



**Agreement Between Owner and Engineer
for
Hidden Valley Playground Renovations
Construction Management and Contract Administration
(24EN13)**

Owner

City of Gillette
201 E. 5th Street
Gillette, WY 82716

Engineer

Consolidated Engineers, Inc.
P.O. Box 1035
Gillette, WY 82717

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of May 21st, 2024 (“Effective Date”) between
[City of Gillette] (“Owner”) and
[Consolidated Engineers, Inc.] (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
[Hidden Valley Playground Renovations Project (24EN13)] (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: [Professional Services related to the management and administration of the Hidden Valley Playground Renovations Project and associated contract between the City of Gillette and the successful Bidder.]

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

- 1. any development that affects the scope or time of performance of Engineer’s services;
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2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Payment shall be made upon submission of invoice pursuant to WYO. STAT. § 16-6-602. No payment shall be made for work performed before the date upon which the last required signature is affixed to this Agreement.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to

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the terms of Paragraph 4.01. After a disputed item has been settled, Engineer shall include the settled amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Reserved*

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.
2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

~~6.02 — Design Without Construction Phase Services~~

- ~~A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.~~

6.03 Use of Documents

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following

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limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants;; and (3) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, including Professional Liability (Errors & Omissions) Insurance. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- C. All insurance policies required by this Agreement, except workers' compensation, shall name the Owner as an additional insured, and shall contain a waiver of subrogation against the Owner, its agents and employees. Engineer shall provide, upon request, a copy of an endorsement providing this coverage.

- D. All policies required under this Agreement shall be in effect for the duration of this Agreement and project. All policies shall be primary and not contributory. Engineer shall pay the premiums on all insurance policies, and all insurance certificates must include a clause stating that the insurance may not be revoked, canceled, amended, or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the Owner.
- E. The insurance requirements set out above apply to all Subcontractors. It is the Engineer's responsibility to ensure that its Subcontractors meet these insurance requirements. The Owner has the right to review the Certificates of any and all subcontractors used by the Agreement.
- F. The Owner reserves the right to reject a certificate of insurance if the Engineer's insurance company is widely regarded in the insurance industry as financially unstable. This would include, but is not limited to, insurance companies with an A.M. Best's rating of less than A:VII.
- G. At any time, Owner may request that Engineer or its Consultants, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

6.07 *Controlling Law*

- A. The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the Owner does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121, and all other applicable law.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner, to the extent authorized by law, and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors,

administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known

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Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Indemnification

- A. *Indemnification by Engineer:* The Engineer shall indemnify, hold harmless, and defend the Owner, its members of the governing body, directors, officers, agents, representatives, and employees from and against any and all claims, demands, penalties, liens, losses, fines, liabilities, damages, interest, costs, or expenses (including without limitation reasonable attorneys' fees and court costs), whether or not involving a third party claim, arising out of or in connection with:
 - 1. The acts, errors, omissions, conduct, or operations of Engineer or any of its officers, sub-contractors, agents, or employees
 - 2. Any breach of any of the representations, warranties, covenants, obligations or duties contained in this Agreement.
 - 3. Any violation of any federal, state, or local laws, rules, or regulations.
- B. The indemnification obligations herein shall not be limited by reason of the enumeration of any insurance coverage and shall survive the termination of this Agreement.

6.12 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 Miscellaneous Provisions

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

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- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: If any part of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed, and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Agreement and the remaining portion of this Agreement shall be valid and enforceable.
- D. *Waiver*: The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver. No waiver, amendment, release, or modification of this Agreement shall be established by conduct, custom, or course of dealing. All waivers must be in writing and signed by all parties.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Governmental Immunity*: The Owner does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to Wyo. Stat. §§ 1-39-101 through 120 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity. With respect to W.S. 1-39-104(a), Owner does not intend to retain immunity in action based on contract under this provision.
- G. *Availability of Funds*: Each payment obligation of the Owner is conditioned upon the availability of government funds which are appropriated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Engineer and/or the Contractor, the Agreement may be terminated by the Owner at the end of the period for which the funds are available. The Owner shall notify the Engineer and/or the Contractor at the earlier possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payment due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Owner to terminate this Contract to acquire similar services from another party.
- H. *Force Majeure*: Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be

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effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the Owner does not waive governmental immunity by entering into this agreement and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. §§ 1-39-101-120 and all other applicable law.

- I. *Independent Contractor*: The Engineer shall function as an independent contractor the purposes of this Agreement and shall not be considered an employee of the Owner for any purpose. The Engineer shall assume sole responsibility for any debts or liabilities that may be incurred by the Engineer in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this agreement. Nothing in this Agreement shall be interpreted as authorizing the Engineer or its agents and/or employees to act as an agent or representative for or on the behalf of the Owner or to incur any obligation of any kind on behalf of the Owner. The Engineer agrees that no health/hospitalization benefits, workers' compensation, and or/similar benefits available to the Owner's employees will inure to the benefit of the Engineer or the Engineer's agents and/or employees as a result of this Agreement.
- J. *Binding Effect*: This Agreement shall not be binding on any party until executed by all parties. Once completely executed, this Agreement shall be binding upon and insure to the benefit of the parties and their respective successors and permitted assigns.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer’s services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor’s record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field

- Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
 27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
 28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
 29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
 30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
 31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
 32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
 33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design

professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Not Used.
- F. Exhibit F, Not Used.
- G. Exhibit G, Insurance.
- H. Exhibit H, LWCF Misc Certs and Clauses.
- I. Exhibit I, LWCF Buy America Requirements
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

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8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*


- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: [City of Gillette]

Engineer: [Consolidated Engineers, Inc.]

By: _____
Print name: Shay Lundvall
Title: Mayor
Date Signed: _____

By: [] 
Print name: [Dennis G. Stillman]
Title: [Secretary / Treasurer]
Date Signed: [] April 2, 2024

Engineer License or Firm's Certificate No. (if required):
[E-0286]
State of: [Wyoming]

Address for Owner's receipt of notices:
[City of Gillette: Engineering Division
201 E. 5th Street
Gillette, WY 82716]

Address for Engineer's receipt of notices:
[P.O. Box 1035
Gillette, WY 82717-1035]

Designated Representative (Paragraph 8.03.A):
[Tobias Fiske]
Title: [Project Manager Technician]
Phone Number: Direct: 307-228-0077
Alt: (651) 528-0399
E-Mail Address: [tobyf@gillettewy.gov]

Designated Representative (Paragraph 8.03.A):
[Dennis G. Stillman]
Title: [Secretary / Treasurer]
Phone Number: [307-680-1788]
E-Mail Address: [dstillman@ceincorp.com]

This is **EXHIBIT A**, consisting of [11] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase (Removed, Not Applicable to This Agreement)*

A1.02 *Preliminary Design Phase (Removed, Not Applicable to This Agreement)*

A1.03 *Final Design Phase (Removed, Not Applicable to This Agreement)*

A1.04 *Bidding or Negotiating Phase (Removed, Not Applicable to This Agreement)*

A1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Reserved.*

Exhibit A – Engineer's Services

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4. *Pre-Construction Conference:* Conduct a pre-construction conference prior to commencement of Work at the Site. Provide meeting minutes to all conference attendees.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an

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experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents. However, neither Engineer's authority to reject Work nor Engineer's decision to exercise or not exercise such authority shall give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters,

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then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Proposals, Change Orders and Work Change Directives:* Recommend Change Proposals, Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve

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it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

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22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: [N/A]
 25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
 26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are

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required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 Post-Construction Phase

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. Collect and transmit construction related data relevant to the development of Record Drawings and Final Report
 - b. Transmit such data to Owner for review and transmittal to Design Architect Russell + Mills Studios.
 - c. Relevant data includes, but is not limited to:
 - 1) Survey data
 - 2) Test reports
 - 3) Progress Meeting Minutes
 - 4) As Constructed Drawings, Notes and/or other such documentation]
 - d. Conduct an 11-month warranty review of the project and prepare notes of any deficient items.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in

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- connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
 8. Furnishing services of Consultants for other than Basic Services.

Exhibit A – Engineer's Services

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9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Reserved.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Reserved.

Exhibit A – Engineer's Services

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21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Reserved.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives, Change Proposals and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

Exhibit A – Engineer's Services

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3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

Exhibit A – Engineer's Services

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This is **EXHIBIT B**, consisting of [4] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

- B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:
- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
 - B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
 - C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
 - D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Utility and topographic mapping and surveys.

Exhibit C – Compensation Decision Guide.

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4. Reserved.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests, including but not limited to the review of Contract Documents supplied by Engineer.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Removed, Not applicable to this Agreement.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities

Exhibit C – Compensation Decision Guide.

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among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following:
 - 1. Coordinate between Engineer and Design Architect Russell Mills Studios, including but not limited to:
 - a. Relaying correspondence and requests for information
 - b. Providing data, reports or other information used during design development as may be relevant to the project.
 - 2. Communicate as required with federal funding agencies related to the LWCF Grant funding for this project.
 - 3. Prepare and submit reports, reimbursement requests, correspondence, and other documents to the LWCF as may be requested or required.]

Exhibit C – Compensation Decision Guide.

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This is **EXHIBIT C**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 21st, 2024.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
4. The total compensation for services under Paragraph C2.01 is estimated to be \$[26,753.75] based on the following estimated distribution of compensation:

- | | |
|---------------------------------|---------------|
| a. Study and Report Phase | \$[] |
| b. Preliminary Design Phase | \$[] |
| c. Final Design Phase | \$[] |
| d. Bidding or Negotiating Phase | \$[] |
| e. Construction Phase | \$[26,098.25] |
| f. Post-Construction Phase | \$[655.50] |

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed

the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.4 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of [1.05].

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.05].
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

- 1. Resident Project Representative Services:* For services of Engineer’s Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any. The total compensation under this paragraph is estimated to be \$[18,855.00] based upon full part-time RPR services on an eight-hour workday, Monday through Friday, over a [60] day construction schedule.

B. Compensation for Reimbursable Expenses:

- 1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.*
- 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.*
- 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of [1.05].*

C. Other Provisions Concerning Payment Under this Paragraph C2.04:

- 1. Whenever Engineer is entitled to compensation for the charges of Engineer’s Consultants, those charges shall be the amounts billed by Engineer’s Consultants to Engineer times a factor of [1.05].*

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer’s personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants’ charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [1.05].
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer’s Consultants, those charges shall be the amounts billed by Engineer’s Consultants to Engineer times a factor of [1.05].
 2. *Factors:* The external Reimbursable Expenses and Engineer’s Consultant’s Factors include Engineer’s overhead and profit associated with Engineer’s responsibility for the administration of such services and costs.

**Exhibit C – Compensation Packet AS-3: Additional Services –
Salary Costs Times a Factor Method of Payment.**

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3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ []/page
Copies of Drawings	\$ []/sq. ft.
Mileage (auto)	\$ [0.75]/mile
Air Transportation	at cost
CAD Charge	\$ []/hour
Laboratory Testing	at cost
Health and Safety Level D	\$ []/day
Health and Safety Level C	\$ []/day
Meals and Lodging	at cost

This is **Appendix 2 to EXHIBIT C**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

- Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
- The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

B	illing Class VIII		[\$]/hour
P	rincipal Engineer		[\$150.00]/hour	
S	enior Project Engineer		[\$130.00]/hour	
R	esident Project Representative (RPR)		[\$90.00]/hour	
B	illing Class IV		[]/hour
B	illing Class III		[]/hour
B	illing Class II		[]/hour
B	illing Class I		[]/hour
N	on-administrative Support Staff		[]/hour

[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, “Billing Class VI—Assistant Project Manager”), or using the engineering firm’s own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project’s course.]

This is **EXHIBIT D**, consisting of [5] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide ~~full~~ part-time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

Exhibit D - Resident Project Representative.

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removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Proposals, Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Proposals, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
 - d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - e. Maintain records for use in preparing Project documentation.
 - f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
12. *Reports:*
- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and/or recommend to Engineer Change Proposals, Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
15. *Completion:*
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer’s visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including “or-equal” items).
 2. Exceed limitations of Engineer’s authority as set forth in this Agreement.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Reserved: NOT USED FOR THIS AGREEMENT

This is **EXHIBIT F**, consisting of [n/a] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Reserved: NOT USED FOR THIS AGREEMENT

Exhibit F – Reserved.

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This is **EXHIBIT G**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|-------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Bodily injury, each accident: | \$1,000,000 |
| 2) Bodily injury by disease, each employee: | \$1,000,000 |
| 3) Bodily injury/disease, aggregate: | \$1,000,000 |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| 2) General Aggregate: | \$2,000,000 |
| d. Excess or Umbrella Liability -- | |
| 1) Per Occurrence: | \$2,000,000 |
| 2) General Aggregate: | \$2,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | \$1,000,000 |
| f. Professional Liability (Errors Omissions) – | |
| 1) Each Claim Made | \$2,000,000 |
| 2) Annual Aggregate | \$2,000,000 |

2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of [12] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Reserved for incorporation of LWCF Misc Certs and Clauses

LWCF: Miscellaneous Certifications and Clauses
FOR PROFESSIONAL SERVICES ONLY
to be Completed and Signed by all Bidders

Reference: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D>

This project is subject to an Agreement between the Project Sponsor and the Wyoming Department State Parks and Cultural Resources (SPCR) to utilize federal funding from the Land and Water Conservation Fund.

The provisions of Wyo. State § 16-6-102 and 16-6-104, Preference for Wyoming labor and materials, **DO NOT** apply. The contract shall be awarded to the lowest responsive and responsible bidder. (see PL §200.319)

The undersigned Bidder hereby proposes to furnish all materials (except materials furnished by the Project Sponsor) including machinery, tools, equipment, and supplies, and perform all labor necessary to complete the work described in accordance with the plans, current standard specifications, special provisions, and for the prices set forth in the **attached schedule**. The schedule is to include major work components with costs and expected completion dates and other requested information.

REGISTRATION WITH THE WYOMING SECRETARY OF STATE

- I. Bidder is a corporation or limited liability company? **YES (X)** **NO ()**
- II. Is the above Bidder currently registered with the Wyoming Secretary of State to do business in the State of Wyoming? **YES (X)** **NO ()** (Please attach a copy of your registration.)

CERTIFICATION OF SUSPENSION OR DEBARMENT

Bidder and all person(s) associated therewith in the capacity of owner, partner, director, or officer authorized to sign contracts certifies by signing this document that the responses to the following questions are true.

- I. Is any interested party currently under suspension, disqualifications, debarment, voluntary exclusion, or determination of ineligibility by any state or federal agency?
 YES () NO (X) Initials: SS
- II. Has any interested party been suspended, debarred, disqualified, voluntarily excluded, or determined ineligible by any state or federal agency within the past three years?
 YES () NO (X) Initials: SS
- III. Has any interested party have a debarment pending? YES () NO (X) Initials: SS
- IV. Has any interested party been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving non-compliance, non-performance, judgement for financial compensation, fraud or official misconduct within the past three years?
 YES () NO (X) Initials: SS
- IV. Is any interested party currently involved in a case related to non-compliance, non-performance, judgement for financial compensation, fraud or official misconduct within the past three years?
 YES () NO (X) Initials: SS
- V. If registered with SAM.gov, UEI: **TZUBYWNBEBS9**

If the answer is YES to any of I-IV above, insert explanation and official documents below:

APPLICABLE: YES () NO (X)

SUSPENSION OR DEBARMENT LISTING

Suspension or Debarment actions will not necessarily result in denial of award but will be considered in determining Bidder responsibility. For any Suspension or Debarment noted, indicate below to whom it applies, initiating agency and dates of action.

APPLIES TO WHOM	INITIATING AGENCY	DATES OF ACTION

The person or persons signing this document do hereby certify, under penalty of perjury, that the CERTIFICATION OF SUSPENSION OR DEBARMENT is a true and accurate statement.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION CERTIFICATION

Affirmative steps are required to utilize Minority Business Enterprises and Woman Business Enterprises (“Disadvantaged Business Enterprises” or “DBE”) as possible sources of supplies, equipment, construction, and services. DBE’s are minority or women owned or controlled businesses.

- (I.) Bidder certifies that:
 - (A.) It has taken and will take affirmative action to seek out and consider Disadvantaged Business Enterprises as potential subcontractors.
 - (B.) It has taken and will take affirmative action to seek out and consider DBEs as potential suppliers.
- (II.) Further, the Bidder shall:
 - (A.) List all DBE’s contacted (and those that responded) on the following form and complete the requested information for each.
 - (B.) If applicable, mark that subcontracting is not anticipated.
 - (C.) If subcontracting occurs, provide the list to the Project Sponsor within thirty (30) days of project completion.
 - (D.) Make available upon request the bids submitted from each DBE and from non-DBE bidders.

**DISADVANTAGED BUSINESS ENTERPRISE
 PARTICIPATION CERTIFICATION**

The Bidder has contacted the following Disadvantaged Business Enterprises (DBE) to solicit quotations for work to be subcontracted or for materials to be used on this project. If one DBE firm is contacted as a supplier of materials and for other subcontract work (i.e. furnish benches as a supplier and providing labor as a subcontractor) the firm must be shown twice, once as a supplier and once for the subcontract work.

Information from all DBE firms that submitted quotes, whether solicited or not solicited, must be retained in the project file.

Do Not Intend to (or did not) Subcontract Work (Note: Add additional lines if needed.)

Disadvantaged Business Entity	Specific Subcontract Work or Materials Requested	Contact Method(s)	Contact Date(s)	Contact Result
				<input type="checkbox"/> No Response or Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted <input type="checkbox"/> Bid Amount \$ <input type="checkbox"/> Selected for Work or Materials
				<input type="checkbox"/> No Response or Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted <input type="checkbox"/> Bid Amount \$ <input type="checkbox"/> Selected for Work or Materials
				<input type="checkbox"/> No Response or Not Interested <input type="checkbox"/> Not quoting on this project <input type="checkbox"/> Quote submitted <input type="checkbox"/> Bid Amount \$ <input type="checkbox"/> Selected for Work or Materials

BUY AMERICA REQUIREMENTS

Federal law §200.322 Domestic preferences for procurements, PL 117-48 Infrastructure and Jobs Act, and Executive Order 14005 Ensuring the Future is Made in All America by All of America's Workers apply to this project. All contracts and subcontracts must reference these laws and policies.

For further information on the Buy America preference, please visit www.doi.grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

BIDDER INFORMATION

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

- (I.) The undersigned certifies, to the best of his or her knowledge and belief, the following:
- (A.) No federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (B.) If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit to the Project Sponsor Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (C.) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES APPENDIX A TO SUBPART A OF PART 230 – SPECIAL PROVISIONS

- (I.) General.
- (A.) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Executive Order 11246 and Executive Order 11375, are set forth in Required Contract Provisions form FHWA-1273, and these certifications and clauses are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-

Aid Highway Act of 1968. The requirements set forth in these certifications and clauses constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

(B.) The Bidder will work with the Project Sponsor and SPCR in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

(C.) The Bidder and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity:

(i.) The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.

(ii.) The Bidder will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

(II.) Equal Employment Opportunity Policy.

(A.) The Bidder will accept as his/her operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of the Bidder to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

(III.) Equal Employment Opportunity Officer.

(A.) The Bidder will designate and make known to the Project Sponsor the Bidder's contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

(IV.) Dissemination of Policy.

(A.) All members of the Bidder's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Bidder's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(i.) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work, and then not less often than once every six months, at which time the Bidder's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(ii.) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Bidder's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(iii.) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Bidder's procedures for locating and hiring minority group employees.

(B.) The Bidder and all Subcontractors shall take the following actions:

(i.) Notices and posters setting forth the Bidder's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment, and potential employees.

(ii.) The Bidder's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(V.) Recruitment.

(A.) The Bidder and all Subcontractors will include in all advertisements for employees the notation "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

(B.) The Bidder will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral

sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his/her EEO Officer, identify sources of potential minority group employees and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

(C.) In the event the Bidder has a valid bargaining agreement providing for exclusive hiring practices, Bidder will remain in compliance with equal employment opportunity provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Bidder to do the same, such implementation violates Executive Order 11246, as amended.)

(D.) The Bidder will encourage present employees to refer minority group applicants for employment. Appropriate notices or bulletins will be posted in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

(VI.) Personnel Actions.

(A.) Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. These procedures shall be followed:

- (i.) The Bidder will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- (ii.) The Bidder will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- (iii.) The Bidder will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Bidder will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- (iv.) The Bidder will promptly investigate all complaints of alleged discrimination made to the Bidder in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Bidder will inform every complainant of all of his avenues of appeal.

(VII.) Training and Promotion.

(A.) The Bidder will assist in locating, qualifying, increasing the skills of, and increasing the proportion or number of applications for employment among minority group and women employees.

(B.) Consistent with the Bidder's work force requirements and as permissible under federal and state regulations, the Bidder shall make full use of training programs, *i.e.*, apprenticeship and on-the-job training programs. Where feasible, 25 percent (25%) of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

(C.) The Bidder will advise employees and applicants for employment of available training programs and entrance requirements for each.

(D.) The Bidder will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

(VIII.) Unions.

(A.) If the Bidder relies in whole or in part upon unions as a source of employees, the Bidder will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions and to effect referrals by such unions of minority and female employees. Actions by the Bidder either directly or through a Bidder's association acting as agent will include the procedures set forth below:

(i.) The Bidder will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(ii.) The Bidder will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

(iii.) The Bidder is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Bidder. The Bidder shall certify to the Project Sponsor the efforts made to obtain such information.

(B.) In the event the union is unable to provide the Bidder with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Bidder will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Bidder has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Bidder shall immediately notify the Project Sponsor.

(IX.) Subcontracting

(A.) The Bidder will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Bidders may be able to obtain lists of minority-owned construction firms from the Wyoming Department of Transportation.

(B.) The Bidder will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

(C.) Bidder agrees to pay subcontractors within thirty (30) days of payment from Project Sponsor for all satisfactory work performed and retainage.

(X.) Records and Reports.

(A.) The Bidder will keep such records as are necessary to determine compliance with the Bidder's equal employment opportunity obligations. The records kept by the Bidder will be designed to indicate the following:

(i.) The number of minority and nonminority group members and women employed in each work classification on the project.

(ii.) The progress and efforts made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to Bidders who rely in whole or in part on unions as a source of their work force),

(iii.) The progress and efforts made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(iv.) The progress and efforts made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

(B.) All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Project Sponsor and SPCR.

(C.) The Bidder will submit an annual report to the Project Sponsor each July for the duration of the project. The annual report will include the numbers of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision," the contractor will be required to furnish Form FHWA 1409.

(XI) Other

(A.) This project is subject to CFR 2 §200.322 Domestic preferences for procurements.

Please note any exceptions here:

Federal Fund Notification

This project is funded in part with a federal Land and Water Conservation Fund grant for which the Sponsor is a Subrecipient.

FAIN # P22AP01555 LWCF # 56-00955 CFDA # 15.916

BIDDER CERTIFICATION

Bidder, either personally or through its duly authorized representatives, certifies that it has read, understood, and agreed to all terms and conditions of these certifications and clauses. If selected as a subcontractor, this document will be added to contract for the services.

Bidder certifies that a pricing schedule consisting of 1 pages is attached to this document.

Bidder Name: Consolidated Engineers, Inc.

Bidder Mailing Address: PO Box 1035, Gillette, WY 82717-1035

Email: dstillman@ceincorp.com

Phone Number: (307) 682-0768

Printed Name of Bidder's Authorized Signatory: Dennis G. Stillman

Signature of Authorized Signatory: 

Date: March 15, 2024

This is **EXHIBIT I**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Reserved for Insertion of LWCF Buy America Requirements

Attachment B: Buy America Requirements
56-00955 Hidden Valley Park Playground Improvements

A. Background:

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, and specified in Executive Order 14005, Ensuring the Future is Made in All America by All of America's Workers, none of the funds under a federal award that are part of a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver.

The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Grants may be covered by a Waiver to the Buy America provisions. Waivers are published here: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

B. Definitions:

1. "Construction materials" includes an article, material, or supply that is or consists primarily of:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - lumber;
 - drywall;
 - and anything that is installed, built, or purchased.
2. "Construction Materials" does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.
3. "Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; and the construction materials used in the project are produced in the United States.
4. "Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. **Infrastructure includes all amenities funded through this Agreement.**

5. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

C. Infrastructure Requirements:

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent (55%) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

D. Waivers:

When necessary, the Subrecipient may apply for a waiver. The waiver request must be submitted to the Agency before work begins. Waivers must then be approved by Department of the Interior (DOI) who may grant a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;

2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

Applications for waiver must be in writing, signed by the Subrecipient's Principal Contact, and include the following. A form for this purpose will be provided by the Agency.

- a. Type of waiver requested (non-availability, unreasonable cost, or public interest).
- b. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
- c. Department of Interior Bureau or Office who issued the award.
- d. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
- e. Financial assistance title of project (reference block 8 on DOI Notice of Award).
- f. Federal Award Identification Number (FAIN).
- g. Federal funding amount (reference block 11.m. on DO Notice of Award).
- h. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
- i. Infrastructure project description(s) and location(s) (to the extent known).
- j. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
- k. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
- l. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- m. Anticipated impact if no waiver is issued. Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers.

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the Subrecipient will notify the Agency of the general applicable waiver before work begins.

This is **EXHIBIT J**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

Special Provisions

Paragraph(s) [6.07, 6.11, 6.13] of the Agreement is/are amended to include the following agreement(s) of the parties:

Paragraph 6.07 Controlling Law is hereby amended as follows:

Replace WYO. STAT. §§ 1-39-101-121 with WYO. STAT. §§ 1-39-101-120 at the appropriate place in the paragraph.

Paragraph 6.11 *Indemnification and Mutual Waiver* is hereby removed in its entirety and replaced with the following:

6.11 *Indemnification*

- A. *Indemnification by Engineer*: The Engineer shall indemnify, hold harmless, and defend the Owner, it's members of the governing body, directors, officers, agents, representatives, and employees from and against any and all claims, demands, penalties, liens, losses, fines, liabilities, damages, interest, costs, or expenses (including without limitation reasonable attorneys' fees and court costs), whether or not involving a third party claim, arising out of or in connection with:
1. The acts, errors, omissions, conduct, or operations of Engineer or any of its officers, sub-contractors, agents, or employees.
 2. Any breach of any of the representations, warranties, covenants, obligations or duties contained in this Agreement.
 3. Any violation of any federal, state, or local laws, rules, or regulations.
- B. The indemnification obligations herein shall not be limited by reason of the enumeration of any insurance coverage and shall survive the termination of this Agreement.

The following is hereby added to paragraph 6.13 Miscellaneous Provisions:

- F. *Governmental Immunity*: The Owner does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to Wyo. Stat. §§ 1-39-101 through 120 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity. With respect to W.S. 1-39-104(a), Owner does not intend to retain immunity in actions based on contract under this provision.

- G. *Availability of Funds:* Each payment obligation of the Owner is conditioned upon the availability of government funds which are appropriated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Engineer and/or the Contractor, the Agreement may be terminated by the Owner at the end of the period for which the funds are available. The Owner shall notify the Engineer and/or the Contractor at the earlier possible time of the services which will or may be affected by a shortage of funds. NO penalty shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payment due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Owner to terminate this Contract to acquire similar services from another party.
- H. *Force Majeure:* Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the Owner does not waive governmental immunity by entering into this agreement and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. §§ 1-39-101-120 and all other applicable law.
- I. *Independent Contractor:* The Engineer shall function as an independent contractor the purposes of this Agreement and shall not be considered an employee of the Owner for any purpose. The Engineer shall assume sole responsibility for any debts or liabilities that may be incurred by the Engineer in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this agreement. Nothing in this Agreement shall be interpreted as authorizing the Engineer or its agents and/or employees to act as an agent or representative for or on the behalf of the Owner or to incur any obligation of any kind on behalf of the Owner. The Engineer agrees that no health/hospitalization benefits, workers' compensation, and or/similar benefits available to the Owner's employees will inure to the benefit of the Engineer or the Engineer's agents and/or employees as a result of this Agreement.
- J. *Binding Effect:* This Agreement shall not be binding on any party until executed by all parties. Once completely executed, this Agreement shall be binding upon and insure to the benefit of the parties and their respective successors and permitted assigns.

Paragraph 6.13(3) *Severability* is hereby removed in its entirety and replaced with the following:

- C. *Severability:* If any part of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed, and enforced to the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Agreement and the remaining portions of this Agreement shall be valid and enforceable.

Paragraph 6.13(D) *Waiver* is hereby amended and the following added to the end of the paragraph:

No waiver, amendment, release, or modification of this Agreement shall be established by conduct, custom or course of dealing. All waivers must be in writing and signed by all parties.

This is **EXHIBIT K**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [May 21st, 2024].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ___ Additional Services to be performed by Engineer
- ___ Modifications to services of Engineer
- ___ Modifications to responsibilities of Owner
- ___ Modifications of payment to Engineer
- ___ Modifications to time(s) for rendering services
- ___ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____