilities for each alternative	0	2	6	0	0	0	8
3. Evaluate economic impact of ownership & management alternatives	0	2	4	0	0	0	6
4. TAC selects preferred ownership & management approach	0	1	0	0	0	0	1
Subtotal	6	11	10	0	0	0	27
TASK 3: Identify & Evaluate Financing Alternatives							
1. Review & update capital improvement plan	0	2	8	16	4	0	30
2. Identify available alternatives for capital financing	1	4	0	0	0	0	5
3. Develop capital financing strategy w/CCWSD	2	4	0	0	0	0	6
Subtotal	3	10	8	16	4	0	41
TASK 4: Identify & Evaluate Legal & Regulatory Issues							
1. Identify legal & regulatory issues associated w/ stand-alone alternative	2	6	4	0	0	0	12
2. Identify permit & environmental issues	0	0	2	6	0	0	8
3. Identify industrial pretreatment issues	0	1	2	0	0	0	3
4. Evaluate economic impact of legal & regulator issues	0	2	4	0	0	0	6
5. Prepare Task TM for Task 2, 3, & 4	1	3	6	8	0	1	19
Subtotal	3	12	18	14	0	1	48

Detail Planning Worksheet

Wastewater Treatment Study

Cane Creek WSD, Henderson County, North Carolina

TASK DESCRIPTION	LABOR REQUIREMENT						
	Project Director	Project Manager	Senior Engineer	Project Engineer	Engineer Tech.	Admin.	TOTAL
	Hours	Hours	Hours	Hours	Hours	Hours	Hours
TASK 5: Develop Financial Model							
1. Receive & review CCWSD Enterprise Fund budget & financial audit	0	2	4	0	0	0	6
2. Allocate operational cost to functional areas & customer classes	0	0	6	0	0	0	6
3. Conduct work session with CCWSD	0	6	4	0	0	0	10
4. Develop 10 year revenue & expense budget for Enterprise Fund	0	2	16	4	0	0	22
5. Develop 10 year revenue & expense model	0	2	16	4	0	0	22
6. Develop & evaluate revenue options & rate schedules	2	8	12	0	0	0	22
7. Conduct work session with Steering Committee	5	6	8	0	0	0	19
8. Prepare Task TM	1	3	12	4	0	2	22
Subtotal	8	29	78	12	0	2	129
FINAL REPORT PHASE							
1. Prepare draft report & review w/Steering Committee	1	6	6	12	8	2	35
2. Prepare final report	0	1	4	4	0	3	12
Subtotal	1	7	10	16	8	5	47

Detail Planning Worksheet

Wastewater Treatment Study

Cane Creek WSD, Henderson County, North Carolina

ITEM			Allowance
1. Travel			\$1,700
2. Reproductions			\$200
3. Prints			\$0
4. Telephone			\$0
5. Postage			\$100
TOTAL			\$2,000

DAVIS & FLOYD, INC.
GENERAL CONDITIONS for
Professional Services

PROPOSAL/AGREEMENT NO.: 1

NAME OF CLIENT: Cane Creek WSD

PROJECT NAME: Wastewater Treatment Study

These General Conditions are a part of each agreement between Davis & Floyd, Inc. and its client for the performance of professional services. In these General Conditions, Davis & Floyd, Inc. (hereinafter referred to as "D&F") is the party performing the services, the party for whom the services are performed is called "Client", and the written agreement between the parties, including these General Conditions, is called "this Agreement."

Section 1: Services by D&F

1.1 Scope of services; required standard of care.

D&F will perform the services described in this Agreement and in any work release documents or change orders which are issued under this Agreement and signed by both parties. D&F will not have any obligation to perform services unless expressly described in this Agreement. In performing the services, D&F will exercise the degree of care and skill ordinarily exercised by members of the same profession currently performing the same or similar services in the same geographic area. Upon notice to D&F and by mutual agreement between the parties, D&F will correct those services not meeting such a standard without additional compensation. Consistent with the standard of care, D&F will endeavor to perform its professional services in accordance with applicable federal, state, and local laws, regulations and ordinances which are in effect on the date of execution of this Agreement.

1.2 Estimates. Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by D&F will represent its professional judgment based on its experience and available information. However, Client recognizes that D&F has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, D&F does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by D&F. If the Client wishes greater assurance as to probable construction costs, Client shall employ an independent cost estimator.

1.3 Hazardous materials. D&F's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any contaminated non-hazardous, hazardous, toxic, radioactive or

infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). Unless provisions have been incorporated into this Agreement to provide for the handling of Oil or Hazardous Materials, the discovery or reasonable suspicion of Oil or Hazardous Materials or hazardous conditions at a site where D&F is to perform services shall entitle D&F to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.

1.4 Other contractors. D&F shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. D&F's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. D&F shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities. Client shall notify all contractors in writing that D&F has no duty or authority and therefore no responsibility, as stated herein. The client agrees to include in all contracts with construction contractors an exclusion of the construction contractors' right to make a direct claim against D&F, in a form acceptable to D&F.

1.5 Health and safety. D&F shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. D&F shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage D&F from voluntarily addressing health or safety issues while at Client's site, in the event D&F does address such issues by making observations, reports, suggestions or otherwise, D&F shall nevertheless have no liability, responsibility, or affirmative duty under this Agreement or by law arising on account thereof.

1.6 Litigation support. D&F will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event D&F is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse D&F for its costs and compensate D&F at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

1.7 Confidential information. Although D&F generally will not disclose without Client's consent information provided by Client or developed by D&F in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in D&F's possession, or is obtained from third parties), D&F shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. D&F shall notify Client (in advance, except in emergency) of any such disclosure.

1.8 No warranty. NO WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE OR WILL BE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

1.9 Certifications. Any certifications or representations which D&F may be required to make shall be limited to the existence of conditions which D&F could, within the scope of its services, reasonably ascertain, and shall be based on D&F's then-current knowledge, information, and belief.

1.10 No construction phase services. If D&F's services under this Agreement do not include Project observation, or review of contractors' performances, or any other Construction Phase Services, and that such services will be provided by the Client or others then the Client assumes all responsibility for interpretation of Contract Documents used for the construction of the Project and for construction observation or review and waives any claims against D&F that may in any way be related thereto.

Section 2: Responsibilities of Client

2.1 Client requirements. Client, without cost to D&F, shall:

- (a) Designate to D&F in writing a person to act as Client's representative with respect to the services
- (b) Provide or arrange for access and make all provisions for D&F to enter any site where services are to be performed
- (c) Furnish D&F with all available information pertinent to the services
- (d) Furnish D&F with all relevant information about site conditions property descriptions, zoning, deed and other land use restrictions and with property, boundary, easement, right-of-way and other special surveys, including establishing relevant reference points
- (e) Furnish D&F data prepared by others including without limitation exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site or hydrographic surveys
- (f) Furnish D&F environmental assessments, audits, investigations and impact statement and other relevant environmental or cultural studies as to the site and adjacent areas
- (g) Furnish D&F with all approvals, permits and consents from government authorities and others as may be required for performance of the services
- (h) Notify D&F promptly in writing of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Materials, and of any other conditions requiring special care, and provide D&F with any available documents describing the nature, location and extent of such materials, contamination or conditions
- (i) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices D&F has expressly agreed in writing to give
- (j) Inform the owner of the site (if different from Client) of any contamination by or release of Oil or Hazardous Materials at the site.
- (k) Unless this Agreement expressly provides otherwise, D&F shall be entitled to rely on the accuracy and completeness of information given to it by the Client and/or others on behalf of Client pursuant to Paragraphs 2.1 (c), (d), (e), (f), (g), (h) and (j), immediately above.

2.2 Hazards. Client represents and warrants that it does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials, except as expressly disclosed to D&F in writing.

2.3 Confidentiality. Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to D&F and agrees not to disclose it or otherwise make it available to others without D&F's express written consent.

2.4 Documents.

- (a) All reports, notes, calculations, data, drawings, estimates specifications and other documents (collectively "Documents") and electronic files prepared by D&F are instruments of D&F's professional services and not products and shall remain D&F's property. Documents or electronic files provided to Client are for Client's use only for the purposes disclosed to D&F and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or for any other project or purpose for which they were not prepared, without D&F's express written consent. Any reuse thereof without written consent shall be at the Client's or the user's sole risk and without liability or legal exposure to D&F or their independent contractors or consultants.
- (b) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies). Electronic files in electronic media format of text, data, graphics, or of other types that are furnished by D&F to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- (c) Because electronic files can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days after receipt thereof, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. D&F shall not be responsible to maintain electronic files after acceptance by Client.
- (d) When transferring electronic files, D&F makes no representations as to long-term compatibility, usability, or readability of such files.

Section 3: Changes; Delays; Excused Performance

3.1 Changes.

- (a) Unless this Agreement expressly provides otherwise, D&F's compensation and time for rendering services represent its professional estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the conditions and circumstances under which the services will be performed, and based on its anticipation of the orderly and continuous progress of the Work and of the Project through completion of the Work. Unless specific periods of time or specific dates for providing services are specified in this Agreement, D&F's obligation to render services hereunder will be for a period which may reasonably be required, using due and reasonable diligence consistent with sound professional practices, for the completion of said services.
- (b) As services are being performed, conditions may change or circumstances outside of D&F's reasonable control (including changes of laws and Client directed changes) may develop which would require D&F to expend additional costs, effort and time to complete the services, in which case D&F will notify Client and an equitable adjustment will be made to D&F's compensation and time for performance.
- (c) If Client fails to give prompt written authorization to proceed with any task or phase of services after completion of the immediately preceding task or phase, or if D&F's services are delayed through no fault of D&F, in each case for a period of 90 days or longer, D&F may, after giving seven days written notice to Client, suspend services under this Agreement. An equitable adjustment to D&F's compensation and time for performance will be made upon Client's authorization or directive for D&F to resume performance of its services.
- (d) If D&F's services are suspended or delayed in whole or in part by Client, or if D&F's services are extended by actions or inactions of Client or its contractors for more than 90 days through no fault of D&F, D&F shall be entitled to an equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by D&F in connection with, among other things, such delay or suspension and reactivation, and the fact that the time for performance has been revised.
- (e) In the event conditions or circumstances require the services to be suspended or terminated, D&F shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

- 3.2 **Force majeure.** D&F shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority timely to review or to approve the services or to grant permits or approvals, or any other cause beyond D&F's reasonable control, and D&F's compensation and schedule shall be equitably adjusted to compensate it for any additional costs and delays it incurs due to any Force Majeure event.

Section 4: Compensation

- 4.1 **Rates.** Unless otherwise agreed in writing, D&F shall be compensated for its services at its standard rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the services.
- 4.2 **Invoices.** D&F may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 30 days of invoice date, Client shall pay interest from invoice date until payment is received at the rate of 1.0% per month or, if less, the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it shall notify D&F in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 4.3 **Suspension, etc.** If payment is not received within 45 days of the invoice date, D&F may upon 7 days' notice suspend or terminate the services and receive compensation for services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 4.4 **Collection.** Client shall reimburse D&F for its costs and expenses (including reasonable attorneys' and witnesses' fees) incurred in any litigation for collection under this Agreement in which D&F obtains a judgement in its favor.
- 4.5 **Taxes, etc.** Unless expressly agreed in writing, D&F's fees do not include any taxes, excises, fees, duties or other government charges related to the goods or services provided under this Agreement, and Client shall pay such amounts or reimburse D&F for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption, it shall provide D&F with a valid exemption certificate.

Section 5: Insurance; Dispute Resolution; Allocation of Risk

- 5.1 **Insurance.** D&F will maintain workers compensation insurance as required by law; employers liability, commercial general liability and automobile liability insurance each with coverage of \$1 million per occurrence; and professional liability insurance with coverage of \$1 million per claim; and upon request will furnish insurance certificates to Client. D&F will include the Client as additional insured on the comprehensive general liability and automobile liability insurance. D&F will purchase additional insurance if requested by Client, provided the insurance is reasonably available from carriers acceptable to D&F and Client reimburses D&F for its cost.
- 5.2 **Disputes.** If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve under the authority of a principal from each party the claim or dispute equitably through negotiation within a period of time no longer than 60 days from the time the claim or dispute is presented in writing to the other party. If, after the 60 days, good faith negotiations fail to achieve a resolution, the parties shall seek resolution of the claim through nonbinding mediation under the rules and auspices of the American Arbitration Association. The parties shall a) limit the submission of evidence to the mediator to a period of no more than 30 days following the demand for mediation, and b) commence mediation no more than 30 days thereafter. If the parties cannot reach a settlement within 15 days following commencement of the mediation proceedings, or such other reasonable time frame as the parties may agree to, the parties may a) mutually agree to subject the claim to binding arbitration in accordance with the rules of the American Arbitration Association, or b) pursue any legal remedy then available. However, prior to or during negotiations, mediation, or arbitration, either party may initiate litigation that would otherwise be barred by a statute of limitations, and D&F may pursue any property liens or other rights it may have to obtain security for the payment of its invoices.
- 5.3 **Suspension.** If the project is suspended for more than 30 calendar days in the aggregate, D&F 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 90 calendar days in the aggregate, D&F, at its option, may terminate this Agreement upon giving notice in writing to the Client.

If the Client fails to make payments when due or otherwise is in breach of this Agreement, D&F may suspend performance of services upon 7 calendar days' notice to the Client. D&F shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

5.4 Termination. The Client may terminate this Agreement at any time with or without cause upon giving D&F 30 calendar days prior written notice. D&F may terminate this Agreement upon giving the Client 30 calendar days prior written notice for any of the following reasons:

(a) Breach by the Client of any material term of this Agreement, including but not limited to compensation provisions.

(b) Transfer of ownership of the project by the Client to any other persons or entities not a party to this Agreement without the prior written agreement of D&F

(c) Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and charges for any additional services required because of such changes.

(d) The Client shall within 30 calendar days of termination pay D&F for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

5.5 Indemnification. The Client and D&F agree to indemnify, hold harmless and defend each other from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which the first party may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any

person, destruction or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any other damages claimed by third parties (collectively, "Damages") to the extent such Damages are caused directly by the negligence or willful misconduct of second party.

If the negligence or willful misconduct of both parties (or a person or entity for whom each is liable) is a cause for Damages, the loss, cost or expenses shall be shared between the parties in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

5.6 Indemnification regarding hazardous materials. Client acknowledges that D&F does not have any responsibility for preexisting Oil and Hazardous Materials at the site, or for their previous detection, monitoring, handling, storage, transportation, disposal or treatment. Client agrees to indemnify, hold harmless and defend D&F against all Damages arising out of or related to any Oil or Hazardous Materials located at or removed from the site, including Damages such as costs of response or remediation arising out of the application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability or Damages arising out of D&F's performance or non-performance of its obligations under this Agreement; provided, however, that Client shall not be required to indemnify, hold harmless or defend D&F to the extent such Damages are caused directly by D&F's sole negligence or willful misconduct.

5.7 Limitation of liability. D&F's liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, or any other theory of liability, shall be limited to \$100,000 or the total compensation received by D&F from Client under this Agreement, whichever is greater. In no event shall either party be liable for special, indirect, incidental or consequential damages including commercial loss, loss of use, or lost profits, even if advised of the possibility of such damages.

5.8 Employee injury. Client agrees not to implead or to bring an action against D&F based on any claim of personal injury or death occurring in the course or scope of the injured or deceased person's employment with D&F and related to the services performed under this Agreement.

5.9 Defense. Any defense of D&F required to be provided by Client under this Agreement shall be with counsel selected by D&F and reasonably acceptable to Client.

Section 6: Miscellaneous Provisions

6.1 Notices. Notices between the parties shall be in writing and shall be hand delivered or sent by certified mail or acknowledged telefax.

6.2 Assignment, etc. Neither Client nor D&F shall assign or transfer any rights or obligations under this Agreement, except that D&F may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and D&F, without the express written consent of both parties. The relationship between Client and D&F is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.

6.3 Governing law. This Agreement shall be governed by and construed in accordance with the laws in effect at the Jobsite or as specified in the Supplemental Conditions (if applicable).

6.4 Headings. The headings in this Agreement are for convenience only and are not a part of the agreement between the parties.

6.5 Entire agreement, etc. The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by D&F, unless D&F signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings which comprise this Agreement, the order of precedence shall be as follows: (1) Proposal/Agreement, (2) Supplemental Conditions (if applicable), (3) these General Conditions, (4) Scope of Services, and (5) Other exhibits and attachments (if applicable).

6.6 Severability. Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. D&F and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.

6.7 Waiver. A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.

6.8 Survival. All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility and liability between Client and D&F shall survive the completion of the services hereunder and the termination of this Agreement.

6.9 Third party beneficiaries. 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 D&F. D&F's services under this Agreement are being performed solely for the client's benefit, and no other entity shall have any claim against D&F because of this Agreement or the performance of services hereunder.

6.10 Statute of limitations. The statute of limitations would commence to run not later than the relevant date of substantial completion of the Work.