

# AUTHORIZATION FORM

**Originator:**

Name Joel Burzynski      Department Finance      Ext. 7153      Date 4-23-25

**Description of Request:** BW2025-004 Professional Environmental Services

Department Leave Form ☐ Check Request Form ☐ Acquisition Approval ☐

Budget Transfer ☐ Grant Item ☐ Memorandum Service Authorization Approval ☐

☐ Other (Please Specify) Due to EnviroDesign's familiarity with the project and great working relationship

with both the City and FDEP, staff is requesting approval of a Bid Waiver and agreement to facilitate services required by FDEP.

The deadline to submit a SAR to FDEP based on F.A.C requirements in 12/5/2025

\$125,000/year; current proposal is \$81,660.00 additional costs will be incurred for mitigation services. 5 year term total \$625,000

Chief Procurement Officer: *Eugene Bittaker*

Department Head Signature: *Henry Dachowitz*  
Henry Dachowitz (Apr 23, 2025 16:40 EDT)

Finance Signature:(if request impacts budget) \_\_\_\_\_

**Review Completed by Staff – Comments:**

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☐ RETURN TO ORIGINATOR FOR ADDITIONAL COMMENTS

☐ APPROVED FOR Chief Procurement Officer

**TRACKING:**

Returned to \_\_\_\_\_ Department for additional information on: \_\_\_\_\_

Forwarded to \_\_\_\_\_ Department for action on: \_\_\_\_\_



## MEMORANDUM BID WAIVER ACQUISITION APPROVAL

**TO:** Terrence R. Moore, ICMA-CM  
Henry Dachowitz, Chief Finance Officer

**THROUGH:** Missie Barletto, Public Works Director *Missie Barletto*  
Cynthia, Buisson, Assistant Public Works Director *CyB*  
Eugene Bitteker, Chief Procurement Officer

**FROM:** Jason Kaufman, Public Works Engineering Division Manager *Ja Kaf*  
Jason Kaufman (Apr 3, 2025 13:51 EDT)

**SUBJECT:** Environmental Site Assessment Report with EnviroDesign Associates, Inc.  
Delray Beach Municipal Golf Course Renovation  
Project No. 19-032

**DATE:** March 31, 2025

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### Background:

The Delray Beach Municipal Golf Course Renovation project originally began in October 2020, however the project was placed on an indefinite hold in June 2021 and the design agreement was terminated in March 2022. On May 3, 2024, during the Commission's goal setting meeting, the Golf Course project was discussed and there was consensus to move forward with improvements. Direction was provided to pursue re-contracting with Sanford Golf Design to complete the 60% design previously halted in June 2021. On August 19, 2024, Res. 167-24 was approved by the City Commission to issue a Bid Waiver and award an agreement to Sanford Golf Design to complete the design.

The Municipal Golf Course renovation scope of work includes a complete overhaul of the maintenance facility, which includes replacement of fuel tanks and storage areas for sensitive chemicals and fertilizers. For this reason, the City engaged with EnviroDesign Associates, Inc. ("EnviroDesign") to complete a Phase I Environmental Site Assessment (ESA). On July 26, 2024, EnviroDesign was issued a purchase order in the amount of \$1,650, through the Purchasing Policy and Procedures Manual, Section 4(B)(x) exemption (Consultant/Professional Services up to \$65,000), to complete the Phase I ESA. The purpose of a Phase I ESA is to meet the requirements of 40 CFR §312.10 for determination of Recognized Environmental Conditions through (1) Physical inspection of subject property by an Environmental Professional; (2) Records Review of Environmental, Historical, and Physical Setting Sources; and (3) Interviews with present owners, operators, and local government officials.

In October 2024, EnviroDesign submitted the Phase I ESA report which stated the following – "Given the length of time that the facility had been occupied by commercial golf maintenance uses (approximately 60 years) and the lack of comprehensive Phase II testing on the property, there is a potential for undocumented contaminants to be present in the soil and groundwater at the Site. To evaluate these potential impacts, EDA recommends limited Phase II soil and groundwater testing for petroleum and agrichemicals.

On November 18, 2024, the City increased EnviroDesign's purchase order by \$16,875 (total cumulative value of \$18,525 including original \$1,650 for Phase I ESA) to conduct a limited Phase II ESA. A Phase II ESA is necessary to evaluate Recognized Environmental Conditions (REC's) identified in the Phase I ESA. The tasks associated with this scope included locating underground utilities; provision of equipment needed for environmental testing; installation of five (5) soil borings; soil screening; soil samples for laboratory analyses of arsenic, organochlorine pesticides, chlorinated herbicides, and various metals; installation of five (5) temporary shallow groundwater monitoring wells; and groundwater samples for laboratory analyses of organochlorine pesticides, chlorinated herbicides, and various metals.

On January 13, 2025 (and revised on February 13, 2025), EnviroDesign submitted the Phase II ESA, which detected arsenic and organochlorine pesticide soil and groundwater impacts at the maintenance building. The Phase II ESA was submitted to the State of Florida Department of Environmental Protection (FDEP) on February 14, 2025, and on March 10, 2025, the FDEP issued the City a notification of requirements for the REC's present at the golf course, pursuant to Florida Administrative Code Chapter 62-780 (Contaminated Site Cleanup Criteria). Florida Administrative Code Chapter 62-780 (Contaminated Site Cleanup Criteria) requires the submission of a Site Assessment Report (SAR) to address arsenic and organochlorine pesticides Contaminants of Concern (COCs) that were detected in the soil and groundwater during the Phase II ESA.

Chapter 62-780, F.A.C., establishes a process and time schedule for assessing and remediating contaminated sites. A responsible party is required by Chapter 62-780, F.A.C., to initiate a site assessment within 60 days of discovery of the contamination and to submit a SAR to the Department within 270 days of discovery of the contamination. The deadline to submit a SAR to FDEP (based on requirements of Chapter 62-780, Table A: (270 days from discovery of contamination) is December 5, 2025.

On March 28, 2025, EnviroDesign submitted a proposal to complete the SAR for a total cost of \$81,660.00. Staff is requesting approval of this Bid Waiver to continue professional environmental services at the golf course with EnviroDesign and to develop an agreement for future services, as deemed necessary.

#### Justification:

EnviroDesign is a qualified and mindful vendor with a team in place to provide fairly priced services and accurate assessments of the City's site. EnviroDesign has maintained a great working relationship with City staff and FDEP. EnviroDesign has continually been in contact with City staff throughout the above process and has performed all tasks required by the City. Due to their continued familiarization with the project and the processes requested by FDEP, the Public Works Department is requesting approval of a bid waiver agreement to allow EnviroDesign continue to provide the City with the required services.

#### Market Research:

EnviroDesign is a qualified professional with extensive environmental assessment experience and has extensive experience working with FDEP. EnviroDesign holds all required insurance certifications for safe, quality work.

☐ Need Additional Information ☐ Not Approved

Comments: \_\_\_\_\_

☒ Approved This Bid Waiver approval is valid for this purchase only.

  
Henry Dachowitz (Apr 23, 2025 16:40 EDT)

Chief Financial Officer

Apr 23, 2025

Date

N/A

Information Technology (IT) Director

Date



City Manager

Apr 23, 2025

Date

March 28, 2025

Attn: Robert V. Hunt, P.E., LEED  
Engineer III, Public Works Department  
City of Delray Beach  
434 S. Swinton Ave.  
Delray Beach, Florida 33444

**RE: PROPOSAL FOR CHAPTER 62-780 F.A.C. - SITE ASSESSMENT REPORT  
DELRAY BEACH GOLF MAINTENANCE; Commerce Avenue, Delray Beach, FL  
33445; (PBC Property ID# 12-43-46-18-42-005-0000)  
EDA Proposal #24036C; EDA Project #24036  
FDEP ID# ERIC\_18809**

Dear Robert:

EnviroDesign Associates, Inc. (EDA) is pleased to present this proposal for a Site Assessment Report (SAR) for the “Delray Beach Golf Maintenance” (Site) located at Commerce Avenue, Delray Beach, FL 33445. The SAR scope of work will be prepared in general accordance with Florida Administrative Code 62-780 (Contaminated Site Cleanup Criteria) and industry standards. The proposal is being prepared to address arsenic and organochlorine pesticides Contaminants of Concern (COCs) that were detected in the soil and groundwater during a Phase II Environmental Site Assessment (ESA) completed by this office on January 13, 2025 (revised February 13, 2025). The Limited Phase II ESA was submitted to the State of Florida Department of Environmental Protection (FDEP) on Friday, February 14, 2025. On March 10, 2025, the FDEP issued a “Welcome Letter” and notification of requirements regarding Chapter 62-780 F.A.C. The FDEP letter is considered the starting point of our timeline for assessment.

## **SITE ASSESSMENT REPORT**

Prepare a Site Assessment Report in accordance with Chapter 62-780 requirements. Submittal to the State of Florida Department of Environmental Protection (FDEP), Southeast District, Waste Cleanup Division.

## SCOPE OF WORK

### Field Assessment

- Locate underground utilities using Sunshine State One Call.
- Provision of Geoprobe direct push field test equipment (per day)
- Provision of soil sampling kits.
- Install up to 50 soil borings (based on one day of Geoprobe testing).
- Collect soil samples for laboratory analyses of total Arsenic at DEP specified intervals Collection depths (6-inches, 2-feet, 4-feet, 6-feet); up to 200 discrete samples.
- Collect soil samples for laboratory analyses of Arsenic using the Synthetic Precipitation Leaching Procedure (SPLP) up to 20 discrete samples.
- Collection of soil samples for laboratory analyses of Organochlorine Pesticides; up to 14 discrete samples.
- Provision of up to seven (7) well permits, Palm Beach County Health Department.
- Installation of six (6) permanent shallow groundwater monitoring wells by direct push methods using State-licensed Water Well Contractor. (Wells to be constructed with 15-feet of 1" diameter 0.006/slot screen, 1" diameter schedule 40 PVC riser, and finished with 5" diameter bolt-down manhole. *Wells can be abandoned and later relocated and replaced to accommodate for the construction of the planned new golf maintenance area – work to be completed under separate cover.*
- Installation of one (1) permanent 2-inch diameter deep depth "double cased" groundwater monitoring well using sonic drilling methods.
- Collection of groundwater samples by FDEP approved methods.
- Survey elevation and location of groundwater monitoring wells.

### Laboratory Analyses (Using a NELAC Certified Environmental Laboratory)

- Laboratory analyses of up to 200 soil samples for Total Arsenic.
- Direct Leachability analyses of up to 20 soil samples for Arsenic using the Synthetic Precipitation Leaching Procedure (SPLP) – as needed.
- Laboratory analysis of up to 20 discrete soil samples for Organochlorine pesticides.
- Laboratory analysis of up to 16 groundwater samples for Total Arsenic.
- Laboratory analysis of up to 16 groundwater samples for Organochlorine pesticides.

### Reporting

- Preparation of a combination Site Assessment Report in accordance with Chapter 62-780 FAC.
- Review and seal of report by a Professional Geologist Licensed with the State of Florida.

**Estimated Total: \$81,660.00**

## Cost Breakdown

Task	Rate	No.	Units	Total	Comment
<b>Site Assessment Report - Startup</b>					
Professional Engineer (Principal)	\$ 295.00	8	hour	\$ 2,360.00	Meeting and review of data
Professional Geologist	\$ 185.00	16	hour	\$ 2,960.00	FDEP teams meeting, whiteline Site
Environmental Technician	\$ 125.00	8	hour	\$ 1,000.00	Whiteline Site, layout borings
				<b>\$ 6,320.00</b>	<b>Subtotal (Startup)</b>
<b>Site Assessment Report - Field Work</b>					
Utility Locate	\$ 225.00	2	each	\$ 450.00	
Professional Engineer (Principal)	\$ 295.00	16	hour	\$ 4,720.00	
Professional Geologist	\$ 185.00	60	hour	\$ 11,100.00	2 days geoprobe, 1 day sampling, 2 preparation
Environmental Technician	\$ 125.00	40	hour	\$ 5,000.00	three days Andres
Provision of Organic Vapor Analyzer	\$ 210.00	2	Day	\$ 420.00	1 day wells, 1 day borings
Well Permit	\$ 150.00	7	each	\$ 1,050.00	5 shallow, 1 deep
Provision of Geoprobe	\$ 2,250.00	2	Day	\$ 4,500.00	1 day wells, 1 day borings
Installation of shallow wells with manhole	\$ 1,050.00	6	each	\$ 6,300.00	5 shallow
Provision of Sonic Drill Rig (deep well)	\$ 5,950.00	1	Day	\$ 5,950.00	Deep well installation
Installation of deep (45') well with manhole	\$ 1,750.00	1	each	\$ 1,750.00	1 Deep
Provision, Transportation and disposal for 55-gallon IDW drums	\$ 350.00	10	each	\$ 3,500.00	State Rate = \$254 (includes drum)
				<b>\$ 44,740.00</b>	<b>Subtotal (Field Work)</b>
<b>SAR - Laboratory Analyses</b>					
Laboratory Analyses (total Arsenic) GW by EPA 6020	\$ 35.00	16	each	\$ 560.00	\$22 ea
Laboratory Analyses Organochlorine Pesticides (OCP's) -GW	\$ 145.00	16	each	\$ 2,320.00	\$89 ea
Laboratory Analyses (total Arsenic) SOIL by EPA 6020	\$ 35.00	200	each	\$ 7,000.00	\$22 ea
Laboratory Analyses (SPLP Arsenic) SOIL by EPA 6020	\$ 115.00	20	each	\$ 2,300.00	\$87 ea
Laboratory Analyses Organochlorine Pesticides (OCP's) -Soils	\$ 145.00	20	each	\$ 2,900.00	\$89 ea
				<b>\$ 15,080.00</b>	<b>Subtotal (Lab)</b>
<b>Report Preparation</b>					
Professional Engineer (Principal)	\$ 295.00	16	hour	\$ 4,720.00	Meeting and review of data
Professional Geologist	\$ 185.00	40	hr	\$ 7,400.00	Prepare and seal SAR as per 62-780 FAC
DRAFTING	\$ 85.00	40	hr	\$ 3,400.00	
GIS	\$ 85.00	20	hr	\$ 1,700.00	
				<b>\$ 15,520.00</b>	<b>Subtotal (Report Writing)</b>
				<b>Total</b>	
				<b>\$ 81,660.00</b>	

\* Standard laboratory analyses (7 to 10 business days) apply.

**\*\* Hourly time commitments are estimates and will be billed on an as completed basis.**

**TIMEFRAME** – Chapter 62-780, F.A.C., establishes a process and time schedule for assessing and remediating contaminated sites. A responsible party is required by Chapter 62-780, F.A.C., to initiate a site assessment within 60 days of discovery of the contamination and to submit a site assessment report to the Department within 270 days of discovery of the contamination. As a responsible party for the Delray Beach Golf Maintenance (Site), you may be subject to the requirements for remediation of contamination under Chapter 62-780, F.A.C.

FDEP Site Assessment Report deadline (based on requirements of Chapter 62-780, Table A: (270 days from discovery of contamination): **December 5, 2025.**

## TIMEFRAME – CONTINUED

TASK	Anticipat ed Time	Comments
<b>Receive Purchase Order</b>	<b>Day 1</b>	April 7
Utility Locate	5 days	Includes white-lining test areas
Schedule and install soil borings	1-week	1-day Geoprobe
Laboratory analyses	1-week	Standard 5 to 7 business days
Review and map soil data	1-week	Is more testing needed?
Utility locate update	3-days	concurrent
Complete additional tests	1-week	as needed*
Laboratory analyses	1-week	Standard 5 to 7 business days
Review and map additional soil data	1-week	Is more testing needed?
Install shallow wells	2-days	1-day Geoprobe
Sample wells (1)	1-week	Minimum 72 hours after well install.
Laboratory analyses	1-week	5 to 7 business days
Map groundwater data	1-week	Are more wells needed?
Install Deep Well	2-weeks	Sonic Drilling Rig
Sample deep well (1) DTW all wells	1-week	Minimum 72 hours after well install
Laboratory analyses	1-week	Standard 5 to 7 business days
Map additional groundwater data	1-week	Are more wells needed?
Gauge monitoring wells	1-day	At least 30 days after (1)
Completion of slug tests	1-week	Unless the Site meets NFA Criteria
Prepare Site Assessment Report	4-weeks	Maps, tables, recommendations
Submit SAR Report to FDEP		TARGET DATE: August 18, 2025*
FDEP Review of SAR	30-days	Calendar Days per statute
Receive FDEP Review letter		TARGET DATE: September 17, 2025

***\*Original Due Date per FAC Chapter 62-780 – December 5, 2025***

- EDA will make every effort to fast track the process, but it is important to note that the process and timelines established by the FDEP including report review and approvals are outside of our control.
- The completion of a Site Assessment Report is an iterative process. Additional sampling may be required based on the results of our initial findings or outside agency requirements.
- We cannot be responsible for delayed responses from FDEP or other regulatory agencies.
- Off-site access may be necessary. This will require additional coordination, hours of work and the drilling of additional wells and borings not scoped in this proposal.
- If the FDEP requires additional testing, additional fees may be required.

## CONTINGENCIES

- Restoration of incidental damage from Site Assessment, Drilling, and Testing (such as, but not limited to Landscaping and Irrigation Damage) will be the responsibility of the client.
- Additional testing may be required. Any additional testing not described in this scope of work will be provided under separate cover.
- Remediation costs, excavation, soil removal and replacement, are to be completed under a separate agreement and are not included in this Scope of Work.
- Estimated fee does not include disposal cost of investigative derived waste. If warranted, 55-gallon drums will be provided at a rate of \$125 per drum. Laboratory disposal analysis and disposal costs to be provided under a separate agreement.

## ADDITIONAL SERVICES:

If the findings of our SAR identify contaminants, additional testing may be warranted. This assessment does not include the preparation of a Remedial Action Plan (RAP), Risk Based Corrective Action (RBCA) report, Natural Attenuation Monitoring Plans (NAMP) or similar investigative measures. These services, if necessary, will be completed under separate cover.

Services not specifically identified within this scope of services may be approved by the Client on an as-needed basis and will be invoiced in accordance with the attached hourly rate schedule or under a separate fixed-fee agreement. Such services would include, but are not limited to, ground penetrating radar surveys, soft “vacuum” digging, and/or coordination, additional soils and/or groundwater evaluation, and the storage/disposal of investigative derived wastes.

## LIMITATIONS

In accordance with ASTM 1903-19, no ESA can eliminate all uncertainty. Furthermore, any sample, either surface or subsurface, taken for chemical analysis may or may not be representative of a larger population. Professional judgment and interpretation are inherent in the process and uncertainty is inevitable. Additional assessment may be able to reduce the uncertainty. Even when Phase II ESA work is executed with an appropriate site-specific standard of care, certain conditions present especially difficult detection problems. Such conditions may include, but are not limited to, complex geological settings, the fate and transport characteristics of certain hazardous substances and petroleum products, the distribution of existing contamination, physical limitations imposed by the location of utilities and other man-made objects, and the limitations of assessment technologies.

Phase II ESAs do not generally require an exhaustive assessment of environmental conditions on a property. There is a point at which the cost of information obtained, and the time required to obtain it outweigh the usefulness of the information and, in fact, may be a material detriment to the orderly completion of transactions. If hazardous substance or petroleum releases are confirmed on a parcel of property, the extent of further assessment is related to the degree of uncertainty that is acceptable to the user with respect to the real estate transaction.

Measurements and sampling data only represent the site conditions at the time of data collection. Therefore, the usability of data collected as part of this Phase II ESA may have a finite lifetime depending on the application and use being made of the data. An environmental professional

should evaluate whether the generated data are appropriate for any subsequent use beyond the original purpose for which it was collected.

We appreciate the opportunity to offer our professional services. Should you have any questions, please feel free to call.

Sincerely yours,  
***EnviroDesign Associates, Inc.***

  
Scot E. Wehmeyer, PG, MBA  
Senior Project Manager

## Authorization to Proceed

EnviroDesign Associates, Inc. (EDA) is hereby authorized to proceed with Tasks as described herein, for the estimated total of: **\$81,660.00**. A 25% draw is due upon inception of this agreement. Invoices to be forwarded monthly based on time and materials on an as completed basis. Final payment is due upon completion of the investigation and delivery of the report to the client. Standard Terms and Conditions are attached and are hereby made a part of this Agreement by reference.

2025 HOURLY RATE SCHEDULE	
POSITION	RATE
EXPERT WITNESS	\$295
PRINCIPAL	\$235
PROFESSIONAL ENGINEER/GEOLOGIST	\$185
STAFF ENGINEER OR GEOLOGIST	\$155
FIELD OR ENVIRONMENTAL TECHNICIAN	\$125
COMPUTER DRAFTING/PLOTTING	\$85
CLERICAL	\$45

### CLIENT CORP:

I hereby authorize EDA to commence with the work and terms described herein:

Name (sign): \_\_\_\_\_ Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_

### ENVIRODESIGN ASSOCIATES, INC.

Name (sign): Scot E Wehmeyer Date: June 5, 2025

Name & Title: Scot E Wehmeyer, Senior Project Manager

**STANDARD TERMS AND CONDITIONS  
FOR THE PROVISION OF ENVIRONMENTAL SERVICES**

**1. GENERAL.**

a.As used in this and any related contract document, "EDA," "Consultant", "we," or "us" refers to EnviroDesign Associates, Inc. and its officers, employees, and agents. "You", "Client", or "Owner" refers to the party or parties contracting with EDA. "Agreement" refers to these "Standard Terms and Conditions" and the accompanying proposal ("Proposal"). "Site" refers to any and all of the sites upon which EDA is to perform services under this Agreement. "Contractor" refers to every third party contracting with Client to perform work or services or furnish materials at the site.

b. EDA agrees to perform services in accordance with the Agreement. Services may be performed in any order as EDA may elect, and not necessarily in the order in which services are described in the Agreement.

c. EDA shall not be obligated to perform any task beyond the Scope of Services ("Services") set forth in the Agreement. If additional services are undertaken at Client's request, including but not limited to updating or revising plans undertaken as part of the services, or if litigation services, expert, or other witness testimony is provided in any court, administrative, or arbitral proceeding (unless expressly contemplated as part of the services), Client agrees to pay at EDA's hourly rate schedule, for all services provided, including but not limited to review of documents, preparation, meeting with attorney, attendance at depositions or trial, and any travel time associated therewith.

d. If included in the services, EDA will assist Client in applying for permits, certificates, or other official approvals for the project but will not be responsible for obtaining same and makes no representations or guarantee that they will be granted or issued.

e. The possibility that EDA's opinion may be different from Client's expectations will not be a basis for Client withholding any portion of EDA's compensation or asserting any claim against EDA. Client acknowledges that EDA's staff includes professionals who are obligated by law and/or accepted ethical standards to apply their professional judgment, and that such judgment may not necessarily coincide with maximizing Client's expectations or financial return.

f. EDA may render opinions but will not render a legal opinion and shall not be held responsible or liable for its good faith interpretation of laws, statutes, ordinances, or regulations.

**2. STANDARD OF CARE.**

Services will be performed in accordance with generally accepted professional practice and standards at the time and place services are rendered.

**3. PAYMENT.**

a. EDA will render invoices to Client monthly and payment is due upon receipt of the invoice. EDA will not release reports, drawings, specifications, or other work product until all outstanding invoices have been paid in full. EDA's compensation is not contingent upon Client's success in Client's project, Client's ability to obtain financing or any government approval, or upon any other condition other than that which may specifically be provided for in the Agreement.

b.If payment in full of all amounts due is not received within 30 days of the date of the invoice, Client's account will be deemed delinquent from the date of billing, and Client agrees pay interest of 1.5% per month on delinquent amounts, plus a \$15.00 monthly minimum to cover the expense of administering Client's account. If Client's account is referred to an attorney or collection agent, independent of whether legal action is filed, Client shall be obligated to pay EDA, in addition to all other sums due, reasonable attorneys' fees and all costs of collection including but not limited to costs of mediation, depositions (whether utilized in court or not), filing fees, and expert witness fees. If Client's account is delinquent, EDA may unilaterally elect to cease providing services at any time, and EDA shall be relieved of any further obligation which it may otherwise have under this Agreement.

**4. SITE; OWNER'S RESPONSIBILITIES.**

a. Upon execution of this Agreement, Client agrees to provide EDA with a legal description of the site and the full name of its current owner. Within five (5) days of the date of execution of this Agreement, client agrees to provide EDA with all relevant information, which relates to the site or its present or former uses, including but not limited to:

i. Boundary lines and existing site plans;  
ii. Historical information as to prior owners and occupiers of the site and their activities, including information in the relevant land records;

iii. Location of utilities, underground tanks, and other structures, and all available plans of the site;

iv. The name, quantity, location, and date of release of hazardous substances known or believed to have been released at or near the site;

v. Any other information reasonably requested by EDA. EDA may rely on surveys and other documents provided by the owner and prepared by other licensed professionals.

b. Client will arrange for EDA, its agents and representatives, to obtain prompt access and safe access to the site and buildings thereon as required at reasonable times throughout performance of the services. If Client is not the owner of the site, EDA may require satisfactory written assurances from the owner of the site as to access and permission to perform the services.

c. Under circumstances in which services include subsurface explorations, Client acknowledges that the use of exploration equipment may alter or damage the terrain, vegetation, structures, improvements, or other property at the site and hereby knowingly accepts that risk. Provided EDA uses reasonable care, EDA shall not be liable for such alteration or damage to or interference with any subterranean structure, pipe, tank, cable, or other element or condition whose nature and location are not called to EDA's attention in writing prior to the commencement of exploration.

**5. LABORATORIES, SUBCONSULTANTS, AND OTHER THIRD PARTIES.**

If requested or agreed by the Owner, EDA may recommend that Client engage the services of laboratories, subconsultants, or other third-parties to perform suitable aspects of the services. Payment to these third-parties will be made directly by the Owner. EDA may recommend the use of such third-parties with reasonable care but does not guarantee their services and shall not be liable for their errors, omissions, or negligence.

**6. TERMINATION.**

a. In the event Client elects to cease any further work or services being performed by EDA in connection with the subject contract, written notification of Client's request to cease further work must be received by EDA. Client hereby agrees to pay for all services performed and related expenses incurred through the business day on which written notice of termination is received, plus any amount reasonably expended beyond that date to cease services in a prompt, safe, and professional manner.

b. If Client or any party sharing a direct or indirect interest with Client in the services, project, or land thereunder, is in default under this agreement or any other contract with EDA, we may cease services and/or terminate this Agreement and any or all other contracts.

**7. RISK ALLOCATION PROVISIONS.**

a. To the fullest extent permitted by law, Client shall indemnify, defend, and hold harmless EDA and its subconsultants and consultants from and against all claims, damages, losses, and expenses (collectively "Claims"), whether direct, indirect,

Initial Here: \_\_\_\_\_

or consequential, including but not limited to reasonable attorneys' fees and court and arbitration costs, arising out of or relating to the services, this Agreement, or work or services performed at or in regard to the site, including but not limited to any Claim against EDA arising from (i) the acts, omissions, or work of the Client, Owner or others, or (ii) the acts or services of EDA; provided, however, that this subparagraph shall not apply to Claims which are finally determined to result from a breach by EDA of this Agreement or from EDA's sole gross negligence. Without limiting the generality of the foregoing, the indemnification applies to all Claims against EDA which arise out of, are related to, or are based upon, the actual or threatened dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, or any other material irritant, contaminant, or pollutant in or into the atmosphere or on, onto, upon, in or into the surface or subsurface (i) soil, (ii) water or watercourses, (iii) objects, or (iv) any tangible or intangible matter, whether sudden or not.

b. EDA's total liability to the Owner for all Claims arising out of or relating to this Agreement or from its performance or nonperformance from any cause or causes, including but not limited to EDA's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty, shall not exceed a total of \$100,000 unless specifically stated otherwise elsewhere in this Agreement. A claim for such sum shall be Client's exclusive remedy under this Agreement.

c. EDA shall not be liable to Client or to any Contractor for any special, indirect, or consequential damages, however caused or alleged to be caused.

d. Client shall not assert a claim for punitive or exemplary damages against EDA, and hereby knowingly waive the right to assert a claim for punitive or exemplary damages.

e. Client shall make no Claim, directly or as a third-party Claim, against EDA unless Client shall have first provided EDA with a written certification executed and notarized by an independent professional licensed in the State of Florida, specifying every act or omission which the certifier contends is a violation of the industry standard of care, at the time and place, and under similar circumstances, where the work was performed or to be performed. The certificate shall be provided to EDA at least thirty (30) days before the presentation of any such Claim or the commencement of any judicial or arbitral proceeding.

#### **8. HAZARDOUS SUBSTANCES**

Except as may be specifically provided in the Scope of Services, EDA shall have no obligation to uncover or disclose or provide any services relating to hazardous substances, known or unknown, that may be on the site. EDA is not, and has no responsibility as a handler, generator, operator, treater, storer, transporter, or disposer of hazardous substances or toxic substances. Client will be responsible for the handling, removal, treatment, storage, transportation, and disposal of all hazardous substances found or identified at the site, or in connection with the Services rendered.

#### **9. SUBSURFACE RISKS.**

The Owner recognizes that special risks arise whenever environmental or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with the appropriate equipment and experienced personnel under the direction of a trained professional who functions in accordance with a professional standard of practice, may fail to detect certain hidden conditions. Similarly, proper laboratory and sampling procedures can sometimes produce false positive results. The passage of time also must be considered, and the Owner recognizes that, due to natural occurrences or direct or indirect human intervention at the Site or the surrounding curtilage, actual conditions may quickly change. The Owner realizes these risks cannot be completely eliminated, but certain techniques may be applied to help reduce them to a level which may be tolerable to the

Owner. EDA is available to explain these risks and risk reduction methods to the Owner but, in any event, the Services included in this Agreement are those which the Owner agreed to or selected given his or her own risk threshold and other considerations.

#### **10. OWNERSHIP AND REUSE OF DOCUMENTS.**

All documents including drawings or specifications prepared or furnished by EDA pursuant to this Agreement are instruments of service and considered work product, with respect to the project, and EDA shall retain an ownership and property interest therein, independent of whether the project is started or completed. The Owner may make and retain copies for reference in connection with the use and occupancy of the project by the Owner and others, however, such documents are not intended to be relied upon for reuse by the Owner or others on extensions of the project or on any other project. Any use for a purpose not intended by EDA and any reuse without written consent and adaptation by EDA for the specific purpose intended, will be at the Owner's sole risk and without liability to EDA, and the Owner shall indemnify and hold harmless EDA from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from any unauthorized use. Any necessary verification or adaptation will entitle EDA to further compensation at EDA's hourly rate schedule as it may be adjusted from time to time.

#### **11. BINDING; WAIVER.**

The Agreement is binding upon and shall operate to the benefit of the Client, EDA, and their respective representatives, successors, and assigns. No failure to enforce any part of the Agreement shall operate as a waiver, render any part of the Agreement invalid, or impair the right to enforce that or any part of the Agreement in the future.

#### **12. GOVERNING LAW; FORUM.**

This Agreement shall be constructed in accordance with the laws of the State of Florida. Subject to any arbitration agreement they may have, the parties agree to the exclusive jurisdiction of the state and federal courts in Florida with respect to disputes arising between them. Client hereby agrees to submit to the jurisdiction of Palm Beach County, Florida.

#### **13. INDEPENDENT CONTRACTOR.**

In performing any services pursuant to the contract, EDA is an independent contractor, and not an employee, agent, partner, or joint venturer of the Owner.

#### **14. MODIFICATIONS; PRECEDENCE; ENTIRE AGREEMENT.**

The terms and conditions of this Contract may be modified, only if in writing, and executed by an officer of EDA. Otherwise these terms and conditions shall take precedence over all inconsistent or contradictory provisions or representations, oral or written. This Agreement is the entire exclusive understanding of the parties and supersedes all prior representations.

#### **15. SEVERABILITY.**

If any provision of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform or re-execute this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that accomplishes the intentions of the parties insofar as it relates to the stricken provision.

#### **16. SURVIVAL.**

This Agreement shall survive the completion, temporary suspension of Services, and the termination of this Agreement.

Initial Here: \_\_\_\_\_











# BW2025-004 Professional Environmental Services

Final Audit Report

2025-04-23

Created:	2025-04-23
By:	Joel Burzynski (burzynskij@mydelraybeach.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAL69N4Uehq2sY4kQllc_e95ETbjP6oQBp

## "BW2025-004 Professional Environmental Services" History

-  Document created by Joel Burzynski (burzynskij@mydelraybeach.com)  
2025-04-23 - 6:54:05 PM GMT
-  Document emailed to Eugene Bitteker (BittekerE@mydelraybeach.com) for signature  
2025-04-23 - 6:54:10 PM GMT
-  Email viewed by Eugene Bitteker (BittekerE@mydelraybeach.com)  
2025-04-23 - 7:52:15 PM GMT
-  Document e-signed by Eugene Bitteker (BittekerE@mydelraybeach.com)  
Signature Date: 2025-04-23 - 7:57:42 PM GMT - Time Source: server
-  Document emailed to Henry Dachowitz (DachowitzH@mydelraybeach.com) for signature  
2025-04-23 - 7:57:44 PM GMT
-  Email viewed by Henry Dachowitz (DachowitzH@mydelraybeach.com)  
2025-04-23 - 8:39:49 PM GMT
-  Document e-signed by Henry Dachowitz (DachowitzH@mydelraybeach.com)  
Signature Date: 2025-04-23 - 8:40:58 PM GMT - Time Source: server
-  Document emailed to Terrence Moore (moore@mydelraybeach.com) for signature  
2025-04-23 - 8:41:00 PM GMT
-  Email viewed by Terrence Moore (moore@mydelraybeach.com)  
2025-04-23 - 8:58:26 PM GMT
-  Document e-signed by Terrence Moore (moore@mydelraybeach.com)  
Signature Date: 2025-04-23 - 8:58:44 PM GMT - Time Source: server

✔ Agreement completed.

2025-04-23 - 8:58:44 PM GMT