

YOR 29



New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500
Headquarters: (603) 271-3421
Web site: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964
FAX (603) 271-1438
E-mail: info@wildlife.nh.gov

December 15, 2016

His Excellency, Governor Christopher T. Sununu
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to enter into a contract with Horizons Engineering, Inc. (Vendor Code 221454) of Littleton, New Hampshire for \$24,000 to conduct a full boundary survey of the Mathes Family Limited Partnership property in Londonderry, New Hampshire. Contract will be effective upon Governor and Council approval until June 30, 2017. Funding is 100% Federal funds.

Funding for this purchase is available as follows:

<u>03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation</u>	
020-07500-21550000-033-500-150 Land Acquisition and Easements	<u>FY2017</u> \$24,000.00

EXPLANATION

NHFG is working to acquire 149 acres from the Mathes Family Limited Partnership in Londonderry to create a new wildlife management area. As part of the due diligence necessary to acquire the property we propose to enter in a contract with Horizons Engineering, Inc. to survey the two parcels that make up the property and to monument and blaze the boundary lines. This will ensure that the boundaries of this public property will be delineated and maintained in good order for the benefit of the public and the abutting landowners.

Requests for bids were sent via e-mail and/or fax to known vendors who provide this service.

Funding for this project would be provided by the U.S. Fish and Wildlife Service's Wildlife Restoration Program.

Respectfully submitted,


Glenn Normandeau
Executive Director


Kathy Ann LaBonte
Chief, Business Division

Bid Solicitations

Statewide Wildlife Management Area System Enhancement Grant

November 30, 2016

Deadline for response December 9, 2016

Surveyor	Date Received	Date Sent	Bid	Telephone
Holden Engineering & Surveying		11/30/16	No response	472-2078
Doucet Survey, Inc.		11/30/16	Not interested	239-2724
TF Bernier, Inc.		11/30/16	No response	224-4148
Tracey Sweeney		12/2/16	No returned call	568-9067
Horizon Engineering, Inc.	12/8/16	12/2/16	\$24,000	444-4111

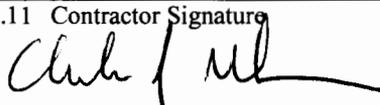
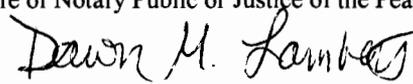
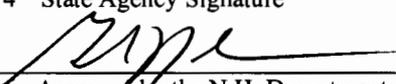
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

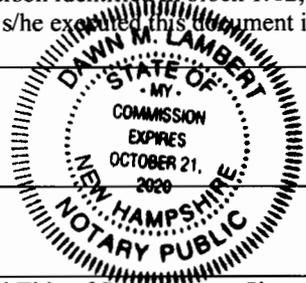
AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Fish and Game Department		1.2 State Agency Address 11 Hazen Drive, Concord, NH 03301	
1.3 Contractor Name Horizons Engineering, Inc.		1.4 Contractor Address 34 School Street, Littleton NH 03561	
1.5 Contractor Phone Number 603 444-4111	1.6 Account Number 020-07500-21550000-033-500-150	1.7 Completion Date June 30, 2017	1.8 Price Limitation \$24,000
1.9 Contracting Officer for State Agency Glenn Normandeau, Executive Director		1.10 State Agency Telephone Number (603) 271-3511	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Andrew J. Nadeau, Pres	
1.13 Acknowledgement: State of New Hampshire County of Grafton On December 15, 2016 before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace Dawn M. Lambert, Notary Public			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Glenn Normandeau, Executive Director	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 12/23/16			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			



2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 (“Effective Date”).
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials ASW
Date 12/15/14

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials ASW
Date 12/15/14

Exhibit A Scope of Services

The Scope of Services is agreed to be as follows between Horizons Engineering Inc. and the New Hampshire Fish and Game Department (NHFG)

Horizons Engineering Inc. shall:

1. Complete a closed perimeter boundary survey including setting of new monuments and at boundary points of obliterated or missing boundary monuments. Survey will be based on NH State Plane Coordinate system. Contractor will provide a digital file of an acceptable format (i.e. Auto Cad/Carlson) of the survey plan in format sheet. The file will include the points file for all boundary corners and monuments referenced by deed (including tie courses generated through closure) in the drawing.
2. Provide three (3) paper copies and two (2) hard copies of the formatted boundary plan on Mylar suitable for registry filing. Also, a digital file of an acceptable format of the drawing plan in formatted sheet including the points file for all boundary corners and monuments in the drawing referenced by deed. Also provide a Word document format of the description of each lot's metes and bounds for the deed description and a list of coordinates in numerical order for each lot.
3. Brushing, Blazing, Painting & Signage:
 - a) All necessary materials, (i.e. paint, brushes, nails, signs, monuments) will be supplied by the New Hampshire Fish & Game Department. Unused materials are returned to the New Hampshire Fish & Game Department upon completion of the project.
 - b) The property line will be brushed out approximately four feet (4') horizontally, two (2') feet each side of the line and six feet (6') vertically; removing limbs, saplings, etc. so that the line is clearly visible.
 - c) Blazed boundary lines are to follow as straight a line as possible on the actual magnetic bearing. Blazes are cut into the trees sapwood (as the vegetated condition permits, ie availability and diameter of trees) removing the bark. Blazes shall be generally rectangular in shape, and a minimum of 2" wide x 4" long. Blaze marking protocol: fore & aft blazes of online trees, $\frac{3}{4}$ blazes (two blazes on the same side of tree opposed @ a forty-five degree position) facing the line for trees located within two feet (2') left or right of boundary line and **side blazes** shall be used on trees between two feet (2') and four feet (4') from the line (a single blaze facing the line).. Blazed and painted trees should not be further than thirty feet (30') to forty feet (40') apart and be in sight of the next blaze on line.
 - d) Fresh trees blazes must dry a minimum of three weeks prior to painting. Orange paint provided will be used to paint blazes and shall be applied by brush or paint roller. The paint will be applied in an even consistency (not washy or runny) completely covering the blaze.

- e) Witness of Boundary corners: Boundary lines and corners must be clearly visible, “heading to” and “leaving from” the corner or monument. At least two separate witness trees (when available) are blazed @ each corner. Each tree will have three blazes vertically aligned facing the corner with each positioned at approximately (10’) ten feet either side of boundary corner and include a orange boundary corner sign (3”X 7”) worded – STATE WILDLIFE MANANAGMENT AREA CORNER posted online facing abutting property and perpendicular of the boundary line direction.
- f) Orange boundary signs (3” x 10”) worded – BOUNDARY - STATE WILDLIFE MANANAGMENT AREA BEYOND THIS SIGN shall be installed approximately 200’ apart along all boundary lines.
- g) Caution must be exercised when witnessing boundary lines where hiking/snow machine trails cross the property line. At these intersections, boundary line blazes/paint will be absent a minimum of fifty feet (50’) from the trail intersection so users do not confuse the boundary line blazes for a trail blazes. Property signs shall be posted at trail intersections facing the abutting property. Signs are posted every 25’ for a total distance of 100’ left and 100’ right of the intersection along the boundary where blazes and paint are omitted.

**Exhibit B
Method of Payment**

Method of Payment shall be as follows:

Fifty percent of the price limitation will be made during the contract period. Payment will be based on review and receipt of the preliminary (draft) survey plan with corner locations to be set identified and deed research post complete.

The remaining payment, final 50% (fifty percent) of the contract, will be made contingent upon the complete setting of required monuments, brushing and blazing, painting, signing, filing of the boundary plat information with the county registry of deeds, receipt of stamped Mylar property plan, copy of field notes with ACAD LLD .DXF & .DWG file or better in State Plane coordinate base. Site work will be field inspected for acceptance by NH Fish & Game agents upon completion of work.

Final payment may be withheld in the event that the State determines through field inspection that scope of work was not consistently followed. Final payment will be made when all work is completed in accordance with the scope of work.

**Exhibit C
Special Provisions**

None

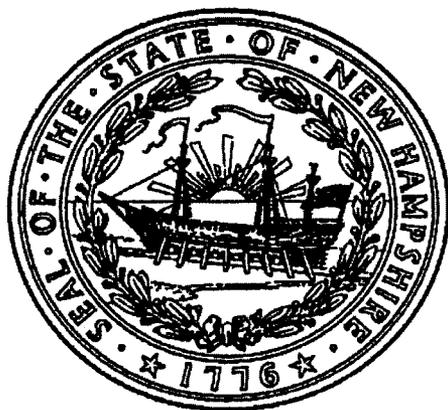
State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that HORIZONS ENGINEERING INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on September 29, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 620170



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 15th day of December A.D. 2016.

A handwritten signature in black ink, appearing to read "William M. Gardner".

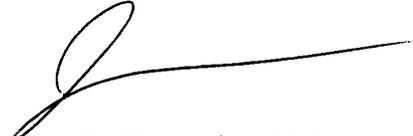
William M. Gardner
Secretary of State

CERTIFICATE OF VOTE

At a duly authorized meeting of the Board of Directors of Horizons Engineering, Inc. (the "Company"), held April 8, 2015 it was VOTED that Andrew J. Nadeau, the President of the Company, be and hereby is authorized to execute contracts and bonds in the name of and on behalf of the Company; and such execution of any contract or obligation in the Company's name on its behalf by such officer under seal of the Company, shall be valid and binding upon this Company.

I hereby certify that I am the Chief Executive Officer of the Company and that Andrew J. Nadeau is the duly elected officer as stated above of the Company. This vote has not been amended or rescinded and remains in full force and effect as of the date signed below.

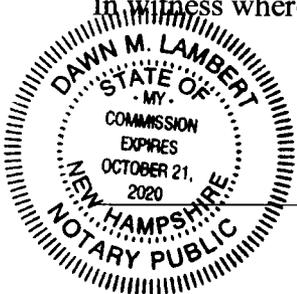
December 15, 2016
Date


Jon L. Warzocha, CEO
Name/Title

State of New Hampshire, County of Grafton County, ss.

On this 15 day of December, 2016, before me, Dawn M. Lambert, the undersigned officer, personally appeared Jon L. Warzocha, who acknowledged himself to be the President of Horizons Engineering, Inc., and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing his name as Chief Executive Officer of Horizons Engineering, Inc.

In witness whereof I hereunto set my hand and official seal.





Dawn M. Lambert, Notary Public

