



Division of Public Works .  
1000 South Houser St.  
Muscatine, IA 52761

Recycling Center and Transfer Station

Phone (563) 263-9689  
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## MEMORANDUM

To: Mayor and City Council Members

Cc: Gregg Mandsager, City Administrator

From: Laura Liegois, Solid Waste Manager

Date: March 14, 2016

Recycling Center  
Transfer Station  
Landfill Operations  
Refuse Collection

### Re: Muscatine County Landfill Survey Control, Site Map Update, and Cover Verification

#### **Introduction:**

At the February 2016 In-Depth meeting, Tim Buelow of Barker Lemar Engineering provided information on several topics in regards to the Muscatine County Landfill. One of the details was to have new survey point controls and the site map updated for the landfill facilities.

#### **Background:**

The Muscatine County Landfill has not had a new site map update in numerous years. Due to numerous projects and changes in mapping, it is time for the Muscatine County Landfill to have a new site map update. This process will allow for new survey control points to be placed on site and around the landfill facilities. Barker Lemar Engineering will be working with Martin and Whitacre Surveyors and Engineers to do the survey work for the site map updating.

Along with the updating site map work, this proposal is also for verification of a closed area that was considered closed by landfill rules that were "Pre 1989" Iowa landfill rules. Iowa DNR in the fall of 2015 requested documentation of soil borings from the testing of the older sections closed during this time period. Staff was able to produce documents that detailed verification from the City Engineer at the time, that stated the areas were closed. However, the soil boring test documents for the closed areas were not found. Iowa DNR is requiring that this area be retested for verify the area is closed with adequate two foot of soil cover, as was required during that time frame of the landfill rules.

#### **Recommendation to approve professional services with Barker Lemar Engineering:**

Staff recommends that the request to approve professional services with Barker Lemar Engineering for survey control, site map, and cover verification be approved.



March 2, 2016

Ms. Laura J. Liegois, Solid Waste Manager  
Muscatine Recycling Center and Transfer Station  
1000 South Houser Street  
Muscatine, Iowa 52761

**Re: Survey Control, Site Map Update, and Pre 1989 Cover Thickness Verification– Revision 1  
Muscatine County Sanitary Landfill  
Permit No. 70-SDP-02-75P  
Proposal No. 154013**

Dear Laura:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide consulting services to the Muscatine County Solid Waste Management Agency (Client) described as Survey Control and Site Map Update at the Muscatine County Sanitary Landfill (Landfill).

## **1.0 PROJECT UNDERSTANDING**

During the past year of surveying and working with the current site map of the Landfill provided by HLW, BARKER LEMAR has noticed inconsistencies with the survey control network and other documented data for the Landfill; these include locations of monitoring wells as well as the overall topography. These discrepancies are likely linked to the survey control network. For example, during the first survey in September 2014, BARKER LEMAR concluded that one of the main survey benchmarks is over waste and has likely settled. Further, prior to the September 2015 survey, additional survey information was received from HLW. During the subsequent survey, the survey point was located by BARKER LEMAR; however, it was determined to be compromised.

Resolving the survey control issue and converting to a known coordinate system will assist in maintaining survey accuracy, modernizing the coordinate system, and providing an accurate map for use in planning the future of the Landfill. In addition, this will provide the opportunity to have the control set by a registered land surveyor, which is required by Iowa's solid waste regulations.

Once the conversion has been completed, the current AutoCAD files (current site map) will be transitioned to the new coordinate system. This will allow interaction with other systems such as hand-held GPS, county or city GIS, Google Earth, or mapping applications for iPad or other devices that are currently unavailable with the local coordinate system. The site topography of the current site map will be updated using a combination of aerial LiDAR and ground-based GPS survey.

It should be noted that BARKER LEMAR is leading this project, Martin & Whitacre Surveyors and Engineers, Inc. (Martin-Whitacre) from Muscatine, Iowa is the subconsultant performing the survey control work, and Aeroview, Inc from Wever, Iowa (Aeroview) is the subconsultant performing the aerial survey.

## 2.0 SCOPE OF SERVICES

Based on the above information, BARKER LEMAR proposes the following Scope of Services by Task:

1. Pre-Survey Preparation
2. Initial Survey Event and Report
3. Final Survey Event
4. Update Site Map and Report
5. Pre 1989 Closure Area Thickness Verification

### **Task 1 – Pre-Survey Preparation**

BARKER LEMAR will perform the following services:

- A. Review and select current control points to be used for conversion and/or to determine temporary control point locations.
- B. Select six physical features to be used to verify the conversion. It is anticipated that existing monitoring wells or other historic, permanent features will be selected.
- C. Coordinate Iowa One Call and obtain a One Call ticket for each selected proposed point.
- D. Identify locations for new, permanent control points.
- E. Mobilize to the site and set temporary control points, if determined to be necessary in Task 1.A, and mark the approximate location of each new, permanent control point to be set by Martin Whitacre.
- F. Clearly label and flag the six physical features identified in Task 1.B so Martin Whitacre can easily locate and survey their locations.

### **Task 2 – Initial Survey Event and Report**

Martin Whitacre will perform the following services:

- A. Control Points: A 39-inch FENO Survey Marker will be utilized for each permanent control point. Each survey marker will have an aluminum cap stating the control point number and the landfill name. A post with a survey marker sign will be placed at each control point.
- B. Horizontal Control Survey: All new control points and a limited number of existing control points will be surveyed. Horizontal control will be determined using Iowa RTN, a minimum of 2 shots for 3 minutes each, at different times of day. All final positions will be reported in NAD 83, Iowa State Plane South Zone, U.S. Survey feet.
- C. Vertical Control Survey: A digital level loop will be used to establish elevations beginning and ending at the nearest county control point. A series of closed digital level loops will be used to determine the vertical positions of new and old monuments. Vertical positions will be referenced in NAVD88 datum.
- D. Control Conversion: The existing control points included in the survey will be analyzed to create a conversion between the current and local coordinate system and the Iowa State Plane coordinate system. Additionally, six physical features will be surveyed, relative to the Iowa RTN, to provide verification of the conversion.

- E. Horizontal and Vertical Control Report: A final report will be prepared that will include an Iowa Professional Land Surveyor stamp, coordinate system description, equipment used, monument coordinates and descriptions, and the process description.

**Task 3 – Final Survey Event**

BARKER LEMAR will perform the following services, except as noted:

- A. Coordinate with Aeroview to schedule a survey event where both BARKER LEMAR and Aeroview personnel can be on site.
- B. Set ground targets in the updated coordinate system established in Task 2. Ground targets are needed to maintain accuracy for an aerial survey.
- C. Survey ground, top of casing, and top of protective casing of all (37) existing monitoring wells.
- D. Survey all known site features that are able to be located (i.e. cleanouts, valves, culverts, manholes, piping, buildings, roads, fences, gates, power poles, groundwater underdrains, etc.). Discussion with on-site staff will be utilized to locate hard-to-find or unknown features.
- E. Place T-posts with marker sleeves (markers) at monitoring wells, cleanouts, groundwater underdrains, and manholes for identification and/or protection purposes. One marker will be placed at each cleanout, groundwater underdrain, and manhole; 3 markers will be placed at each monitoring well; and 4 markers will be set at each monitoring well cluster. For purposes of this proposal, it is assumed that 200 markers will be placed. If additional markers are required, they will be invoiced at \$23 each per additional marker.
- F. Aeroview will perform the following services:
  - 1. Aerially survey approximately 200 acres of Landfill property. This is best scheduled late fall or early winter after foliage has died and before any snowfall.
  - 2. Provide a point file, surface contour file, and orthographic photo of the site.

**Task 4 – Update Site Map and Reporting**

BARKER LEMAR will perform the following services:

- A. The control conversion information established in Task 2 will be used to convert the existing site map.
- B. The survey information gathered in Task 3 will be used to update and add features to the site map. If necessary, the data will be supplemented with publically available LiDAR data.
- C. The site map will be updated to BARKER LEMAR AutoCAD Standards.
- D. The Department of Natural Resources (DNR) will be notified that the criteria pursuant to 567 Iowa Administrative Code (IAC) 113.8(2) "a"(3) and (4) has been satisfied. The notification will include a cover letter and a copy of the certification sealed by an Iowa Licensed Land Surveyor.

**Task 5 – Pre-1989 Closure Areas Cover Thickness Verification**

In accordance with DNR correspondence dated January 26, 2016 addressed to Patrick Burk and Special Provision 10a of the current sanitary disposal permit, the Client is required to perform cover thickness verification of approximately 18 acres of landfill that was closed prior to 1989. Ninety-nine verification locations will be determined on a 100-foot grid and staked using GPS. The locations will have a hollow stem push probe driven a minimum of 2 feet below the ground surface and the thickness noted as sufficient or insufficient. After verification, the locations will be backfilled with soil and/or bentonite. A

report will be prepared to document the process and cover thickness observed. This task will be performed in for a lump sum of \$4500 as previously discussed with the client.

BARKER LEMAR will perform the following services:

- A. Cover Thickness Verification
- B. Cover Thickness Report

**3.0 LIMITATIONS**

Services not set forth in Section 2.0, 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.

**4.0 SCHEDULE**

BARKER LEMAR will begin these services upon receiving the signed Confirmation of Notice to Proceed, or the Client’s verbal authorization followed by the signed Notice to Proceed. Barring circumstances beyond BARKER LEMAR’s control, including but not limited to weather, Client review times, and subconsultant schedule, BARKER LEMAR anticipates completing all tasks within 90 days of receiving a signed notice to proceed.

**5.0 COMPENSATION**

The compensation for the proposed scope of services is shown in Table 1 and is valid for 60 days following the date of this proposal. Our invoices will be submitted monthly and will reflect the percentage complete of each task for lump sum items, actual quantities for unit priced items, and actual labor and expense for other items as of the date of the invoice.

Item	Compensation
Lump Sum Tasks (1 – 4)	\$19,500
Estimated Time & Expense for 200 markers (\$23 Each)	\$4,600
Lump Sum (Task 5)	\$4,500
<b>Total</b>	<b>\$28,600</b>

**6.0 HEALTH AND SAFETY**

This proposal assumes that Level D safety precautions are adequate. Level D safety attire generally consists of a normal work uniform including safety shoes, hard-hat where required, and appropriate eye protection. The costs will be adjusted accordingly if site-specific conditions require more stringent health and safety procedures.

**7.0 CONDITIONS**

Items to be provided by the Client include the right-of-entry to conduct the surveys. The Client is responsible for making BARKER LEMAR aware of any restrictions or special requirements regarding the site and its required activities prior to the commencement of the fieldwork. We have enclosed our Terms and Conditions that should be considered part of this proposal.

## CONFIRMATION OF NOTICE TO PROCEED

Proposal No. 154013

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

**BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR)** agrees to perform and complete the following Services for the Client at its facility located at Muscatine, Iowa.

The Scope of Services is described as Survey Control, Site Map Update, and Pre 1989 Closure Area Cover Thickness Verification, 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 an estimated compensation of \$28,600. The Client will be invoiced for the percentage complete of each task for lump sum items and actual quantities for unit priced items 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 one of the authorized signers below at 515.256.8814, or 800.707.4248.

FOR BARKER LEMAR ENGINEERING CONSULTANTS



Dan J. Jensen, E.I.

*Project Manager*

Date: 3-2-16

Email: djensen@barkerleamar.com

FOR MUSCATINE COUNTY SOLID WASTE MANAGEMENT  
AGENCY

\_\_\_\_\_  
Laura Liegois, Solid Waste Manager

Date:

Email:



Brian L. Rath, P.E.

*Project Manager*

Date: 3-2-16

Email: brath@barkerleamar.com

Copies: Addressee (via email)  
File  
Electronic File

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## TERMS AND CONDITIONS

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### 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 1/2% per month. If 1 1/2% 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 contaminants 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.