



STORMWATER MANAGEMENT COMMISSION

November 27, 2021

To: Stormwater Management Commission

From: Kurt Woolford, Executive Director

Re: Hey & Associates, Inc. General Engineering Services
Final Request for Additional Funding

ACTION REQUESTED: APPROVAL

Hey & Associates, Inc. is currently performing various engineering and related tasks on eighteen projects (see list below) for SMC under our Professional Services Agreement (Agreement) executed on April 26, 2018. The Agreement is for a not-to-exceed amount of \$220,100 (T&M basis) through April 6, 2022. The current projects total \$151,448, leaving a balance of \$68,652.

Staff requests approval to expand Hey & Associates current Service Request #18 to achieve shovel-ready status and construction in Spring 2022. The estimated (not-to-exceed) total cost for this Service Request is **\$177,000**. Reimbursement of DCEO grant engineering expenses will be submitted in 2022. SMC's approved FY22 budget includes \$2,013,000 for Engineering Services available on December 1, 2021.

Your approval is requested to increase the not-to-exceed amount in the Agreement to **\$328,448** to cover the current and additional project costs. We have been very pleased with Hey & Associates performance to date on the professional engineering services rendered and have every reason to believe this high level of effort will continue.

Any questions concerning the Professional Services Agreement, or the listed projects may be directed to Kurt Woolford, Executive Director at 847-377-7720 or kwoolford@lakecountyil.gov.

SERVICE TASK	SMC Staff	VALUE	BALANCE
Contract Authorization Value		\$35,000.00	\$35,000.00
Service Request 1: Jaime Phase III 2018 M&M	GW	(\$8,619.59)	\$26,380.41
Service Request 2: Jaime Phase I-II 2018 M&M	GW	(\$4,962.10)	\$21,418.31
Service Request 3: Vegetation Management WH & BP	EH	(\$15,581.45)	\$5,836.86
Service Request 4: Jaime Phase IV Wetland Delineation	GW	(\$2,491.25)	\$3,345.61
Contract Amendment #1		\$23,100.00	\$26,445.61
Service Request 5: WRF Lake Michigan Restoration Site	MW	(\$4,457.50)	\$21,988.11
Service Request 6: Route 120 Drain Tile Study	KW	(\$3,948.20)	\$18,039.91
Service Request 7: Strawberry Condo Wetland Report	KW	(\$3,000.00)	\$15,039.91
Contract Amendment #2		\$32,000.00	\$47,039.91
Service Request 8: HPCC PDM Design	MW	(\$7,500.00)	\$39,539.91
Service Request 9: Jaime Phase III 2019 M&M	GW	(\$9,221.50)	\$30,318.41
Service Request 10: Jaime Phase I-II 2019 M&M	GW	(\$7,748.02)	\$22,570.39
Service Request 12: Jaime Phase III Restoration Seed.	GW	(\$4,584.56)	\$17,985.83
Contract Amendment #3		\$50,000.00	\$67,985.83
Service Request 11: Strawberry Condos Berm Design	KW	(\$20,500.00)	\$47,485.83
Service Request 13: Jaime Phase III 2020 M&M	GW	(\$9,244.05)	\$38,241.78
Contract Amendment #4		\$40,000.00	\$78,241.78
Service Request 14: Jaime Phase I-II 2020 M&M	GW	(\$7,740.45)	\$70,501.33
Service Request 15: Strawberry Condos Drainage Imp.	EH	(\$13,500.00)	\$57,001.33
Service Request 16: Jaime Phase I-II, North Chicago, IL: 2020 Mitigation Area Monitoring & Management Project	GW	(\$8,350.00)	\$48,651.33
Service Request 17: Skokie River Floodplain Enhancement Project Wetland Mitigation Bank Concept	KW	(\$19,999.33)	\$28,652.00
Contract Amendment #5		\$40,000.00	\$68,652.00
Service Request 18 (expanded): DCEO Engineering Services - Dady Slough Wetland and Floodplain Infrastructure Improvements	KW	(\$177,000.00)	(\$108,348.00)

PROFESSIONAL SERVICES AGREEMENT AMENDMENT #6
between
LAKE COUNTY STORMWATER MANAGEMENT COMMISSION
and
HEY AND ASSOCIATES, INC.
for
DCEO ENGINEERING SERVICES

This is an Agreement, by and between the LAKE COUNTY STORMWATER MANAGEMENT COMMISSION, 500 Winchester Road, Suite 201, Libertyville, Illinois 60048 (hereafter called SMC) and HEY AND ASSOCIATES, INC., 26575 W. COMMERCE DR., SUITE 601, VOLO, IL 60073 (hereinafter called CONSULTANT).

PURPOSE

SMC wishes to engage the CONSULTANT to provide professional engineering services and related technical services for project design, plan & specifications, and permit/grant application development, surveying services, and H&H analysis. Additional services may include geotechnical and/or structural engineering services, construction and/or natural areas monitoring and management, and supplemental engineering services, as needed.

SERVICES

The CONSULTANT has provided cost estimates for each work assignment for budgetary purposes. The actual costs charged by the CONSULTANT for the work assignment will be on a time and material basis for the work performed per the CONSULTANT'S current Standard Charges. Travel and vehicle costs from the CONSULTANT'S office will be included in the charges to SMC.

COMPENSATION

1. The SMC agrees to pay the CONSULTANT for the work assigned to the CONSULTANT on a time and material basis with a total not to exceed **\$328,448.00**. The fees and costs charged to the SMC for work performed will be in accordance with HEY AND ASSOCIATES, INC. Standard Charges as described in EXHIBIT A.
2. Invoicing by the CONSULTANT shall be on a monthly basis. Payments by the SMC shall be made in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

TERMS AND CONDITIONS

1. The Agreement for Professional Services shall be effective through **April 6, 2022**.
2. The SMC may make, by written Order and agreed to by the CONSULTANT, changes in the scope of work if such changes are within the general scope of the Agreement.
3. The SMC or CONSULTANT may at any time, terminate this Agreement in whole or in part by written or verbal notice confirmed in writing. Upon notice of termination, the SMC will assume responsibility for services rendered and costs incurred prior to notification and any reimbursable expenses and reasonable costs relating to the termination. All services, property, publications, or materials provided during or resulting from the Agreement shall be the property of the SMC.
4. This Agreement shall be governed by and construed according to the laws of the State of Illinois.
5. CONSULTANT will maintain INSURANCE coverage as required by Lake County Purchasing for Professional, Comprehensive, General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with generally accepted legal and business requirements. Certificates evidencing such coverage must be provided to SMC.

6. This Agreement shall not be assigned, altered or modified without the express written consent of both parties except as provided in paragraph 3 above. The CONSULTANT shall not reject any reasonable change proposed in the best interest of the project by SMC. This Agreement supersedes any and all other Agreements, oral or written, between the parties hereto with respect to the subject matter hereof,

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, as evidenced by the signatures of their duly authorized representative as affixed below.

**LAKE COUNTY STORMWATER
MANAGEMENT COMMISSION**

HEY AND ASSOCIATES, INC.

Kurt Woolford
Executive Director

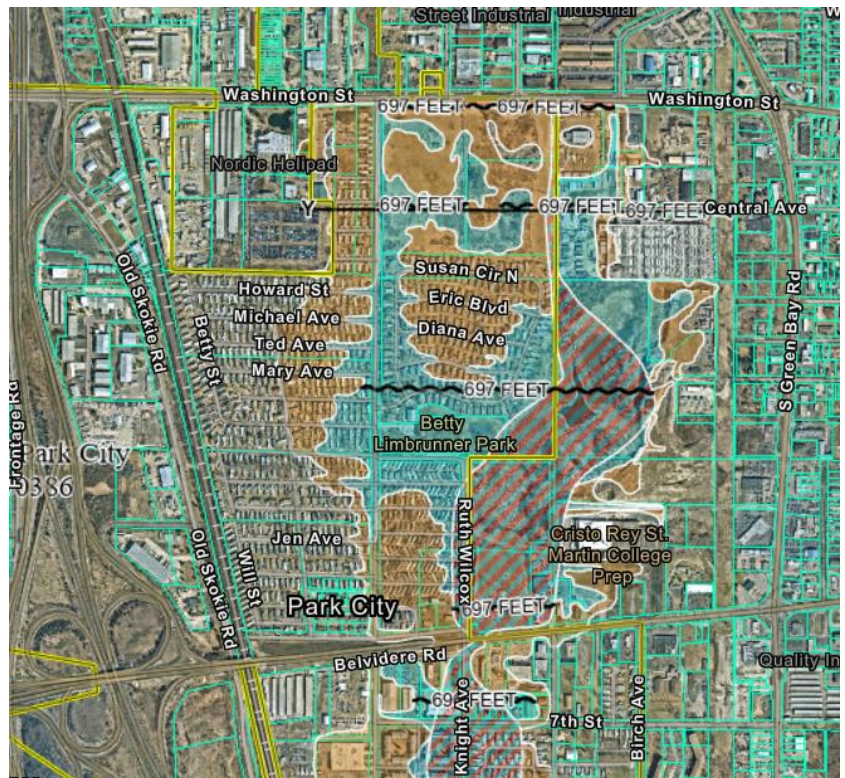
Thomas Polzin, P.E., CFM, CPESC
President

Date: _____

Date: _____

PROPOSAL

DADY SLOUGH WETLAND AND FLOODPLAIN ENHANCEMENTS ECOLOGICAL, ENGINEERING, AND PERMITTING SERVICES



SUBMITTED BY

Hey and Associates, Inc.
Engineering, Ecology and Landscape Architecture

26575 W. Commerce Dr., Suite 601
Volo, Illinois 60073
847-740-0888

August 27, 2021

FOR THE

**LAKE COUNTY STORMWATER MANAGEMENT
COMMISSION**

**PROJECT NO. 18-0112
SERVICE REQUEST 18**

Hey and Associates, Inc.

Engineering, Ecology and Landscape Architecture

MILWAUKEE, WISCONSIN

*26575 W. COMMERCE DR., SUITE 601
VOLO, ILLINOIS 60073
PHONE (847) 740-0888*

CHICAGO, ILLINOIS

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Hey and Associates, Inc.

Engineering, Ecology and Landscape Architecture

MILWAUKEE, WISCONSIN

26575 W. COMMERCE DR., SUITE 601

VOLO, ILLINOIS 60073

PHONE (847) 740-0888

CHICAGO, ILLINOIS

August 27, 2021

Mr. Kurt Woolford. P.E.
Lake County Stormwater Management Commission
500 W. Winchester Road, Suite 201
Libertyville, Illinois 60048

Re: Proposal for Dady Slough Wetland and Floodplain Enhancements

Dear Mr. Woolford,

Hey and Associates, Inc. (Hey) is pleased to submit this proposal for ecological, engineering, and permitting services for wetland and floodplain enhancements at the Dady Slough, located north of Illinois Route 120 In the Cities of Park City and Waukegan, Illinois. The project will take place on all or portions of parcels with PINs 0830112007, 0830113001, 0830100009, 0830100011, 0830101005, and 0830101006.

We appreciate the opportunity to propose on this project and look forward to our continued relationship with the Lake County Stormwater Management Commission (LCSMC). Please do not hesitate to contact us if you require any additional information (dkraft@heyassoc.com 847-740-0888).

Sincerely,



Vince Mosca, CWS
Vice-President – Principal Ecologist



Dave Kraft, PE, CFM
Principal Civil Engineer

Hey and Associates, Inc.

Engineering, Ecology and Landscape Architecture

MILWAUKEE, WISCONSIN

*26575 W. COMMERCE DR., SUITE 601
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COVER LETTER

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STANDARD TERMS AND CONDITIONS EXHIBIT A

PROJECT APPROACH / SCOPE OF SERVICES

The following outlines our proposed scope of work, including project assumptions.

A. Project Initiation and Data Review

1. **Existing Data Collection and Review.** We will request relevant existing data from LCSMC, City of Park City, City of Waukegan, and other project partners. Data may include previous plans and design reports for the project area, anecdotal information related to the site and project area, plats of survey, available topographic surveys, design and permit documents for adjacent properties, and hydrologic and hydraulic modeling for the watershed that the project falls in. We will also assemble available County and other available spatial data. We will review the collected data for use in design and project execution.
2. **Kick-Off Meeting.** We will arrange and attend a kick-off meeting with the United States Army Corps of Engineers (USACE), LCSMC, officials from Park City and Waukegan, and other relevant project partners. We will prepare a meeting agenda and provide meeting notes following the meeting. The meeting will confirm project goals and input to be used in concept and preliminary design tasks.
3. **Base Plan Set-up.** We will prepare a base plan for the project, utilizing information collected in task A1, as well as information described under Task B.

B. Site Inventory and Analysis

1. **Field Reconnaissance.** We will perform a thorough field reconnaissance of the proposed project area to review existing conditions and identify any special or unusual constraints. We will photograph the project area and immediate surroundings to capture current conditions for reference throughout the planning process. Key staff will spend time in the field identifying and evaluating the existing resources that fall under their expertise. Some field verifications of existing utilities on the site may be conducted to corroborate those shown on previously provided mapping.
2. **Wetland Delineation and JD.** We will supplement and finalize the previously performed wetland delineation within the project area applying the general procedures detailed in the 1987 USACE Wetland Delineation Manual and the 2010 Regional Supplement-Midwest Region. We will submit for a USACE wetland jurisdictional determination (JD) and attend a field meeting. We will collect the wetland flagging using survey-grade GPS equipment.
3. **Limited Tree Inventory.** We will perform a limited tree inventory within the project area. The inventory will consist of identifying potential trees (12 inches and greater in diameter at breast height) that may be recommended for preservation as part of the overall project approach. This inventory will not be comprehensive to all trees within the identified properties. Key trees will be tagged, and GPS location will be recorded along with species, size, and condition. We have one (1) day of field work budgeted for this task. Prior to completing the field work we will coordinate with LCSMC and project partners to establish criteria for trees to be preserved.
4. **Topographic Survey.** We will perform a topographic survey of key site features, preliminarily focused on existing structures and utilities and grades at key property boundaries. This task will not include full topographic survey of wetland and pond areas. It is anticipated that Lake County GIS 1-foot contour mapping will be suitable for the remainder of the site for design outside of areas where this survey is collected. We have budgeted two days of field survey for this task. A boundary survey is not included as part of this task, and we assume any legal or boundary survey tasks will be handled directly by LCSMC. This task will also include a design-level JULIE locate.
5. **Trail Corridor Survey.** We will perform a limited GPS based survey of the proposed trail corridor as satellite signal allows for use in trail design. We have two days of GPS-based survey budgeted for this task.

6. **Geotechnical Assessment.** We will coordinate a geotechnical investigation (using our subcontractor) to support the planning and design of the project. We will collect up to four (4) borings up to 20 feet deep. Boring information will be used for design tasks such as drainage structure and trail design, but also be used to assess soil strata and potential dredging and excavation strategy.
7. **Sediment Sampling and Testing.** During the Geotechnical Assessment we will obtain two (2) sediment samples, one in the northern portion of the site and one in the southern portion of the site. We will deliver the samples to a laboratory for testing and assessment to determine potential soil contaminants and provide support information for excavated material to be used in design and bidding to determine disposal requirements. We will prepare necessary Illinois Environmental Protection Agency (IEPA) forms for documentation of material for use in bidding the project and ultimately disposal of the material.
8. **Updated Existing Conditions Hydrologic and Hydraulic Modeling.** We understand that available hydrologic and hydraulic information downstream of the project area has recently been prepared for drainage improvements south of Illinois Route 120. We will recover that data and update the modeling with more detailed information collected as part of this task to produce an existing conditions hydrologic and hydraulic model for project design and permitting.
9. **Project Meeting 1.** Upon Completion of Tasks A and B, we will meet with LCSMC to review data and discuss any issues that may have arisen in collection and review of project data.

C. Develop Programming and Concept Development

1. **Wetland Storage Concept Design and Cost Opinion.** Upon completion of initial data gathering and project information tasks, we will develop an initial concept plan for the wetland and floodplain improvements component of the project. The primary goals will focus on maximizing gravity drained flood storage within the identified project area while providing function improvement to the wetland complex. We will also develop a concept level cost opinion for these project components.
2. **Trail and Access Concept and Cost Opinion.** Upon completion of the Wetland Storage Concept Design, we will also develop a concept trail alignment within the project area. The concept will have preliminary trail alignment and key grades, along with recommended surfacing. We will also develop a concept level cost opinion for these project components.
3. **Project Meeting 2.** We will meet with LCSMC and other key project partners to review and discuss the concepts and perform one (1) round of concept refinement as needed to address partner input.
4. **Project Meeting 3 (Regulatory Pre-Application Meeting).** Upon general concurrence on a concept plan, we will arrange and attend a pre-application meeting with USACE and other regulatory authorities to discuss the project and attempt to confirm regulatory requirements or needed design refinements. We will prepare meeting minutes for distribution following this meeting
5. **Project Design Assumptions.** Key project design assumptions for all design tasks include:
 - a. The proposed trail will be a multi-use trail around the wetland complex and will not include any new parking areas or other access amenities such as shelters or latrines.
 - b. No modifications to the existing outlet structure located at the southwest corner of the existing wetland complex are planned.
 - c. No work will take place downstream of the existing wetland complex outlet.
 - d. All property owner coordination and easement and land acquisition tasks will be performed by LCSMC directly.
 - e. Structural Engineering will not be required for this project or will be by separate proposal if determined to be necessary.

D. Design Development/Preliminary Engineering

1. **Design Development/Preliminary Engineering Documents.** We will finalize the design, based on the preferred Concept Plan of the proposed improvements. We will prepare the Design Development/Preliminary Engineering Documents including existing conditions information, plan view drawings, supplemental drawings, outline specifications, and preliminary restoration plan.
2. **Cost Opinion.** We will prepare a summary of estimated quantities and an estimate of probable cost.
3. **Preliminary Proposed Conditions Hydrologic and Hydraulic Modeling.** We will update the enhanced existing conditions hydrologic and hydraulic modeling to represent the preliminary proposed design and provide a summary of modeled benefits and also confirm that relevant regulatory requirements can be met.
4. **Regulatory Summary.** We will prepare a summary confirming expected regulatory requirements for the project, building from the scope outlined below for permitting.
5. **Project Meeting 4.** We will meet with the LCSMC and key partners to review the Design Development/Preliminary Engineering Documents and solicit initial feedback.

E. Construction Documents

1. **Construction Plans, Specifications, and Cost Opinion – 75% Completion.** We will prepare final construction documents including plans, specifications, summary of quantities, and a final opinion of probable cost will review standard LCSMC “front end” documentation (provided by LCSMC) and recommend revisions if warranted. We will generally rely on standard IDOT pay items and specifications where practical to simplify the bidding process and provide supplemental Special Provisions as required. We will initially provide these documents at an approximately 75% level of completion for review. It is anticipated that this set of documents will largely be sufficient for permit submittals.
2. **Project Meeting 5.** We will meet with the LCSMC and key partners to review the 75% Construction Documents and solicit initial feedback.
3. **Construction Plans, Specifications, and Cost Opinion – 100% Completion.** We will incorporate LCSMC and project partner feedback, as well as initial regulatory feedback to prepare final Construction Documents for bidding.

F. Permitting

1. **Pre-permit correspondence.** We will communicate by email, phone and/or a pre-application meeting with pertinent approval agencies and/or entities during the concept and design development stages to inform design.
2. **Permit submittals.** We will prepare required permit submittal documents and support for the planned project. We will submit permit documents to the respective regulatory agencies. We will communicate with you as necessary to discuss review letters received from regulatory agencies. We will make one (1) set of authorized revisions to appropriate permit documents and resubmit to the respective agencies. It is assumed that all permitting fees will be paid directly by LCSMC. Permits not noted below are specifically excluded from this contract. We assume that permits or coordination may be needed from the following:
 - 1) Watershed Development Permit (Assumed to be issued by the City of Waukegan or LCSMC)
 - 2) IEPA for NPDES Permitting (we assume that the area of disturbance will exceed one acre) including a Notice of Intent (NOI) and preparation of a Stormwater Pollution Prevention Plan (SWPPP). We will also file a Notice of Termination following project completion.
 - 3) Illinois Department of Natural Resources – Office of Water Resources (IDNR-OWR) Part 3708 Permit for activities within the floodway. We assume that detailed hydrologic and hydraulic modeling will not generally be required for this submittal, as the project will result in no fill within the floodway and an

expected reduction in floodplain elevations. It is also possible that the final project may qualify for the Regional Permit 3, and no submittal will be required.

- 4) State and Federal Threatened and Endangered Species Consultation.
- 5) IDNR – State Historic Preservation Office for cultural resources.
- 6) If it is determined to be required by ordinance, or if the LCSMC desires to reflect the proposed conditions, we will prepare and submit to FEMA for a Letter of Map Revision, reflecting the proposed project floodplain and floodway.
- 7) USACE Section 404 Permitting. At this time, we believe the project should qualify for the Regional Permit 5 or an equivalent Nationwide Permit.
- 8) Depending on the funding sources, it is possible that Interagency Wetland Policy Act of 1989 coordination with IDNR may be required. We will provide this coordination if necessary.
- 9) If the USACE determines that the project does not qualify for a Regional or Nationwide Permit, a 404 Individual Permit and IEPA 401 Water Quality Certification may be required. This may include a variety of anti-degradation surveys, studies, and sampling which will be determined upon coordination with USACE and IEPA.

G. Bidding and Construction Phase

1. **Pre-Bid Meeting.** We will attend a pre-bid meeting for the project.
2. **Bidder Question Response.** We will assist, as requested, with response to bidder inquiries and requests for information.
3. **Bid Evaluation.** We will also assist, as requested, with evaluation of bids and issue a summary of bids.
4. **Pre-Construction Meeting.** We will attend a pre-construction meeting for the project.
5. **Construction Phase Services as Requested.** We can, at your request, assist you in administering your construction contract with the Contractor. We assume all construction means and methods and work site safety are the responsibility of the Contractor. Services may include, but may not be limited to:
 - a. Issuing interpretations or clarifications
 - b. Preparing recommendations for construction change orders
 - c. Reviewing submittals and shop drawings
 - d. Reviewing testing procedures and data provided by independent testing
 - e. Performing and reporting on construction observation
6. **As-Built Survey and Record Drawings** We will perform as-built survey of key project components and prepare record drawings documenting key project features. This will not include full topography of the wetland area grading or full trail corridor documentation. Only items related to regulatory approvals, such as drainage structures, utilities, key grading locations, ADA accessible features, and other items affecting approvals will be documented.

FEE SUMMARY

The following table summarizes our fees for the major tasks previously outlined. A copy of our standard conditions is included after the fee table.

Task	Description	Fee	Fee Type
A	Project Initiation and Data Review	\$5,000	Lump Sum
B	Site Inventory and Analysis	\$33,000	Lump Sum
C	Design Programing and Concept Development	\$11,500	Lump Sum
D	Design Development/Preliminary Engineering	\$20,000	Lump Sum
E	Construction Documents	\$37,000	Lump Sum
F	Permitting	\$20,000	NTE
F	Permitting (USACE/IEPA Individual Permit and Associated Tasks)	\$30,000	NTE
G	Bidding and Construction Phase	\$25,000	NTE
Total		\$177,000	

Compensation

Profession	Hourly Bill Rate
Principal	\$195-205
Engineering	
Senior Civil Engineer	\$170
Civil Engineer I to V	\$105-145
Engineering Designer	\$150
Water Resources Specialist I to IV	\$95-125
Engineering Technician I to IV	\$95-140
Lake and Survey Services Manager	\$140
Ecological Services	
Senior Project Scientist	\$160
Environmental Services Manager	\$140
Environmental Scientist I to V	\$90-130
Environmental Intern	\$45
Landscape Architecture	
Senior Landscape Architect	\$165
Landscape Architect I to V	\$105-145
Landscape Designer	\$100
Erosion Control	
Senior Erosion and Sediment Control Specialist	\$165
Erosion and Sediment Control Specialist	\$90
Subsurface Drainage Services	
Subsurface Drainage Services Manager	\$120
Design Support	
CAD Manager	\$100
CAD Technician	\$95
GIS Specialist	\$85
Administration	
Senior Administrator	\$110
Accounting/Marketing Administrator	\$70
Administrative Assistant	\$65
Expert Testimony	
Rates to be determined on per-project basis	

Reimbursable Expense

Reimbursable expenses shall be reimbursed at cost plus an 8% administrative service charge. Such expenses shall include, but are not necessarily limited to travel, reproduction, shipping/delivery, aerial photographs, phone and other communication charges, consultants and subcontractor fees, equipment and supply costs related to the execution of the project. Fixed reimbursable expense costs are as follows:

Travel	\$.65/mile
Copies	\$.20/page
Software/Digital Resource Charge	\$100.00/project
ATV Usage	\$ 40.00/hour
ATV Discing, Herbicide, Spraying, Mowing	\$ 45.00/hour
Boat Usage	\$ 75.00/hour
Chain Saw Usage	\$ 20.00/hour
Additional Plotting, B & W	\$.90/sq. ft.
Additional Plotting, Color	\$ 2.75/sq. ft.
Additional Plotting, Mylar	\$ 4.50/sq. ft.
Flow Meter	\$ 50.00/day
GPS Rover	\$350.00/day
Total Station	\$100.00/day
Unmanned Aerial Reconnaissance	Per Project

Insurance

Throughout the duration of the project, Hey will procure and maintain the following insurance:

Liability	Limits of Liability
Workers' Compensation and Employer's Liability	\$ 500,000 each incident
Commercial General Liability	\$ 2,000,000
Professional Liability	\$ 2,000,000
Automobile Liability	\$ 1,000,000

Within the limits of this insurance, Hey agrees to hold the Client harmless from and against loss, damage, injury or liability arising directly from the negligent acts or omissions of employees, agents, or subcontractors of Hey.

Client will limit any and all liability, claim for damages, losses, cost of defense, or expenses to be levied against Hey on account of any design defect, error, omission, or professional negligence to a sum not to exceed the amount of Hey's fee under this agreement. Should the Client require other types of insurance coverage, limits in excess of the above limits, and/or certificates naming any other(s) than the Client as additional insured parties, Hey's cost of obtaining such coverage, limits, or certificates shall be reimbursable by the Client.

Billing

Billings shall be on a monthly basis and are payable upon receipt. An additional charge of 1½ percent per month (18% per annum) shall be applied to any balance unpaid more than 30 days beyond date of invoice. Client shall pay any attorney's fees, court costs or other expenses incurred collecting delinquent accounts.

Hey and Associates Inc. (Hey), with seven (7) days written notice, reserves the right to suspend or terminate work under this agreement on any account that is past due. The Client's obligation to pay for the work contracted is in no way dependent upon the Client's ability to obtain financing, zoning, permit approval by governmental or regulatory agencies, or upon the Client's successful completion of the project. The rates presented herein are effective for the period January 1, 2021 through December 31, 2021.

Limitation of Costs

Hey will not be obligated to continue performance or incur costs beyond the estimated costs unless the Client agrees in writing to a revised cost estimate.

Client's Responsibilities

Client shall arrange for access to and make all provisions for Hey to enter upon private and public property as required for Hey to perform services under this Agreement. Client shall provide Hey with all existing available information regarding this project as required. Hey shall be entitled to rely upon information and documentation provided by the Client or consultants retained by the Client in relation to this project, however Hey assumes no responsibility or liability for their completeness or accuracy.

Cost Opinions

Any cost opinions or project economic evaluations provided by Hey will be on the basis of experience and judgment, but, because Hey has no control over market conditions or bidding procedures, we cannot warrant that bids, construction cost, or project economics will not vary from these opinions.

Standard of Care

The standard of care for all services performed by Hey under the agreement will be the care and skill ordinarily used by members of Hey's profession practicing under similar circumstances at the same time and in the same locality. Hey makes no warranties, express or implied, under this Agreement or otherwise, in connection with Hey's services.

Means & Methods

Hey will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the construction of the subject project(s).

Mutual Indemnification

Subject to the foregoing provisions, Hey agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, employees and agents from and against any liabilities, damages and costs (including reasonable attorneys' fees and costs of defense) arising out of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused, during the performance of Services under this Agreement, by the negligent acts, errors or omissions of Hey or anyone for whom Hey is legally responsible, subject to any limitations of liability contained in this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Hey, its officers, directors, employees and agents from any liabilities, damages and costs (including reasonable attorney's fees and costs of defense) to the extent caused by the negligent acts, errors or omissions of the Client, the Client's contractors, consultants or anyone for whom Client is legally liable.

Copyright Indemnification

To the fullest extent permitted by law, Client shall indemnify and hold harmless Hey from and against any and all costs, losses and damages (including but not limited to all attorney fees and charges, all court or arbitration or other dispute resolution costs, and any time spent by Hey in defense of any such claims) resulting from any claims brought against Hey alleging copyright, trademark, or patent infringement or any other cause of action or regulatory decision resulting from Hey's use of, or reliance on, the design, plans and specifications provided by the Client for the Project. This provision shall survive the completion of the services provided under this Agreement.

Consequential Damages

To the fullest extent permitted by law, Client and Hey waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

Termination

Either party may terminate this Agreement upon not less than seven (7) days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the terminating party. Hey may terminate this Agreement for its convenience and without cause by providing not less than seven (7) days written notice. If Client terminates this Agreement for its convenience and without cause, Client agrees to compensate Hey for services performed prior to the termination, together with Reimbursable Expenses incurred and costs attributable to termination, including the costs attributable to Hey's termination of consultant agreements and authorized Additional Services.

Dispute Resolution

Client and Hey agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. If such mediation is unsuccessful in resolving a Dispute, then such Dispute shall be resolved by a court of competent jurisdiction.