

**AMENDMENT NO. 1 AND RENEWAL OF CONTRACT FOR CONSULTING SERVICES**

This contract amendment and renewal for consulting services for Brownfields development projects environmental consulting services ("Contract") is entered into this 21st day of June, 2022, by and between The City of Oklahoma City, a municipal corporation ("City"), and Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc. ("Consultant").

**WITNESSETH:**

**PROJECT NO. MC-0656-A  
BROWNFIELDS DEVELOPMENT PROJECTS ENVIRONMENTAL CONSULTANT  
SERVICES**

**WHEREAS**, the City intends to engage the services of the Consultant to assist City staff in preparing site assessment and remediation documents related to Brownfields redevelopment projects (for Fiscal Year 2022-2023), which receive assistance from the City's Brownfields Program funds and which may include Brownfields Cleanup Revolving Loan Funds, Community-wide Hazardous Assessment Grants and Site-Specific Hazardous Substance and Cleanup Grants ("project"); and

**WHEREAS**, the Consultant shall provide professional services for the project in accordance with this Contract, including the scope of work incorporated herein and as set forth in Exhibit A attached hereto; and

**WHEREAS**, it is the intent of the City (at its option) to renew this Contract annually for a period of two years, until June 30, 2023; and

**WHEREAS**, the Consultant has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects, engineers and planners adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, and November 18, 1986, which Resolution, with its amendments, is made a part of this Contract by reference.

**WHEREAS**, subsequent to the execution of the original contract, it has been determined to a Term of Contract section to the Contract to allow the Consultant to complete pending work orders that are issued prior to the Contract expiration, after the contract has expired; and

**WHEREAS**, the original contract must be amended to incorporate the aforementioned Term of Contract section; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained hereinafter relating to the project, the parties hereto do hereby agree to amend and renew the contract to read as follows:

1. **Definitions.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a

different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

- A. *City Engineer* The officer of the City in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects.
- B. *Term of Contract* The term of this Contract shall run from the date of execution through June 30, 2023.
- C. *Beneficiary Trusts* Any public trust of which the City of Oklahoma City is a beneficiary.
- D. *City* The City of Oklahoma City, a municipal corporation.
  - a. The City of Oklahoma City Planning Department's Brownsfields Program Manager (Chris Varga – 297-1639) or the Brownsfields Coordinator (Amanda Alewine- 297-1766)

2. **Basic Services.** The Consultant is hereby engaged and employed by the City to perform in accordance with good consulting practices and in the best interest of the City all of the work as set out herein and including Exhibit A, which is attached hereto and incorporated as a part of this Contract, including but not limited to the following:

- A. Phase I/II Environmental Site Assessments (ESAs)
- B. Phase III Cleanup Plans
- C. Public Meetings
- D. Cleanup Oversight

3. **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City unless such work or service is first approved in writing by the City's Brownsfields Coordinator.

4. **Compensation.** The City agrees to pay the Consultant, as compensation for professional services listed in Paragraph 2. **Basic Services** above and **EXHIBIT A – SCOPE OF WORK** attached hereto and incorporated herein, at the following rates:

**Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc. HOURLY RATES**

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Senior Environmental Consultant	\$150
Project Manager	\$125
Senior Geologist	\$125
Environmental Engineer	\$125
Certified Industrial Hygienist (CIH)	\$110

Data Entry Clerk	\$105
Demolition Engineer	\$100
Asbestos Designer	\$100
Environmental Scientist/Planner	\$90
Demolition Field Manager	\$75
Operations & Maintenance Technician	\$75
Staff Scientist / Hydrologist / Planner	\$75
Asbestos Inspector	\$75
GIS Technician	\$75
Draftsman - CADD	\$75
Environmental Technician	\$70
Administrative Support	\$55

Note:

Work conducted through the Oklahoma Corporation Commission (OCC) Indemnity Fund will be invoiced using a lump sum basis negotiated per site with OCC.

**ANALYTICAL LABORATORY**

<u>PARAMETER</u>	<u>METHOD</u>	<u>UNIT COST</u>
<u>HYDROCARBON ANALYSIS</u>		
BTEX	8021	\$35
BTEX & Naphthalene	Mod 8260	\$65
PAH	8270	\$82
PAH	8310 HPLC	\$92
TPH (GRO & DRO)	8015	\$68
BTEX and TPH Combined (Gasoline)	Mod 8021/8015	\$45
BTEX and TPH Combined (Diesel)	Mod 8021/8015	\$68
BTEX/TPH-G/Naphthalene(Gasoline)	8260/OA1	\$62
BTEX, TPH-Gas & Diesel (Diesel, Used Oil)	Mod 8021/8015	\$70
MTBE	8260B	\$52
Oil & Grease	1664	\$52
Naphthalene (Gasoline or Diesel)	8260	\$48
TPH (DRO)	8015 Mod	\$36
TPH (GRO)	8015 Mod	\$36
Methanol / Ethanol	8015	\$78
Treated Water (BTEX, Phenols, pH, TOC) Effluent	8021, 9066, 9045C,9060	\$93
Terracore Samplers	5035	\$12
Dry Weight Prep (soil)		\$5
<u>ORGANIC PARAMETERS</u>		
OA1 (GRO/BTEX/MtBE)	8021/8015	\$55
OA2 (DRO)	OA2	\$45
VOC's Full Scan	8260	\$85
VOC's Full Scan + GRO	8260	\$95
SVOC's	8270	\$207

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TOXICITY CHARACTERISTIC LEACHING PROCEDURE

TCLP Metals TOX Characteristics (Leaching Procedures)	1311/6010/7470	\$145
Metals (RCRA 8)	6010/7470	\$87
Lead	6010	\$20
Volatiles	8260	\$90
Individual Volatile	624, 8260	\$46
BNA's (SVOC's)	8270	\$207
Individual Semi-Volatile	625, 8270	\$115
Pesticides/Herbicides	8081/8151	\$175
TCLP Extraction Fee	1311	\$46
ZHE Extraction Fee	1311	\$46

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SEMI VOLATILES

Organochlorine Pesticides	8081	\$135
Organophosphorus Pesticides	8141	\$202
PCB's	8082	\$65
Pesticides/PCB's	8081/8082	\$125
BNA's (SVOC's)	8270	\$207
PAH	8270	\$75
Herbicides	8151	\$175

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METALS

Metals (RCRA)	6010/7470	\$84
ICP (Individual)	6010/200.7	\$14
ICP/MS (individual)	6020/200.8	\$18
Mercury	7470/245.1	\$24
Metals Digestion (1 digestion per 20 samples)	NA	\$0
Lab Filtering for Dissolved Metals	NA	\$21
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CONVENTIONAL WATER PARAMETERS

Acetone	8260	\$58
Alkalinity	2320	\$21
BOD	SM5210B	\$35
Chloride	9056/300.0	\$21
Chromium Hexavalent	7196/3500Cr-D	\$30
Chromium Hexavalent (soil)	7196A	\$104
COD	410.4	\$24
Color	110.2	\$17
Cyanide	9012/335.3	\$45
Extractable Organic Halogen (EOX)	9023	\$104
Fluoride	9056/300.0	\$24
Hardness	2340	\$18
Iron	6010	\$15
Ammonia Nitrogen	350.1	\$21
Nitrate	9056/300.0	\$21

Nitrite	9056/300.0	\$25
ORP	2580	\$18
Oil & Grease	9071	\$52
TKN	351.2	\$22
pH	9045C	\$10
Total Phenol	9066/420.2	\$28
Total Phosphorus	4500/365.2	\$22
Purgeable Halocarbon	8260	\$75
Extracted TOX	9023	\$92
Dissolved Solids (TDS)	2540	\$18
Settleable Solids	2540	\$18
Suspended Solids	2540	\$18
Total Solids	2540G	\$18
Volatile Solids	2540	\$21
Specific Conductance	9050/120.1	\$18
Sulfate	9056/300.0	\$18
Sulfide	9030B	\$45
Sulfite	4500	\$24
MBAS	5540	\$60
TOC	9060	\$29
TOX	9020/5320B	\$105

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CERCLA

TAL Metals	6010/7470	\$190
TCL Semi Volatiles	8270	\$225
TCL Volatiles	8260	\$140

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PRIORITY POLLUTANTS

Priority Pollutant Metals		\$210
Priority Pollutant Full Scan VOC's		\$530
Priority Pollutant Full Scan		\$830

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RCRA

Flashpoint	1010	\$22
Ignitability	D4982	\$22
Corrosivity	9040A	\$6
Sulfide Total	9030B	\$45
Cyanide Total	9012	\$35
RCRA (8) Metals	6010/7470	\$87
Paint Filter Test	9095	\$12

HAZARDOUS WASTE MEDIA SAMPLES

LBP Bulk Sample - Standard (5-day) Turnaround	Each	\$15
ACM Samples - Standard (5-day) Turnaround	Each Layer	\$12

**Prices quoted reflect 5 to 7 working day turnaround.**

**RUSH Turnaround Multipliers:**

**1 Working Day**

**2**

2 Working Days	1.5
3-4 Working Days	1.25

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### HOLLOW STEM AUGER DRILLING SERVICES

<u>SERVICE</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
Rig Mobilization	Event	\$400
Support Vehicle	Day	\$100
H.S. Auger Drilling with Continuous Sampling or 5' Sample Intervals	Foot	\$23
Shelby Tube	Each	\$40
Split Spoon Sampling	Each	\$23
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<u>2" Wells</u>		
Well Installation/Materials	Foot	\$23
DOT Drums (used)	Each	\$65
Stick Up completion - 4"x60" steel, 3'x3'x3" pad & lock	Each	\$375
Stick Up completion - 4"x60" steel, 3'x3'x3" pad & lock (4) 3" ballards & locks	Each	\$375
Flush Mount completion	Each	\$175
Soil Boring Plugging	Foot	\$18
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<u>4" Wells</u>		
Well Installation/Materials	Foot	\$26
DOT Drums (used)	Each	\$65
Stick Up completion - 6"x60" steel, 3'x3'x3" pad & lock	Each	\$400
Stick Up completion - 6"x60" steel, 3'x3'x3" pad & lock (4) 3" ballards & locks	Each	\$600
Flush Mount completion	Each	\$175
Soil Boring Plugging	Foot	\$18
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Concrete or Asphalt Coring	Hour	\$150
Bedrock Coring	Foot	\$50
Destructive Rock Drilling (auger refusal then to air or water rotary)	Foot	\$40
Patch Pavement Holes	Each	\$75
Well Development - up to 5 well volumes	Hour	\$200
Portable Decontamination Pit	Day	\$200
High-pressure washer for decontamination	Day	\$150
Well Abandonment - grade - 20 feet below ground surface	Foot	\$15
Well Abandonment - greater than 20 feet bgs	Foot	\$20

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### GEOPROBE - Direct Push Services

<u>UNIT</u>	<u>UNIT PRICE</u>
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Mobilization/Demobilization	Day	\$300
Geoprobe Daily Rate (drilling equipment & labor)	Day	\$1,900
Unusual Drilling Circumstances (e.g.- multiple layers of fill)	Hour	\$200
Surface Drill/Patch (2.5 inch)	Each	\$50
Wet Coring (3" or 6") Thickness X Diameter x \$3.30		
Backfill with Bentonite (1 Bag = 20 feet for borehole)	Bag	\$40
Macro-Core® Soil Sample Liners - 4-foot	Each	\$15
Rig Tool and Equipment Decon	Day	\$125
<u>Groundwater Sampling Materials:</u>		
Includes: SP-15/16 Expendable Points	Each	\$10
Poly Sample Tubing	Foot	\$1
Peristaltic Pump	Day/Week	\$30/\$90
 <u>Piezometer Materials (1-inch):</u>		
Includes: 2.125" Expendable Points	Each	\$22
1" PVC End Points	Each	\$11
(1"x 5') Sch. 40 PVC Screens	Each	\$18
(1"x 5') Sch. PVC Risers	Each	\$14
¾" Mini-Bailers	Each	\$10
1" H-Plugs, Locking Caps, and Locks	Each	\$30
4" Flush Mount Well Vaults (Installed)		\$75

### GEOTECHNICAL LABORATORY TESTING

	<u>UNIT</u>	<u>UNIT PRICE</u>
FOC (Fraction of Organic Carbon)	Each	\$110
Volumetric Water Content (Vadose Zone)	Each	\$20
Dry Bulk Density	Each	\$60
Porosity (Specific Gravity - ASTM D 854)	Each	\$75
Average Grain Size	Each	\$65
(Optional - Hydrometer Test)	Each	\$60
Permeameter (Hydraulic Conductivity)	Each	\$300

- (1) The volumetric water content, dry bulk density, and porosity are performed together on a single, undisturbed sample of cohesive soil. The price shown is for the combination of all three tests.
- (2) The price shown is for a ASTM D2434 permeability test on a coarse-grained soil (i.e., no more than 10% passing a #200 sieve). The price for a ASTM D5084 permeability test on an undisturbed sample of fine-grained soil is \$315. For a disturbed sample of fine-grained soil, the cost is \$165 for a Proctor test to determine the appropriate density for remolding, plus \$75 for remolding the sample, plus \$315 for the ASTM D5084 permeability test on the remolded sample.

### FIELD EQUIPMENT & SUPPLIES

	<u>UNIT</u>	<u>UNIT PRICE</u>
Photoionization Detector	Day/Week	\$100 / \$300
Water Level Meter	Day/Week	\$30 / \$90
Oil/Water Interface Probe	Day/Week	\$60 / \$180
Low Flow Sampling Pump (QED Sampling Pro)	Day/Week	\$250 / \$750

Portable Purge Pump	Day/Week	\$40 / \$120
Micro Purge Pump	Day/Week	\$55 / \$165
Purge Pump - 2" Grundfos	Day/Week	\$100 / \$300
Low Flow Purge & Sampling Pump (Bladder)	Day/Week	\$250 / \$750
2-inch Bailers	Each	\$10
3-inch Bailers	Each	\$12
Survey Equipment (Level/Rod)	Day/Week	\$50 / \$150
pH, Conductivity, Turbidity, Temperature Meter	Day/Week	\$50 / \$150
Dissolved Oxygen Meter	Day/Week	\$70 / \$210
Isobutylene Cal Gas (103 Liter)	Each	\$125
Datalogger System	Day/Week	\$70 / \$210
Groundwater Filters (Metal analysis - 20 cm)	Each	\$20
XRF - Lead Based Paint (LBP) Survey	Day	\$600
XRF - Shipping	Event	\$175

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## VEHICLES

Field Vehicle - Sedan	Day/Mile	\$/1.00 mile
Field Vehicle - Automobile & 1/2-ton truck	Day/Mile	\$/1.00 mile
Field Vehicle - 3/4-ton Truck & larger	Day/Mile	\$/1.20 mile

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## ADDITIONAL SERVICES - LUMP SUM COSTING

- 1) Disposal of investigation-derived waste to be bid on a site-specific basis.
- 2) Registered surveying services to be bid on a site-specific basis. Payments for surveying services associated with this Contract shall be invoiced at the rate of \$180 per hour for use of a two (2) man crew to include transportation of equipment and materials, overhead and profit and all reports to be made. Costs for non-registered surveying included in drilling services.
- 3) Personal protective equipment (PPE) defined by OSHA as Level D including half-face respirator provided at no cost. PPE Level C and above will be bid on a site-specific basis.

The Consultant shall submit invoices to the City, accompanied by detailed description of the total work accomplished not less than once per month (or more frequently if requested by the Brownsfields Coordinator).

## 5. Payments.

- A. Payment of claims for incremental work completed on each task may be submitted. Invoices for the amount and value of the work and services performed by the Consultant shall be submitted monthly to the City and shall meet the standards of quality as established under this Contract. The City agrees to pay the Consultant, as compensation for such consulting services as listed herein, an amount equal to the billing rates shown in **Paragraph 4. Compensation** above. The invoices shall be prepared and submitted by the Consultant and be accompanied by all supporting data required by the City. Payment of any invoice for any work or services may not be deemed to be recognition of satisfactory performance of said work or services or a

waiver of any right of the City or any obligation of the Consultant should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract. Surveyors or other professional consultants engaged for the normal structural, electrical or mechanical engineering services shall be billed to the City by the Consultant at the net cost thereof.

- B. The Consultant shall present monthly invoices to the City for compensation and payment. The City shall review the invoice for payment. Should the City question or request additional documentation or disapprove all or a portion of any invoice, the Consultant will be notified so that it may provide additional documentation sufficient to permit the invoice and claim to be paid, in whole or in part.
  - C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.
6. **Indemnity.** To the fullest extent permitted by law, the Consultant agrees to release, defend, indemnify and save harmless the City and its beneficiary trusts, their officers, agents and employees, from and against any and all loss of or damage to property, injuries to or death of any person or persons and/or all claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever, including, without limitation, Worker's Compensation claims of or by anyone whomever, in any way resulting from or arising out of the Consultant's negligent acts, operations, errors and/or omissions under or in connection with this Contract, or the Consultant's use and occupancy of any portion of the project site, including, without limitation, negligent acts, operations, errors and/or omissions of the Consultant's officers, employees, representatives, suppliers, invitees, contractors, subcontractors or agents. The Consultant shall promptly advise the City and its beneficiary trusts, in writing, of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and the Consultant, at its expense, shall assume the defense of the City and its beneficiary trusts, with counsel satisfactory to the City its beneficiary trusts. This section shall survive the expiration of the Contract. Provided, however, the Consultant need not release, defend, indemnify or save harmless the City and its beneficiary trusts, or their officers, agents and employees, from damages or injuries resulting from the negligence of the City and its beneficiary trusts, their officers, agents or employees. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under the provisions hereof.
7. **Insurance.** Prior to approval of this contract, the Consultant shall obtain insurance coverage as provided below. The Consultant must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts.

The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. Additional Insureds: All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City and its participating trusts are named additional insureds without reservation or restriction.

All insurance coverage of the Consultant shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Consultant is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Consultant's deductible is different than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Consultant's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Consultant under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended insurance program for the Consultant. The Consultant alone shall be responsible for the sufficiency of its own insurance program. Should the Consultant have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Consultant should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Consultant shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Consultant shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Consultant shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Consultant. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Consultant shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
- (2) Commercial General Liability Insurance. The Consultant shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Consultant shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and

any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (4) Professional Liability Insurance. The Consultant shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City.

- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Consultant authorizes the City and its participating trusts to confirm all information so furnished as to the Consultant's compliance with its bonds and insurance requirements with the Consultant's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Consultant shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and

its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the Consultant shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit, the Consultant hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

- F. **Duration of Coverage.** All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Consultant shall maintain in full force in effect the required professional liability insurance stated above during this Contract and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

8. **Termination for Convenience.** The City may terminate this Contract, in whole or in part, for the City's convenience. The City may terminate by delivery of a notice to the Consultant, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Consultant shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), upon payment for work performed, deliver to the City all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for convenience by the City, the City shall pay the Consultant for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by any not to exceed amounts set out in this Contract.

The rights and remedies of the City provided in this paragraph shall be in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

9. **Notices.** All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the City:

The City of Oklahoma City  
Department of Public Works  
420 West Main Street, Seventh Floor  
Oklahoma City, Oklahoma 73102  
Attn: Eric J. Wenger, P.E., Director of Public Works/City Engineer  
Phone Number: (405) 297-2581 Fax Number: (405) 297-2117

And:

The Oklahoma City Brownfields Program  
Planning Department  
Attn: Amanda Alewine, Brownsfield Coordinator  
420 West Main Street, 9<sup>th</sup> Floor  
Oklahoma City, OK 73102

To the Consultant:

Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc.  
2424 North Kelley Avenue  
Oklahoma City, Oklahoma 73111  
Attn: Deanna Atkinson, President  
Phone Number: (405) 605-1720 Fax: (405) 524-0043

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

10. **Stop Work.** Upon notice to the Consultant, the City may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph “Indemnity” and/or “Insurance” of this Contract. In the event the City issues a stop work order to the Consultant, the City shall provide a copy of such stop work order to the Construction Contractor.
11. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Consultant shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Contract.
12. **Records and Accounts.** During the term of this Contract and continuing for a period the longer of five (5) years after the final acceptance of the completed project by the City, or until the final resolution of any outstanding disputes between the City and the Consultant or the contractor(s) on the project, the Consultant shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the City subsequent to final completion of the project and its internal accounting records, and

other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Consultant shall maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Consultant shall, upon request by the City, permit periodic audits by the City and the City's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the City and Consultant. Agreement as to the time and place for audits may not be unreasonably withheld.

13. **Reporting to the City.** The Consultant shall provide reports as directed by the City.
14. **Prohibition Against Collusion.** The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Contract. The Consultant further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Consultant must execute the Non-Collusion Affidavit, attached as Exhibit B, prior to the effective date of this Contract.
15. **Sub-consultant, Sub-contractor or Employee Conflict of Interest.** Consultant shall include language in all agreements with Consultant's employees, sub-consultants or subcontractors on this project that said individuals shall not contract with, work for, or otherwise assist any potential bidder to do any project-related work for a bidder which may in any way be (or construed to be) a conflict of interest. The Consultant shall require all employees, sub-consultants or sub-contractors engaged by the Consultant to advise the City of any business relationship (formal or otherwise) which may pertain directly or indirectly to this project and/or may in any way be (or construed to be) a conflict of interest. The Consultant shall also notify the City of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the City may be cause for rejection of the bid in question and/or cancellation of the Consultant's contract.
16. **Work Orders.** The Consultant shall proceed with the work and/or services for this Contract upon receipt of direction from the City's Brownfields Coordinator (a project-specific work order shall be written upon receipt from the Consultant of a project proposal, time for completion, and estimate of cost for services to be performed). Upon receipt of a directive from the Brownfields Coordinator, the Consultant shall identify the issues to be addressed, outline the service activities potentially required, provide an estimated time for completion, and forward an electronic mail (e-mail) to the Brownsfields Coordinator that addresses the activities (including a requirement to estimate labor hours or costs). The Brownfields Coordinator (or his designated representative/Project Manager (PM) shall provide a response of concurrence/approval and the Consultant shall address the activity required.

Additionally, the Consultant may independently identify activities that require attention and shall notify the Brownfields Program of such activities but will not proceed with those activities until authorization has been received from the Brownfields Coordinator.

If the Consultant cannot perform the work and/or services within the time provided, and upon the submission by the Consultant of a request in writing to the City, indicating the length of extension required to perform a task, the Brownfields Coordinator may grant an extension of time. The request from the Consultant shall state the reason for the extension request, along with evidence showing that the Consultant is unable to complete this work in the time specified in the work order for reasons beyond its control. The Consultant is hereby prohibited from claiming damages for delays and extensions of time.

17. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the City and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Consultant. Reuse of said documents by the City shall be at the City's risk and responsibility and not that of the Consultant. The parties may use any portions of said documents at their own risk and responsibility.
18. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations, the ("FAR"), the American Institute of Architects ("AIA") or any other publication, is not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
19. **Standard of Care.** In providing the work and services herein, the Consultant shall maintain during the course of this Contract the industry-accepted standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Consultant shall require all of its consultants, by the terms of its consultants' contracts, to provide services at the same industry-accepted standard of reasonable care, skill, diligence and professional competence required of the Consultant.
20. **Backup Required.** In accordance with good consulting practices, the Consultant must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as "data") in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively "loss"), the Consultant must timely recreate all data within the original time frame of the consultant contract at its sole cost. No extensions or additional time will be granted the Consultant for loss of data. No additional payment or reimbursement will be made to the Consultant for loss of data. The Consultant will be responsible for any and all costs, expenses, or lost opportunities incurred by The City, Trust, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.
21. **Sub-consultants.** The Consultant shall submit for approval by the City, prior to their engagement, a list of any sub-consultants or subcontractors the Consultant intends to engage to perform work and/or services related to this Contract. Such approval shall not be unreasonably withheld. The Consultant shall notify the City and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors.

22. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Consultant agrees as follows:
- A. The Consultant shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Consultant shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Consultant shall agree to post, in conspicuous places, Exhibit C.
  - B. In the event of the Consultant's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the City. The Consultant may be declared by the City ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Consultant.
  - C. The Consultant agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Consultant shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit C, prior to the effective date of this Contract.
23. **Assignment.** Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Consultant to provide professional and personal services to the City, the parties agree that the Consultant may not assign its obligations, rights or interest in this Contract except as set forth in paragraph "Termination for Default" subparagraph B.
24. **Termination for Default.** The City may cancel this Contract in whole or in part, for failure of the Consultant to fulfill or promptly fulfill its obligations under this Contract.
- A. After due notice and thirty (30) days within which to correct the default, this Contract may be terminated by either party for default upon fourteen (14) days written notice should the other party fail substantially to perform in accordance with the Contract terms through no fault of the party initiating the termination.
  - B. If this Contract is terminated by reason of a default of the Consultant prior to the completion of this project, regardless of the reason for said termination, the Consultant shall immediately assign to the City any contracts and/or agreements relative to this project entered into between the Consultant and its subcontractors and sub-consultants, as the City may designate in writing and with the consent of the

subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the City, the City shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Consultant from and after the date of such assignment to and acceptance by the City and on the same terms as approved by the City herein. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the City shall constitute a debt between the Consultant and the affected subcontractors or sub-consultants, and the City shall in no way be deemed liable for such sums. The Consultant shall include this provision and the City's rights and obligations hereunder in all agreements or contracts entered into with the Consultant's subcontractors and sub-consultants.

- C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.
25. **Time Is of the Essence.** Both the City and the Consultant expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the City to timely object to the time of performance shall not waive any right of the City to object at a later time.
26. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Consultant for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Consultant shall make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
27. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
28. **Entire Agreement.** This Contract, including its Exhibits and any other written documents or certificates incorporated herein by reference, expresses the entire understanding of the City and the Consultant concerning the Contract. Neither the City nor the Consultant has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.
29. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the City and the Consultant. In the event the Consultant's scope of work is increased or changed so as to materially increase the need for consulting services in excess of the not to exceed total compensation, the Consultant may seek to amend this Contract.

30. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
31. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
32. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
33. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
34. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
35. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
36. **Effective Date.** The effective date of this Contract shall be the date of execution of this contract by the City.
37. **Term of Contract.** (added by Amendment No. 1)
  - A. This Contract authorizes the Brownsfield Coordinator to issue Work Orders under this Contract during the contract term as provided herein and the term of this Contract will be from the effective date though June 30, 2023, plus such extended time as necessary until all Work Orders issued during the contract term are complete.
  - B. The City may issue Work Orders under this Contract at any time during the contract term.
  - C. The Consultant will provide such services as set forth in any Work Order issued under this Contract and this Contract will be deemed extended for such extended time as may be necessary for the completion of services set forth in any Work Order issued during the contract term under this Contract.
  - D. If this Contract is extended for completion of any Work Order, upon completion of all the Work Orders issued under this Contract, the City Engineer will issue a notice to the Consultant denoting the termination of this Contract and any extended time.

- E. The Consultant must provide such services and comply with this Contract until expiration of the contract term or through any extended time, if any, until notification of termination of this Contract from the City Engineer, whichever is later.
- F. The City will not be obligated to pay the Consultant under any Work Order (including any services, expenses, and additional services) until the funds have been encumbered. Any Work Order must not exceed the available funds for the year in which the Work Order was issued. Any extended time to complete the Work Order will not change the available funds for the year in which the Work Order was issued.
- G. If the City should need any additional services or a change of the scope of services in any Work Order issued during the contract term, a new separate Work Order must be issued under a separate contract or an amendment to this Contract. An extended time will not extend the authorization to issue a new Work Order under this Contract after the expiration of the contract term.

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**EXHIBIT A  
SCOPE OF WORK  
PROJECT NO. MC-0656-A  
BROWNFIELDS DEVELOPMENT PROJECTS ENVIRONMENTAL CONSULTANT  
SERVICES**

**GENERAL**

All reports generated under this solicitation shall be submitted in electronic format, including maps and photographs contained in Phase I/II Environmental Site Assessments (ESAs). Hard copies should be submitted upon request. The Brownsfields Coordinator shall assist the consultant by providing logistical support and regulatory interface (local, State, and Federal) as needed to facilitate performance of the Scope of Services. Logistical support shall entail preparation/publication of public notices, execution of consent for access agreements, coordinating with property owners, arranging site visits, and other services as may be negotiated during the Contract execution phase.

**SCOPE OF SERVICES**

The consultant shall perform the following types of services under this contract:

**1) Phase I/II ESAs**

The City intends to use Brownfields grant funds allocated to this solicitation to conduct Phase I and II ESAs. All ESAs must be performed in accordance with ASTM Standards and satisfy EPA's All Appropriate Inquiry (AAI) requirements. A programmatic Quality Assurance Project Plan (QAPP) must be prepared by the consultant and approved by City's Brownfields Coordinator and EPA Region 6 prior to the initiation of contract work. The QAPP must comply with EPA's *Requirements for Quality Assurance Project Plans* (QA/R-5). An example QAPP and/or EPA's *Guidance for Quality Assurance Project Plans* (QA/G-5) shall be provided upon request. Prior to initiating any Phase II ESA fieldwork the Consultants will be required to prepare a site-specific field sampling plan (FSP). The QAPP and the FSP are intended to ensure the site's historical research information, monitoring well installation, soil/groundwater sampling, analytical analyses, and data reporting of soil, surface water, and groundwater conditions is conducted in accordance with the Standard Operating Procedures (SOPs) and Data Quality Objectives (DQOs) outlined in each QAPP.

Consultants may be required to coordinate with the following regulatory entities on Phase II ESAs depending on the nature of the project:

- a. EPA Region 6 Brownfields Team,
- b. The Oklahoma Department of Environmental Quality (DEQ) Brownfields Coordinator,
- c. DEQ's Voluntary Cleanup Plan Coordinator,
- d. Oklahoma Corporation Commission (OCC) Pollution Abatement Division,
- e. OCC Petroleum Storage Tank Division,

- f. OCC Brownfields Coordinator, and
- g. Oklahoma Department of Labor.

The City's Brownfields Coordinator shall assist with any necessary regulatory coordination and be advised of interactions with these agencies. The Consultant shall provide data entry services the Environmental Protection Agency's (EPA) ACRES system, and quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

## **2) Phase III Cleanup Plans**

The City's Brownfields assessment grant and Brownfields Cleanup Revolving Loan Fund (BCRLF) can be used to fund cleanup plans. The Brownfields Coordinator shall assist with identifying the range of potential cleanup alternatives at each site. The Analysis of Brownfields Cleanup Alternatives (ABCA) is a Brownfields – specific cleanup plan required for BCRLF cleanup projects. Preparation of an ABCA may also involve close coordination with DEQ's Brownfields Program to ensure the proposed cleanup alternatives meet relevant cleanup standards. The Consultant shall provide data entry services, including input into ACRES, and/or quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

## **3) Public Meetings**

The City may choose to hold public meetings in conjunction with a BCRLF cleanup project or to serve as information dissemination/data gathering opportunities for the Brownfields Redevelopment Program. In these cases, staff support may be required from consultants to address technical issues of sampling activities, cleanup plans, or ongoing remediation activities. The City shall be responsible for preparing and advertising meeting announcements, materials preparation, and facility rental. The Consultant shall provide data entry services, including input into ACRES, and/or quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

## **4) Cleanup Oversight**

The consultant may assist the Brownfields Program with cleanup oversight for active remedial projects. This activity may involve site visits to ongoing cleanup projects to observe site conditions, verifying compliance with the EPA approved QAPP and FSP, verifying completion of cleanup tasks, and obtaining photographs. The Consultant shall document oversight activities by preparing a brief summary for the Brownfields Program that includes date, time, and personnel involved in the on-site visit, observations, and items requiring further action. The Consultant shall provide data entry services, including input into ACRES, and/or quarterly progress reports which correspond with the data entered into the ACRES system per requirements of the Cooperative Agreement with the EPA for grant funding.

**EXHIBIT B  
NON-COLLUSION AFFIDAVIT  
PROJECT NO. MC-0656-A  
BROWNFIELDS DEVELOPMENT PROJECTS ENVIRONMENTAL CONSULTANT  
SERVICES**

State of Oklahoma )  
 ) SS.  
 County of Oklahoma )

The undersigned Consultant, of lawful age, being duly sworn, upon his/her oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal for, and on behalf of, the Consultant; that the Consultant has not, directly or indirectly, entered into any agreement, express or implied, with any other architect/engineer(s), having for its object the controlling of the price or amount of the Contract, the limiting of the services of the architect/engineers, the parceling or farming out to any architect/engineer(s) or other persons, of any part of the Contract or any part of the subject matter of the Contract, or of the profits thereof.

The Consultant further states that the Consultant has not been a party to any collusion among other persons, firms or contractors in restraint of freedom of competition, by any agreement to Contract at a fixed price or to refrain from competing; or with any city official, city employee or city agent as to the quantity, quality, or price in the prospective Contract, or any other terms of the said prospective Contract; or in any discussions between the Consultant or city official, city employee or city agent concerning the exchange or money or other thing of value for special consideration in the letting of a Contract. The Consultant states that it has not paid, given or donated or agreed to pay, give or donate to any city official, officer or employee of the City or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of this Contract.

Printed name of the Consultant: Summit Holdings, Inc. dba Oklahoma Environmental Services, Inc.

Signature of executing individual: *Deanna Atkinson* Digitally signed by Deanna Atkinson Date: 2022.05.19 14:43:50 -05'00'

Title: President

2424 North Kelley Avenue, Oklahoma City, Oklahoma 73111  
 Address of the Consultant Zip Code

(405) 605-1720  
 (A.C.) Tel. Number

Signed and sworn to before me on this \_\_\_\_\_ 19 \_\_\_\_\_ day of \_\_\_\_\_ May \_\_\_\_\_, 2022, by Deanna Atkinson as President.

My Commission Expires/Commission Number:  
04.08.24 / 20003842 (Seal)





