

CITY OF LIBBY

952 E. SPRUCE | POST OFFICE BOX 1428

PHONE 406-293-2731 | FAX 406-293-4090 | WEBSITE: www.cityoflibby.com

REGULAR COUNCIL MEETING #1605

MAY 16, 2022 @ 7:00PM

COUNCIL CHAMBERS – CITY HALL

CALL TO ORDER:

- Pledge of Allegiance
- Prayer by Joseph Miller
- Roll Call
- Welcome

ANNOUNCEMENTS:

1. Campground.

COMMITTEE REPORTS:

- City Administrators Report
- Fire
- Police
- Ordinances
- Lights/Streets/Sidewalks
- Building
- Water/Sewer
- Zoning Commission
- Cemetery/Parks
- Budget
- City-County Board of Health
- Park District Manager of Projects

PUBLIC COMMENT ON NON-AGENDA ITEMS: This is an opportunity for the public to offer comments related to issues that are not currently on the agenda that the council has jurisdiction over. Public comment is limited to 3 minutes.

OLD BUSINESS: Each previous agenda item will be introduced by the mayor with a description of the item and explanation for the recommended action to be taken. Following council discussion on each item there will be an opportunity for public comment. Public comment is limited to 3 minutes concerning the agenda item being discussed only.

NEW BUSINESS: The mayor will introduce each new agenda item with a description of the item and an explanation for the recommended action to be taken. Following council discussion on each item, there will be an opportunity for public comment. Public comment is limited to 3 minutes concerning the agenda item being discussed only.

1. Approve City of Libby submitting MCEP Grant Application for Libby Creek Community Water Improvements.
2. Approve Memorandum of Understanding between the City of Libby and Lincoln County regarding MCEP grant for Libby Creek Community.
3. Approve Master Service Agreement for AE2S engineering services agreement for sewer plant controller and replacement of 3 sections of sewer mains. (Funding is from the CDBG, MCEP and RRGLgrants).
4. Approve Master Services Agreement for AE2S and Task Order #1 for the Water System PER. I have reviewed the Scope and fees.
5. Approve Tina Oliphant, 38D Services, LLC. contract for grant administration.
6. Civics Class Presentations.
7. Approve Ordinance NO. 2002, Adult Use Marijuana – Second Reading.
8. Approve Lincoln County Commissioners' request to define Board of Health – Local Governing Body.
9. Approve all business license applications received to date.
 - a. BBNDLLC DBA Kootenai Country Title, 108 E 9th St. Suite 13, LLC, Title and Escrow Company.
 - b. Hen and Chicks Lawn Care, 570 Conifer Rd., Individual, Lawn Maintenance.
 - c. Troyer Roofing, 874 Granite Ave., LLC, Roof Replacement and Maintenance.

UNFINISHED BUSINESS: Each item will be introduced by the mayor (or assigned liaison) with a description of the item. Following council discussion on each item, there will be an opportunity for public comment. No action will be taken. Public comment is limited to 3 minutes concerning each item.

1. IP negotiations.

GENERAL COMMENTS FROM COUNCIL: Public comment will not be taken during this portion of the meeting.

ADJOURNMENT:

The manner of Addressing Council:

- Each person, not a Council member, shall address the Council at the time designated in the agenda or as directed by the Council, by stepping to the podium or microphone, giving that person's name and address in an audible tone of voice for the record, unless further time is granted by the Council, shall limit the address to the Council to three minutes.
- All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff with no personal remarks allowed.
- No person, other than the Council and the person having the floor, shall be permitted to enter any discussion either directly or through a member of the Council, without the permission of the Presiding Officer.
- Any person making personal, impertinent, or slanderous remarks or who shall become boisterous or disruptive during the council meeting shall be forthwith barred from further presentation to the council by the presiding officer unless permission to continue is granted by a majority vote of the council.

ATTENTION:

To access this meeting electronically with **ZOOM**,
Dial: 253-215-8782
Meeting ID: **4042719951**
Password: **151041**
Posted: 5/12/22

DRAFT Exhibit I-C

Agreement between Lincoln County and the City of Libby

THIS CONTRACT is entered into by the City of Libby, herein referred to as "the City", and Lincoln County, herein referred to as "the County".

WITNESSETH THAT:

WHEREAS, the City is the recipient of a Montana Coal Endowment Program (MCEP) grant for the Libby Creek Water Improvement Project owned and operated by the City of Libby (note: service lines will be owned and operated by the Libby Creek Community); and

WHEREAS, this Contract between the City and the County will enable them to enhance cooperation in implementing the City's MCEP award to accomplish the above-described project; and

WHEREAS, the City, in its capacity as a MCEP grantee, has determined that the County can better administer the design and construction phases of the water system; and

WHEREAS, the Montana Department of Commerce has required the City to enter into a contract with the County specifying the terms and conditions of the City's delegation of certain MCEP grant management responsibilities to the County; and

WHEREAS, both parties to this Contract understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Contract does not create any new organization or legal entity.

NOW, THEREFORE, THE CITY AND THE COUNTY MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the County

- A. The County will, subject to prior approval by the City Council, retain the services of a consulting engineering firm to design and supervise the construction of the project.
- B. The County will be responsible for all facets of the design and construction phases of the project, including the following:
 - 1. Design engineering;
 - 2. Construction engineering;
 - 3. Except as provided by paragraph IV. Administration below, compliance with all applicable state and federal requirements;
 - 4. Except as provided by paragraph IV. Administration below, compliance with all other state and federal requirements as described in the MCEP Project Administration Manual;
 - 5. Preparation of construction bid documents with approval of the city council prior to construction; and
 - 6. Supervision of the bid process, the awarding of construction contracts, and construction of the project. The selection of the project contractor will be subject to the ratification of the City Council and bid solicitation documents will reflect this requirement.
- C. The County and its consulting engineer will receive, review, and approve all requests for payment for the items contained in paragraph B, above, and prepare and submit such requests to the City Council in a timely fashion in accordance with established procedures.
- D. During the term of this MCEP Contract, the County will maintain reasonable records of its performance hereunder in a manner consistent with generally accepted accounting principles. The County will allow the City and Department and their authorized representatives access to these records at any time during normal business hours. At the request of the City, the County will submit to

the City, in the format prescribed by the City, status reports on its performance under this Contract.

II. Payment of Design and Construction Costs Incurred by the County

In consideration of the County's acceptance of the responsibilities described in paragraph I, above, the City agrees to the following:

- A. Upon receipt of a valid claim for payment from the County for allowable project costs as specified in the City's contract with Department, a copy of which is appended as Attachment A of this Contract, and which by this reference is made a part hereof, the County will request the required amount of MCEP funds from Department and upon receipt of these funds, the City will honor the County's claim and pay the engineer or contractor accordingly.
- B. Each payment for engineering and construction costs will be drawn from MCEP and County funds (if applicable) in amounts that are proportionate to the percentage that such funds represent of the total cost of the project as specified in Exhibit B of Attachment A.
- C. The City will deduct a retainage from each payment request equal to five percent of the request, submitted by the County for construction costs incurred by the project contractor and hold this retainage until construction is completed, the engineer approves final payment, and the project is accepted, all in accordance with the conditions of the construction contract. (Note: A retainage requirement is optional.)
- D. The City will also withhold one percent of the amount of any claim submitted by the contractor and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.
- E. The City may refuse to pay any claim which it deems not valid under the terms of the MCEP contract with Department (Attachment A). Any agreement between a MCEP grantee and a subrecipient, such as a water or sewer district, should include a "Scope of Work" which includes a description of the work to be performed, a schedule for

completing the work, and a budget. (These items are standard components of any MCEP grant agreement which is referred to here as an attachment.)

III. Duration of the Contract

- A. This Contract takes effect when the following conditions are satisfied:
 - 1. Department and the City Council have executed the MCEP contract;
 - 2. The City Attorney and the attorney for the County have approved this Contract as to form and content; and
 - 3. The City Council and the County Board of Commissioners have each reviewed this Contract and agreed fully to its terms and conditions.
- B. This Contract will terminate 90 days after the project engineer files a certificate of completion of the project with the Montana Department of Environmental Quality and Department closes out the MCEP project with the County.

IV. Administration

For purposes of implementing the joint undertaking established by this Contract, the City Council and the County Board of Commissioners hereby agree to coordinate with the City's MCEP contract liaison, the project engineer, and a designated representative of the County. These individuals may meet on a regular basis during the term of the MCEP project to provide for the efficient and effective implementation of this project.

V. Management of Real Property or Equipment Acquired

The primary purpose of this Contract is to allow the City to delegate responsibility for the design and construction of the County's project to the County and to define the procedures by which the City will disburse MCEP funds to pay the costs incurred as a result of these activities. The County's

facilities will be constructed or improved as described in the MCEP contract with Department (Attachment A) and the City of Libby may continue to own and operate those facilities subject to the limitations contained in subparagraph B.

Upon the expiration of this Contract the County will transfer to the City any MCEP funds on hand at the time of expiration and any accounts receivable attributable to the use of MCEP funds.

VI. Indemnification

The County waives any and all claims and recourse against the City, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the County's performance of this Contract except claims arising from the concurrent or sole negligence of the City or its officers, agents, or employees. The County will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the County's performance of this Contract except for liability arising out of the concurrent or sole negligence of the City or its officer's agents, or employees.

VII. Suspension and Termination

The City may suspend or terminate this Contract if the County materially fails to comply with any term of the City's MCEP contract with Department. In addition, the City may terminate this Contract for convenience with reasonable notice.

VIII. Modifications or Alterations

This contract can be modified as requested by either party insofar as both parties are in agreeance to the terms and conditions.

This Contract has been approved by the City Council and the County's Board of Commissioners.

Lincoln County

City of Libby

Commissioner

Date: _____

Mayor

Date: _____

City of Libby - Sewer Project 2022

Feb-22

ADMINISTRATION	RRG-L	MCEP	CDBG	SOURCE	SOURCE	TOTAL
Personnel Cost		\$500.00				\$0.00
Office Cost						\$500.00
Professional Services	\$2,500.00	\$16,000.00	\$26,000.00			\$44,500.00
Legal Costs						\$0.00
Audit Fees		\$5,000.00	\$5,000.00			\$10,000.00
Travel & Training						\$0.00
Interim Interest						\$0.00
Bond Costs						\$0.00
TOTAL ADMINISTRATION	\$2,500.00	\$21,500.00	\$31,000.00	\$0.00	\$0.00	\$55,000.00
CONSTRUCTION RELATED ACTIVITIES						
Land Acquisition						\$0.00
Pre. Engineering	\$37,000.00					\$37,000.00
Final Engineering Design		\$55,480.00				\$55,480.00
Construction Engineering		\$76,200.00	\$98,550.00			\$174,750.00
Construction	\$85,500.00	\$310,820.00	\$333,680.00			\$730,000.00
Contingency			\$136,770.00			\$136,770.00
						\$0.00
TOTAL ACTIVITY	\$122,500.00	\$442,500.00	\$569,000.00	\$0.00	\$0.00	\$1,134,000.00
TOTAL PROJECT BUDGET	\$125,000.00	\$464,000.00	\$600,000.00	\$0.00	\$0.00	\$1,189,000.00

Task Order No. 3 - P10074-2021-003

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated January 19, 2021 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: March 15, 2022
- b. Owner: City of Libby, Montana
- c. Engineer: Advanced Engineering and Environmental Services, LLC
- d. Specific Project (title): P10074-2021-003 - Libby WWTP I&C Improvements and Sewer Main Replacements
- e. Specific Project (description): The work is described in Attachment A-1: Scope Definition and Fee Summary.

2. Services of Engineer

2.1 The specific services to be provided or furnished by Engineer under this Task Order are the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

- Final Design Phase Services (Exhibit A, Paragraph A1.03)
- Bidding Phase Services (Exhibit A, Paragraph A1.04)
- Construction Phase Services (Exhibit A, Paragraph A1.05)
- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)
- Commissioning Phase Services (Exhibit A, Paragraph A1.07)
- Resident Project Representative Services (Exhibit D, D1.01)

2.2 Other Services

Engineer shall also provide the following services: N/A

Work is described in the Scope Definition attached to this Task Order No. 1 P10074-2021-003 as Attachment A-1.

2.3 All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services - None

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

- See “*Supplementary Owner Responsibilities*” in Attachment A-1.

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: N/A

6. Payments to Engineer

6.1 Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services		
a. Final Design Phase Services (A1.03)	\$92,480.00	Standard Hourly Rates
b. Bidding Phase Services (A1.04)	\$20,875.00	Standard Hourly Rates
c. Construction Phase Services (A1.05 & D1.01)	\$41,400.00	Standard Hourly Rates
d. Post-Construction Phase Services (A1.06)	\$3,100.00	Standard Hourly Rates
e. I&C Phase Services	\$108,800.00	Standard Hourly Rates
TOTAL COMPENSATION (lines 1.a.-e.)	\$266,655.00	Standard Hourly Rates

Compensation items and totals based in whole or in part on Hourly Rates are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer’s labor, overhead, profit, reimbursable expenses (if any), and Consultants’ charges, if any. Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered. Engineer shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

6.2 The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

TD&H Engineering

8. Other Modifications to Agreement and Exhibits:

N/A

9. Attachments:

Attachment A-1: Scope Definition and Fee Summary

10. Other Documents Incorporated by Reference:

N/A

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is March 15, 2022.

OWNER: _____

ENGINEER: _____

By: _____

By:  _____

Print Name: _____

Print Name: Brian R. Bergantine

Title: _____

Title: Operations Director

Date: _____

Date: 3-15-2022

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: Ross Hanson

Title: _____

Title: Project Manager/I&C Regional Mgr

Address: _____

Address: 405 3rd St NW, Suite 205
Great Falls, MT 59404

E-Mail Address: _____

E-Mail Address: ross.hanson@ae2s.com

Phone: _____

Phone: 406-868-7166

March 15, 2022

Mr. Mike Fraser
Fraser Management & Consulting, PLLC
690 N Meridian Rd, Ste 104
Kalispell, MT 59901

RE: Libby MT – WWTP I&C Improvements and Sewer Main Replacement

Dear Mr. Fraser,

Thank you for the opportunity to continue to provide engineering services on the Libby (Client) Wastewater Treatment Plant (WWTP) I&C Improvements and Sewer Main Replacement project. We have prepared this proposal to provide engineering services to complete the following improvements.

- WWTP I&C Improvements
- Sewer Main Replacements – Alternatives 2, 4, and 7

Proposed Scope of Services

AE2S proposes to perform the following tasks for this Assignment:

WWTP I&C Improvements

1. Project Management
2. Control System Design
 - a. Control panel hardware and wiring demolition and replacement.
 - b. Fiber network layout and configuration.
 - c. Bid Documents.
3. Bidding
 - a. Bidding for Electrical Contractor (EC) to procure and install controls hardware and fiber network.
 - b. Attend Pre-Bid Conference.
 - c. Provide addenda and clarifications associated with the Bid Documents.
 - d. Determine acceptability of equipment and material substitutions requested by ECs.
 - e. Provide bid tabulation review and recommendation to the City.
 - f. If requested, procurement and setup of controls server, software, and network switches.
4. I&C Programming
 - a. Programmable Logic Controller (PLC) programming.
 - b. Operator Interface Terminal (OIT) programming.
 - c. Human-Machine Interface (HMI) programming.
 - d. Supervisory Control and Data Acquisition (SCADA) programming.
5. Construction/Installation Oversight
 - a. Onsite observation and verification of control panel hardware installation and wiring.
 - b. Onsite observation and testing of fiber network installation and termination.
6. I&C Startup Services
 - a. Onsite programming installation, IO test out with EC, and process control verification.
 - b. Server and network switches installation, setup, and testing.

Libby WWTP I&C and Sewer Main Improvements

Project Scope & Fee Definition



Task Order Between Engineer & Owner dated March 15, 2022

- c. Complete control system startup and implementation.
- d. Two (2) two-hour training sessions with operations on new control system equipment.
- e. Provide updated As-Built drawings for upgraded control panels.
- f. Provide Operations and Maintenance (O&M) manuals for new control system equipment.

Sewer Main Replacements – Alternatives 2, 4, and 7*

1. Project/Subconsultant Management
2. Design
 - a. Site Topographic Survey to be provided by TD&H.
 - b. MDEQ design review documentation to be provided by TD&H.
 - c. Technical specifications and construction drawings to be provided by TD&H.
3. Bidding
 - a. Provide bidding conditions, contract forms, and conditions.
 - b. Technical specifications and construction drawings to be provided by TD&H.
 - c. Bid document addenda and clarifications necessary to be provided by TD&H.
 - d. Equipment and materials substitution requested by Contractor to be reviewed by TD&H.
4. Construction Management/RPR Services
 - a. Construction management services to be provided by TD&H.
 - b. Resident Project Representative (RPR) services to be provided by TD&H.
 - c. Construction quality assurance (QA) compaction testing to be provided by TD&H.
5. Post-Construction/Final Certification
 - a. Final walkthrough inspection and punch list development to be provided by TD&H.
 - b. Preparation and submittal of As-Built record drawings to be completed by TD&H.
 - c. Substantial and Final Completion certifications to be provided by TD&H.
 - d. One year warranty inspection, report, and Corrective Action Plan (if necessary) to be completed by TD&H.

*Complete scope of services to be provided by TD&H are provided as Attachment B-1

Thank you again for the opportunity to continue to provide professional services on the Libby WWTP I&C Improvements and Sewer Main Replacement project. We look forward to working with you, and we are confident our experience and expertise will provide value to the project.

Sincerely,
AE2S

Ross Hanson
Project Manager/I&C Regional Manager

Libby WWTP I&C and Sewer Main Improvements

Project Scope & Fee Definition



Task Order Between Engineer & Owner dated March 15, 2022

Phase 040 – Final Design (See Paragraph A1.03):

Task 1 – 60%/90% Plans & Specifications	
Tasks	<ul style="list-style-type: none"> • Project Management • Site Topographic Survey – provided by TD&H • Sewer Main Replacement Design – provided by TD&H • Control System Improvement Design • Engineers Opinion of Probable Construction Cost (EOPPC) • QA/QC
Task 2 – Final Plans & Specifications	
Tasks	<ul style="list-style-type: none"> • Bidding Drawings with PE Stamp – Sewer Main Drawings provided by TD&H • Specifications for Sanitary Sewer Main – provided by TD&H • Specifications for Control System Hardware and Equipment • Final EOPCC
Task 3 – Engineering Report and DEQ Submittal & Approval	
Tasks	<ul style="list-style-type: none"> • Engineering Report – provided by TD&H • Submittal – Sewer Main Submittals reviewed by TD&H • Review Comments
Deliverables	Final Plans, Engineering Report Sections, DEQ Submittal and Approval
Task Fee	\$92,480 (See Attachment A-1 for full Fee Summary)

Phase 050 – Bidding (See Paragraph A1.04):

Task 1 – Bidding	
Tasks	<ul style="list-style-type: none"> • Project Management • Pre-Bid Meeting • Document Preparation – TD&H to provide select plans & specifications • Addenda & Clarifications – TD&H to support plans & specifications provided • Contractor Questions – TD&H to support plans & specifications provided • Recommendation Assistance
Deliverables	Bid Documents and Bid Award Assistance
Task Fee	\$20,875 (See Attachment A-1 for full Fee Summary)

Phase 060 - Construction Services (See Paragraph A1.05):

Construction Phase Services Split:

1. WWTP I&C Improvements by AE2S
2. Sewer Main Replacement by TD&H

Task 1 – Construction Management	
Tasks	<ul style="list-style-type: none"> • Budget, Schedule & Invoicing • Internal Project Meetings
Task 2 – Construction Engineering	
Tasks	<ul style="list-style-type: none"> • Communications & Coordination with City Staff & Contractor • Meetings (Tele/Video Conference) • Miscellaneous Engineering and Shop Drawing Review

Libby WWTP I&C and Sewer Main Improvements

Project Scope & Fee Definition



Task Order Between Engineer & Owner dated March 15, 2022

	<ul style="list-style-type: none"> Administration
Task 3 – Onsite RPR	
Tasks	<ul style="list-style-type: none"> Onsite RPR Onsite Observation (Approximately 1 day per week in coordination with TD&H) Onsite Construction Meetings (6)
Deliverables	Approved Shop Drawings, Daily and Meeting Reports
Task Fee	\$41,400 (See Attachment A-1 for full Fee Summary)

Phase 070 - Post Construction/Warranty (See Paragraph A1.06):

Post-Construction/Warranty Phase Services:


1. Only for Sanitary Sewer Replacement projects – TD&H
2. WWTP I&C Improvements completed under Phase 080

Task 1 – Project Management	
Tasks	<ul style="list-style-type: none"> Budget & Invoicing Final Project Coordination Site Visit/Travel O&M Manuals Record Drawings Project Certification Dead Filing
Deliverables	O&M Manuals, Record Drawings, Project Certification
Task Fee	\$3,100 (See Attachment A-1 for full Fee Summary)

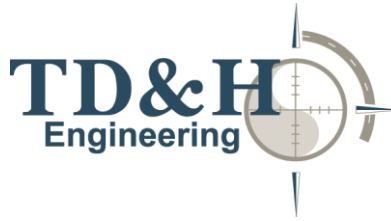
Phase 080 – Instrumentation & Controls (See Paragraph A1.08):

Task 1 – Project Management	
Tasks	<ul style="list-style-type: none"> Budget & Invoicing I&C Construction Coordination O&M Manuals Record Drawings
Task 2 – I&C Programming	
Tasks	<ul style="list-style-type: none"> PLC/OIT Programming HMI-SCADA Programming SCADA Server & Network Equipment Procurement SCADA Server & Network Setup
Task 1 – I&C Startup Services	
Tasks	<ul style="list-style-type: none"> Programming Implementation and Testing Equipment I/O Testout Process Control Testing and Verification Operations Demonstration and Training Site Startup/Travel
Deliverables	O&M Manuals, Record Drawings, Project Certification
Task Fee	\$108,800 (See Attachment A-1 for full Fee Summary)

ATTACHMENT A-1: SCOPE DEFINITION AND FEE ESTIMATE

	Personnel:	Wendt	Hanson	Sletten	Crawford	Salber	Emineth	Manfredini	Chmela	Expenses	
	Role:	PM	Manager	I&C Tech	I&C Tech	I&C Designer	Project Coordinator	Engineering Tech	QA/QC		
	Classification:	Engineer 4	I&C Manager I	I&C Tech IV	I&C Tech IV	Engineer III	PC III	Tech VI	Engineer VIII		
	2022 Rates:	\$203	\$188	\$160	\$160	\$177	\$132	\$165	\$265		
											
TASKS											TOTALS:
Phase 040: Design Phase											
Project/Subconsultant Management		20	20								
I&C Management			20								
Site Evaluation			20	20							
Meetings			4	12		12					
Needs Assessment			4	40		12					
Design			8	40		40		80	5	\$ 3,959.00	
Sewer Main Replacement Survey (TD&H)										\$ 9,100.00	
Sewer Main Replacement Design (TD&H)										\$ 17,300.00	
TASK HOURS		20	76	112	0	64	0	80	5		337
TASK FEE:	\$	4,060.00	\$ 14,288.00	\$ 17,920.00	\$ -	\$ 11,328.00	\$ -	\$ 13,200.00	\$ 1,325.00	\$ 30,359.00	\$ 92,480.00
Phase 050: Bidding Phase											
Bid Documents		16	20	12				2		\$ 645.00	
Bidding/Clarification		2	8	16				24			
Sewer Main Replacement Bidding (TD&H)										\$ 3,400.00	
TASK HOURS		18	28	28	0	0	26	0	0		
TASK FEE:	\$	3,654.00	\$ 5,264.00	\$ 4,480.00	\$ -	\$ -	\$ 3,432.00	\$ -	\$ -	\$ 4,045.00	\$ 20,875.00
Phase 060: Construction Phase											
Project/Subconsultant Management		4	4							\$ 1,818.00	
Electrical Install Observation				60	40						
Show Drawing Review and Approval			6			20					
Expenses - Mileage										\$ 1,500.00	
Expenses - Hotel										\$ 2,500.00	
Expenses - Per Diem										\$ 650.00	
Sewer Main Replacement CM (TD&H)										\$ 12,700.00	
TASK HOURS		4	10	60	40	20	0	0	0		
TASK FEE:	\$	812.00	\$ 1,880.00	\$ 9,600.00	\$ 6,400.00	\$ 3,540.00	\$ -	\$ -	\$ -	\$ 19,168.00	\$ 41,400.00
Phase 070: Post-Construction/Warranty Phase											
Project/Subconsultant Management										\$ 400.00	
Sewer Main Replacement (TD&H)										\$ 2,700.00	
TASK HOURS		0	0	0	0	0	0	0	0		
TASK FEE:	\$	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,100.00	\$ 3,100.00
Phase 080: I&C Phase (Programming/Startup)											
Programming				80	80						
Startup Services				160	160						
As-Built/O&M Manual			20	40		20		60			
Expenses - Mileage										\$ 2,750.00	
Expenses - Hotel										\$ 4,500.00	
Expenses - Per Diem										\$ 1,150.00	
TASK HOURS		0	20	280	240	20	0	60	0		
TASK FEE:	\$	-	\$ 3,760.00	\$ 44,800.00	\$ 38,400.00	\$ 3,540.00	\$ -	\$ 9,900.00	\$ -	\$ 8,400.00	\$ 108,800.00
ESTIMATED TOTAL FEE:											\$ 266,655.00

450 Corporate Drive
Suite 101
Kalispell, MT 59901



Attachment B-1

406.751.5246
tdhengineering.com

February 11, 2022

Advanced Engineering and Environmental Sciences, Inc. (AE2S)

Attn: Mr. Ross Hanson

Via e-mail: Ross.Hanson@AE2S.com

**RE: CITY OF LIBBY WASTEWATER SYSTEM IMPROVEMENTS
SCOPE OF SERVICES AND FEE ESTIMATE
LIBBY, MT**

Dear Ross,

Per your request, TD&H Engineering (TD&H) is pleased to submit the following estimate of costs for surveying and engineering design services for final design of selected alternatives from the City of Libby 2019 Wastewater PER Amendment. The City Council voted to select the following recommended wastewater collection system improvement alternatives:

- **Collection System Alternative #2** – Replace section of sanitary sewer main on California Avenue between W. 9th Street and W. 10th Street
- **Collection System Alternative #4** – Replace section of sanitary sewer main south of Balsam Street between Gallatin Avenue and Custer Avenue
- **Collection System Alternative #7** – Replace section of sanitary sewer main on Flower Street west of Nevada Avenue

The following scope of services and fee estimate has been prepared based on the recommendations as detailed in the City of Libby 2019 Wastewater PER Amendment, our understanding of the project, the anticipated scope of work and knowledge of the review & approval process for public sewer system improvements. All design and specifications will be in accordance with City of Libby Engineering & Construction Standards, Montana Public Works Standard Specifications (MPWSS) and the Montana Department of Environmental Quality (MDEQ). All costs listed below include project management, QA/QC, travel time, mileage, equipment costs and reimbursable expenses.

SCOPE OF SERVICES

1. Meetings/Design Coordination

Throughout the final design & approval process, there are several meetings which will be required with the design team, City of Libby and MDEQ. TD&H has included the following meetings as part of our scope of services and fee estimate:

- Design Coordination w/ Public Works & City Engineer
- Design Coordination w/ Funding Agencies (as necessary)

- Design Team Coordination w/ AE2S
- Design Coordination w/ MDEQ

Additional meetings may be attended, but have not been included in the scope of services at this time.

2. Site Topographic Survey

TD&H will conduct a detailed topographic survey of the subject property for use in both preliminary and final design. Any necessary research to locate existing utilities, boundaries, easements and horizontal and vertical control will also be completed at this time. The survey will be performed using the nearest available datum for horizontal and vertical control. This task includes all necessary field surveying and property investigation services to produce a one (1) foot contour map of the entire site. The topographic survey will ascertain all existing site information and be used as the basis for all final development layouts, design, and construction documents. All data will be processed into a CAD drawing to be used as the basis for all civil design and construction plan documents.

3. Public Sewer Main Extension Design / MDEQ Submittal

TD&H will provide engineering design services for the selected distribution system alternatives which were selected by the City Council based on the recommendations from the 2019 Wastewater PER Amendment. As previously mentioned, the selected collection system alternatives include:

- **Collection System Alternative #2** – Replace section of sanitary sewer main on California Avenue between W. 9th Street and W. 10th Street
- **Collection System Alternative #4** – Replace section of sanitary sewer main south of Balsam Street between Gallatin Avenue and Custer Avenue
- **Collection System Alternative #7** – Replace section of sanitary sewer main on Flower Street west of Nevada Avenue

As required, TD&H will prepare a design report that addresses all requirements per MDEQ (Engineer's Report) for the public sewer main improvements which will include an MDEQ Sewer Main Certified Checklist. Final design and bidding documents will include construction drawings, funding agency specific information, technical specifications, a design report, and estimated construction costs. The final design and bidding documents will be submitted to DEQ for comment and approval as well as any agencies funding the project. It is expected that we will receive review comments from MDEQ, the City and possibly the Funding Agencies. Comments generated by the review will be incorporated and a resubmittal will be made of all corrected project documents. Application, review and permit fees are the responsibility of the City and are not included in this fee estimate.

4. Construction Documents and Specifications

Specifications provided will be based generally on the Montana Public Works Standard Specifications (MPWSS) with modifications for special construction. Additional modifications and updates of the specifications will be included according to City Public Works staff recommendations. TD&H will provide construction plans and specifications suitable to obtain bids from contractors. The construction plans will include associated sewer main improvements including but not limited to: site demolition, erosion control, sewer main plan & profile, and associated detail sheets. The plan sheets are anticipated to be drawn at a scale of 1"=40' on 11 x 17 size plan sheets (1"=20' full size). The following is a list of plan sheets that are anticipated:

- | | |
|--|-----------------|
| • Cover Sheet | 1 Sheet |
| • General Notes & Information | 1 Sheet |
| • Sheet Index / Overall Project Map | 1 Sheet |
| • Existing Conditions / Erosion Control Plan | 3 Sheets |
| • Sewer Improvement Plans (Plan & Profile) | 3 Sheets |
| • Details | <u>2 Sheets</u> |

Total = 11 Sheets

QA/QC - An internal review by TD&H Engineering will be completed for the entire set of construction plans, specifications and bid documents. A Senior Engineer, other than the designated TD&H Project Manager, will be assigned to conduct the review.

Final Review/Approval – The final plans, specifications, required applications and documents will be submitted to the City of Whitefish, MDEQ and required Agencies for final review and approval. Once all comments have been received, final revisions will be made to the submittal documents accordingly for final approval.

5. Bidding Documents / Bidding Assistance

TD&H will provide the necessary bid documents and specifications to AE2S for inclusion in the project Bid Document Manual. TD&H will coordinate format of the documents with AE2S and it is anticipated that documents will be standard MPWSS bidding and construction documents, with project specific sections for special provisions, bid forms, etc. TD&H will:

- Attend Pre-Bid conference;
- Address any addenda as appropriate to clarify, correct, or change the Bidding Documents provided by TD&H;
- Provide information or assistance needed by the City in the course of any negotiations with prospective Contractors;
- Consult with the City as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents;



- Determine the acceptability of substitute materials and equipment proposed when substitution is necessary because the specified item is incompatible with the Project or fails to comply with applicable codes;

The Bidding Phase will be considered complete when the AE2S delivers a written Recommendation of Award to the City of Libby. All work beyond the Recommendation of Award will be considered a part of the Construction Phase of the project.

6. Construction Management

TD&H will provide construction management services. This work will include a pre-construction meeting and progress meetings to be held as often as necessary, estimated to be once per week, in which the Contractor, RPR and Engineer will discuss progress and schedule of the project. The City or Representative(s) are welcome to attend these and any other meetings. Pay Requests, Work Directives and Change Orders in conjunction with construction will be processed and approved by the Engineer for payment by the City. The Engineer will also review and approve any necessary shop drawings, based on project specifications and plans.

Resident Project Representative (RPR)

The RPR will assist the Engineer in observing progress and quality of the Work. Based on our conversations with the funding agencies full-time inspection is not a requirement. For the basis of this proposal we have assumed a construction period of 30 working days and part-time observation. Based on this estimated construction period, a total of 10 trips have been included. This proposal can be modified accordingly if during construction it is determined that more than part-time observation will be required. TD&H will provide daily construction observation during times of active construction by the contractor. The RPR will not direct any work by the contractor. Additionally, the RPR will be responsible for the following services:

- Confirm supplies and materials delivered to the site by suppliers conform to project shop drawings and specifications;
- Witness the construction of sewer system improvements as the Engineer's representative;
- Perform QA testing of back-fill for density by nuclear methods as specified in the contract documents;
- Witness and document sewer main testing per the contract specifications;
- Witness final flushing of sewer mains and services;
- Maintain weekly reports, photo files of work progress, and materials quantity sheets for activities observed by part-time RPR which will be submitted electronically.

Final Certification/Record Drawing Preparation

TD&H will perform a final walk-thru inspection along with the City of Libby, Contractor and funding agency representatives upon completion of the construction. A punch list of outstanding items will be prepared for the contractor and City. Upon successful completion of the project, the Engineer will develop record drawings based on the Contractor's field drawings and certify the project to the City and the MDEQ.



The Engineer shall perform a warranty inspection one year from the date of substantial completion. The Engineer shall prepare a One-Year Certification Report and Corrective Action Plan (if necessary). The One-Year Certification Report advises the City whether or not all the Performance Criteria (which will be attached to the plan and specification approval letter) are met. This is in addition to the "end-of-construction" certification that the project has been constructed in accordance with approved plans and specifications.

Fee Summary

<i>Estimated fee for Site Topographic Survey</i>	\$9,100
<i>Estimated fee for Final Design</i>	\$17,300
<i>Estimated Fee for Bidding Assistance</i>	\$3,400
<i>Estimated Fee for Construction Management</i>	\$12,700
<i>Estimated Fee for Post-Construction / Final Certification</i>	<u>\$2,700</u>
	Total = \$45,200

SERVICES NOT INCLUDED OR PROVIDED BY OTHERS:

1. All agency fees for filing, submittals, reviews, permits or applications will be paid by the City.
2. Grant administration services to be provided by others.
3. There are no street improvements included in this scope of services.

Our estimated time and materials fee based on the attached scope of services is **\$45,200**. We appreciate the opportunity to provide you with a proposal and look forward to your response. If you have any questions or need any additional information regarding this proposal, please feel free to contact me directly.

Sincerely,



Douglas Peppmeier, PE
V.P. / Regional Manager
TD&H ENGINEERING

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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated project and the controlling laws and regulations.

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

TASK ORDER EDITION

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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National Society of Professional Engineers

1420 King Street, Alexandria, VA 22314-2794

(703) 684-2882

www.nspe.org

American Council of Engineering Companies

1015 15th Street N.W., Washington, DC 20005

(202) 347-7474

www.acec.org

American Society of Civil Engineers

1801 Alexander Bell Drive, Reston, VA 20191-4400

(800) 548-2723

www.asce.org

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

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of _____ (“Effective Date of the Agreement”) between

City of Libby, Montana (“Owner”) and

Advanced Engineering and Environmental Services, LLC (“Engineer”).

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

From time to time Owner may request that Engineer provide professional services for **those Specific Projects awarded under the Request for Statement of Qualifications for Engineering Services dated October 27, 2021 for Water System Preliminary Engineering Report 2022 (2022 PER) and/or those Specific Projects identified and recommended in the 2022 PER**. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer’s services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, “Engineer’s Services for Task Order,” prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, “Engineer’s Services for Task Order,” as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of 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; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. 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; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer’s services, the Work, the performance of any Constructor, or in Owner’s performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for **5** years from the Effective Date of the Agreement **and only for those Specific Projects identified in the Request for Statement of Qualifications for Engineering Services dated October 27, 2021 for Water System Preliminary Engineering Report 2022 (2022 PER) and/or those Specific Projects identified and recommended in the 2022 PER.**
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- 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 Specific 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 a Task Order 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.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

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. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *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 the terms of Paragraph 4.01.

- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

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 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project 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. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- 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 the 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. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. 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 of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon 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 in the specific Task Order.
- 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 such 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 for 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 a Site, Engineer, its Consultant, 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. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. 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 Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

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 Specific Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then 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 Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific 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 limitations: (1) Owner acknowledges that such Documents are not intended or

represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific 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; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) 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 Specific 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, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order 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. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- B. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.
- C. Owner shall require Contractors 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 Specific 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.
- D. Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.

- E. All policies of property insurance relating to a Specific Project, including but not limited to any builder’s risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder’s risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner’s sole expense, 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.

6.06 *Suspension and Termination*

A. *Suspension*

- 1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
- 3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

- 1. 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 of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
- 2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or

- b. upon seven days written notice if the Engineer's services under a Task Order 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.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 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.
- C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.
- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D 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 Task Order materials in orderly files.
- F. *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 the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. 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.
 - 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the **State of Montana, without regard to its conflicts of laws principles.**

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner 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, 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 or restricted 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. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

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 invoking the procedures of Exhibit H or other provisions of this Agreement, or 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 invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 - 1. Owner represents to Engineer that as of the Effective Date of the Task Order, 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.

2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
3. 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.
4. 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 Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.
6. 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 a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, Limitations of Liability.**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to

bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

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 under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. 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.
- 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:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement

and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

- G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, 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*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor 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 a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 6. *Change Order*—A document which is signed by a 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 a 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. §§5101 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 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 numbers of days or the dates by which a 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 an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, 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 damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific 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 Specific 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 their employees, agents, and representatives.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, 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 media 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 a Contractor.

19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.
22. *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.
23. *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.
24. *Owner*—The individual or entity with which Engineer has entered into 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 Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely 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. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *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.
28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project 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 use of a Contractor.
30. *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.

31. *Specific Project*—The total specific 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 a specific Task Order are a part.
 32. *Subcontractor*—An individual or entity having a direct contract with a 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 a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
 36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
 37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. 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 such Construction Contract Documents.
 38. *Work Change Directive*—A written directive to a 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*: 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 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.02 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order.
- B. Exhibit B, Owner’s Responsibilities. This Exhibit applies to all Task Orders.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, “Payments to Engineer,” of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer’s scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F – **NOT USED**
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.
- H. Exhibit H, Dispute Resolution. **NOT USED**
- I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.
- J. Exhibit J, Special Provisions. **NOT USED**
- K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.03 *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.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented,

modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.04 *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 individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.05 *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 8.05:
 - 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:

By: _____
Print Name: Peggy Williams
Title: Mayor
Date Signed: _____

Attest: _____

Print Name: Samuel Sikes

Address for Owner's receipt of notices:

City of Libby, Montana

952 East Spruce Street

Libby MT 59923

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Title: _____

Phone Number: _____

E-Mail Address: _____

ENGINEER:

By: Zachary Magdol
Print Name: Zach Magdol, PE
Title: Operations Manager
Date Signed: 4/7/2022

Engineer License or Firm's Certificate No. (if required):

State of : _____

Date Signed: _____

Address for Engineer's receipt of notices:

AE2S - Bozeman

1288 N 14th Ave Unit 103

Bozeman, MT 59715

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Brian Viall, PE

Title: Project Manager

Phone Number: 406-219-2633

E-Mail Address: brian.viall@ae2s.com

**TYPICAL FORM OF
TASK ORDER**

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

[Note: If this option is selected, include only those sections below that are part of Basic Services for the specific Task Order, and delete those sections below that do not apply.]

- Study and Report Services (Exhibit A, Paragraph A1.01)
- Preliminary Design Phase (Exhibit A, Paragraph A1.02)
- Final Design Phase (Exhibit A, Paragraph A1.03)
- Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
- Construction Phase Services (Exhibit A, Paragraph A1.05)
 - including Resident Project Representative (RPR) services (A1.05.A.2)
 - ***[or]*** [not including Resident Project Representative (RPR) services (A1.05.A.2)]
- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

- Commissioning Services (Exhibit A, Paragraph A1.07)

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

C. Other Services

Engineer shall also provide the following services: ***[Reference Attachment of Specific Scope & Fee Definition.]***

- D. All of the services included above comprise Basic Services for purposes of Engineer’s compensation under this Task Order.

3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:

those services (and related terms and conditions) set forth in Paragraph A2.01 of Exhibit A, as attached to the Agreement referred to above, such paragraph being hereby incorporated by reference.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: ***[State any additions or modifications to Exhibit B for this Specific Project here.]***

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: ***[Revise and amend for each specific Task Order.]***

6. Payments to Engineer

- A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)	\$[]	[]
a. Study and Report Phase (A1.01)	\$[]	[]
b. Preliminary and Final Design Phase (A1.02, A1.03)	\$[]	[]
c. Bidding or Negotiating Phase (A1.04)	\$[]	[]
d. Construction Phase (A1.05)*	\$[]	[]
e. Resident Project Representative Services* (A1.05.A.2).	\$[]	[]
f. Post-Construction Phase (A1.06)	\$[]	[]

Task Order Form

g. Commissioning Phase (A1.07)	\$[]	[]
h. Other Services (see A1.08, and 2.D above)	\$[]	[]
TOTAL COMPENSATION (lines 1.a-h)	\$[]	
2. Additional Services (Part 2 of Exhibit A)	(N/A)	[]

*Based on a []-month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

8. Other Modifications to Agreement and Exhibits:

[Supplement or modify Agreement and Exhibits, if appropriate.]

9. Attachments:

10. Other Documents Incorporated by Reference:

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER:

By: _____

Print Name: _____

Title: _____

ENGINEER:

By: _____

Print Name: _____

Title: _____

Engineer License or Firm's
Certificate No. (if required): _____

State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Title: _____

Address: _____

E-Mail
Address: _____

Phone: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Title: _____

Address: _____

E-Mail
Address: _____

Phone: _____

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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This is **EXHIBIT A**, consisting of 16 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services - Task Order Edition** dated _____.

Engineer's Services for Task Order

(Note to User: The following text as published describes a variety of services that may be included, in whole or in part, in a specific Task Order issued under the Agreement. Until this exhibit is customized for inclusion in a specific Task Order, or some or all of the exhibit is incorporated in a specific Task Order by reference, it has no legal or contractual effect.)

PART 1—BASIC SERVICES

A1.01 Study and Report Phase Services

A. As Basic Services, Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions: ***[List the specific potential solutions here.]***
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and

- evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
 7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Specific Project.
 8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
 9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
 10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Specific Project Strategies, Technologies, and Techniques."
 11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
 12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.

15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 6. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 8. Obtain and review Owner's instructions 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. Also obtain and review copies of Owner's 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 or content for Engineer to

include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 10. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific 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. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 *Bidding or Negotiating Phase*

- A. As Basic Services, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.

4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

A1.05 Construction Phase

A. As Basic Services, 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 the 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. ***[If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D in the Task Order.]***

3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
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 the Agreement, this Task Order, 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 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 Contractor, for security or safety at the Site, for safety precautions and programs incident to any Contractor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Contractor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor'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.
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. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *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, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *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, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

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 A2.01.B.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 additional 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 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 the Agreement or this Task Order. 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.
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. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific 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") (also available as a construction form, EJCDC® C-626 (2013)) 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 the Agreement and this Task Order.
 25. *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 specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, 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 required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, 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.
- 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.

A1.07 *Commissioning Phase*

A. As Basic Services, Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 *Other Services:* Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 *Additional Services Requiring an Amendment to Task Order*

A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific 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 Specific 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 Specific Project designed or specified by Engineer, or the Specific 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 of the Task Order 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 Specific 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. based on the engineering and technical aspects of the Project, 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 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.
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.C or the specific Task Order.
 - 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.
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 constructibility 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.

Exhibit A – Engineer's Services

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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. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
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. Preparation of operation, maintenance, and staffing manuals.
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 Specific 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, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and 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. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
 29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
 30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence 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 from Owner. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Services in connection with Work Change Directives 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.
 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.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

B2.01 Specific Responsibilities

A. Owner shall:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. 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.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific 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:
 - a. Property descriptions.

- b. Zoning, deed, and other land use restrictions.
 - c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; 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.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. 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.
6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
- a. 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.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
8. 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.

Exhibit B– Owner's Responsibilities

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9. 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 constructibility review.
10. 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.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall 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.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. 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.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. 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.
18. 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.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Exhibit B– Owner's Responsibilities

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20. Perform or provide the **Supplementary Owner Responsibilities** as may be identified in each specific **Task Order**.

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 - 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 - 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 - 3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement) – **NOT USED**

C2.02 Explanation of Compensation Methods

A. Lump Sum

- 1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
- 2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
- 3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges): **To be identified in the Attachment of Specific Scope & Fee Definition for each specific Task Order, if used.**
- 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. *Standard Hourly Rates*

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates 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.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C. *Direct Labor Costs Times a Factor – NOT USED*

C2.03 *Reimbursable Expenses*

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount **includes** the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.

- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of 1.15.
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of 1.15.
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 *Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.5 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
 - 1. Engineer's estimate of the amounts that will become payable for 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.
 - 2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated _____.

Reimbursable Expenses Schedule

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

Transportation	\$0.65/mile
Survey Vehicle	\$0.85/mile
Laser Printouts/Photocopies	\$0.30/copy
Plotter Printouts	\$1.00/s.f.
UAS - Photo/Video Grade	\$100.00/day
UAS – Survey.....	\$50.00/day
Total Station – Robotic	\$35.00/hour
Mapping GPS.....	\$25.00/hour
Fast Static/RTK GPS	\$50.00/hour
All-Terrain Vehicle/Boat.....	\$100.00/day
Cellular Modem	\$75.00/month
Web Hosting.....	\$26.00/month
Legal Services Reimbursement	\$250.00/hour
Outside Services	cost *1.15
Geotechnical Services.....	cost *1.30
Out of Pocket Expenses.....	cost*1.15
Rental Car	cost*1.20
Project Specific Equipment	Negotiable

These rates are subject to adjustment each year on January 1.

This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Standard Hourly Rates Schedule

The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

Labor Rates*

Administrative 1	\$61.00	I&C Assistant	\$98.00
Administrative 2	\$74.00	I&C 1	\$138.00
Administrative 3	\$89.00	I&C 2	\$160.00
		I&C 3	\$183.00
Communications Specialist 1	\$98.00	I&C 4	\$194.00
Communications Specialist 2	\$113.00	I&C 5	\$203.00
Communications Specialist 3	\$131.00		
Communications Specialist 4	\$158.00	IT 1	\$117.00
Communications Specialist 5	\$173.00	IT 2	\$159.00
		IT 3	\$190.00
Construction Services 1	\$118.00		
Construction Services 2	\$145.00	Land Surveyor Assistant	\$90.00
Construction Services 3	\$160.00	Land Surveyor 1	\$108.00
Construction Services 4	\$180.00	Land Surveyor 2	\$129.00
Construction Services 5	\$198.00	Land Surveyor 3	\$145.00
		Land Surveyor 4	\$160.00
Engineering Assistant 1	\$77.00	Land Surveyor 5	\$177.00
Engineering Assistant 2	\$92.00		
Engineering Assistant 3	\$116.00	Operations Specialist 1	\$93.00
Engineer 1	\$125.00	Operations Specialist 2	\$113.00
Engineer 2	\$148.00	Operations Specialist 3	\$140.00
Engineer 3	\$177.00	Operations Specialist 4	\$158.00
Engineer 4	\$203.00	Operations Specialist 5	\$184.00
Engineer 5	\$215.00		
		Project Coordinator 1	\$109.00
Engineering Technician 1	\$75.00	Project Coordinator 2	\$121.00
Engineering Technician 2	\$96.00	Project Coordinator 3	\$132.00
Engineering Technician 3	\$117.00	Project Coordinator 4	\$148.00
Engineering Technician 4	\$131.00	Project Coordinator 5	\$167.00
Engineering Technician 5	\$149.00		
		Project Manager 1	\$188.00
Financial Analyst 1	\$104.00	Project Manager 2	\$206.00
Financial Analyst 2	\$118.00	Project Manager 3	\$223.00
Financial Analyst 3	\$142.00		
Financial Analyst 4	\$155.00	Sr. Designer 1	\$165.00
Financial Analyst 5	\$172.00	Sr. Designer 2	\$183.00
		Sr. Designer 3	\$194.00
GIS Specialist 1	\$98.00		
GIS Specialist 2	\$118.00	Sr. Financial Analyst 1	\$194.00
GIS Specialist 3	\$139.00	Sr. Financial Analyst 2	\$212.00
GIS Specialist 4	\$155.00	Sr. Financial Analyst 3	\$231.00
GIS Specialist 5	\$173.00		
		Sr. Project Manager 1	\$235.00
		Sr. Project Manager 2	\$254.00
		Sr. Project Manager 3	\$265.00
		Technical Expert 1	\$320.00
		Technical Expert 2	Negotiable

Exhibit C – Appendix 2 – Standard Hourly Rates Schedule

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

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

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

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 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, as incorporated in this Task Order, 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, 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 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, Shop Drawing and Sample submittals received from and delivered to Contractor, 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 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 Specific 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 recommend to Engineer proposed 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 Specific 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 – Task Order Edition** dated _____.

NOTICE OF ACCEPTABILITY OF WORK

Notes to User

1. Exhibit A, Paragraph A1.05.A.24 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor with respect to a specific Construction Contract, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E. The same form is also available as a construction form, EJCDC® C-626 (2013).

2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC® C-700 (2013), Standard General Conditions of the Construction Contract.



NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the following terms and conditions of this Notice.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT G**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraphs 6.05.A and 6.05.B of the Agreement are as follows, unless and except as specifically modified by a specific Task Order:
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. Automobile Liability – Combined Single Limit
(Bodily Injury and Property Damage): \$1,000,000
 - e. Professional Liability –
 - 1) Each Claim Made: \$2,000,000
 - 2) Annual Aggregate: \$2,000,000
 - B. Additional Insureds:
 1. Engineer and the Consultants identified in the Task Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds.
 2. During the term of each Task Order the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
 3. The Owner shall be listed on Engineer's general liability policy.

Exhibit G - Insurance

This is **EXHIBIT I**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

I6.11.A Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Specific Project or the Task Order from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, the Task Order, or the Specific Project, from any cause or causes, including but not limited to **any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of Engineer or Engineer's Officers, directors, partners, employees, or Consultant's Consultants, or any of them.**

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated _____.

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform the following Additional Services: []
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: []
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: []
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: []
- e. The schedule for rendering services under this Task Order is modified as follows: []
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: []

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- a. Original Task Order amount: \$[]
- b. Net change for prior amendments: \$[]
- c. This amendment amount: \$[]
- d. Adjusted Task Order amount: \$[]

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

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

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date
Signed: _____

Task Order No. P10074-2021-006

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____ ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: _____
- b. Owner: City of Libby, Montana
- c. Engineer: Advanced Engineering and Environmental Services, LLC
- d. Specific Project (title): P10074-2021-006 - Libby Water System PER 2022
- e. Specific Project (description): The work is described in Attachment A-2: Scope Definition and Fee Summary.

2. Services of Engineer

2.1 The specific services to be provided or furnished by Engineer under this Task Order are the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

- Study and Report Phase Services (Exhibit A, Paragraph A1.01)

2.2 Other Services

Engineer shall also provide the following services:

Work is described in the Scope Definition attached to this Task Order No. P10074-2021-006 as Attachment A-2.

2.3 All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services - None

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

- See "*Supplementary Owner Responsibilities*" in Attachment A-2.

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: Enter specific date, number of days, or other qualifier for this particular phase

- See respective “Phase Schedules” in the Attachment A-2.

6. Payments to Engineer

6.1 Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services		
a. Phase 020 – Preliminary Engineering Report (A1.01)	\$109,800.00	Standard Hourly Rates
b. Phase 021 – Hydraulic Water Model Development (A1.01)	\$46,340.00	Standard Hourly Rates
TOTAL COMPENSATION (lines 1.a.-b.)	\$156,140.00	Standard Hourly Rates

Compensation items and totals based in whole or in part on Hourly Rates are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer’s labor, overhead, profit, reimbursable expenses (if any), and Consultants’ charges, if any. Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered. Engineer shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

6.2 The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

N/A

8. Other Modifications to Agreement and Exhibits:

N/A

9. Attachments:

Attachment A-2: Scope Definition and Fee Summary

Attachment A-3: Alternatives to be Analyzed

10. Other Documents Incorporated by Reference:

N/A

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____.

OWNER: _____

ENGINEER: _____

By: _____

By:  _____

Print Name: _____

Print Name: Brian Bergantine

Title: _____

Title: Operations Director

Date: _____

Date: 4-15-2022

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: Brian J. Viall, PE

Title: _____

Title: Project Manager

Address: _____

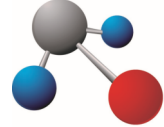
Address: 1288 N 14th Ave, Ste 103,
Bozeman, MT 59715

E-Mail Address: _____

E-Mail Address: brian.viall@ae2s.com

Phone: _____

Phone: 406-219-2633



Libby, Montana

Water System Preliminary Engineering Report - 2022

AE2S PROJECT NO.: P10074-2021-006

Attachment A-2: Scope Definition and Fee Summary

Libby Water System Preliminary Engineering Report 2022

This is Attachment A-2, referred to in and part of Task Order No. P10074-2021-006 dated _____, 2022 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____.

Supplementary Owner Responsibilities (See Task Order 1):

Owner Provided Data necessary to complete Services.

Owner will be responsible for supplying the Engineer with the following data along the respective schedule to support Engineer's design services. Receipt of Data is a critical path priority in order for Engineer to complete its Services in the schedule and timeframe indicated.

- Existing WaterCAD Model and associated files.
- Previous Leak Study by Utility Services Associates (2011)
- Old System Map
- GPS Survey of Existing System Map
- Record Drawings from previous projects
- Water production records
- Water billing records
- Meter count by size and user classification
- Hydrant flushing and pressure records

PROVIDE ALL DATA REQUESTED ON OR BEFORE MAY 9, 2022

Project No. 1 – Hydraulic Model

Phase 021 – Hydraulic Model Calibration and Analysis

- See the estimated Work Breakdown Structure identifying tasks to complete under this phase. The Hydraulic Analysis will be conducted in the City’s existing WaterCAD model.
- Scope and Fee assumes the existing WaterCAD model is compatible with current versions of the software and operable in Windows 10 Enterprise.
- See Estimated Fee Summary for “Phase 021 – Hydraulic Analysis and Calibration Using Existing WaterCAD Model” for additional Tasks scoped for this Phase.

Phase 021 Schedule:

- Water Model to be Calibrated on or before June 3, 2022
- Hydraulic Analysis and Identification of Priorities: July 1, 2022
- Outline Distribution System Projects for PER: July 29, 2022

Project No. 2 – Preliminary Engineering Report

Phase 020 – Preliminary Engineering Report (Management / Direction / Admin.)

- AE2S will complete a Preliminary Engineering Report (Report) in substantial conformance with the Uniform Application for Montana Public Facility Projects by W2ASACT.
- The Report will generally follow the outline provided in Attachment A-3 – Proposed Outline of Preliminary Engineering Report (Attachment A-3).
- Attachment A-3 includes a list of Alternatives to be Analyzed. The Estimated Fee Summary reflects the Alternatives identified in this list. Additional alternatives or significant changes to the scope of these alternatives will entitle Engineer to an equitable adjustment in its compensation or in the time of completion, or both.
- See Estimated Fee Summary for “Phase 020 – Preliminary Engineering Report” for additional Tasks scoped for this Phase.

Phase 020 Schedule:

- Phase 020 Deliverables to be Ready for submission by the following deadlines:
 - Public Meetings for PER Public Notices: August 5, 2022
 - Final Completion of Preliminary Engineering Report: September 16, 2022

ESTIMATED FEE SUMMARY:

Phase 020 - Preliminary Engineering Report



	Personnel:	Wendt, PE	Viall, PE	Graf	Ritz	Kemp	Goldade, EIT	Schultz-Mock	
	Role:	PM	PM	Sr. Consultant	Fund. Prog. Spc.	Drafter	Engr. In Training.	Permitting Specialist	
	Classification:	ENGR IV	ENGR IV	Sr. Fin. Analyst I	Fin. Analyst III	ENGR Tech V	ENGR II	GIS Specialist III	
	2022 Rates:	\$203	\$203	\$194	\$142	\$144	\$148	\$139	
TASKS									TOTALS:
Phase 020: Project Management									
Task 01: Project Management									
Project Communications		4	6						
Project Meetings		4	8				6		
Correspondence		4	8				10		
Project Administration		4						12	
Team Management and Coordination			24						
TASK HOURS		16	46	0	0		16	12	90
TASK FEE:									\$ 16,622.00
Task 02: Executive Summary									
Writing and Publishing			4					4	
TASK HOURS		0	4	0	0		0	4	8
TASK FEE:									\$ 1,368.00
Task 03: Part 2.0 - Project Planning									
Location Map Development			2			2			
History			1.5						
Environmental Resources Present			1.5						
Population Trends			4						
Financial Status of Existing Utilities			2	6	32				
Water Audits			30						
Water Rights Summary			2						
Permitting			2						
Funding Sources			2						
Community Engagement			4						
Agency Comments			4					8	
TASK HOURS		0	55	6	32	2	0	8	103
TASK FEE:									\$ 18,273.00
Task 04: Part 3.0 - Need for Project									
Health, Sanitation, and Security			2						
Aging Infrastructure			2						
Reasonable Growth			2						
TASK HOURS		0	6	0	0	0	0	0	6
TASK FEE:									\$ 1,218.00
Task 05: Part 4.0 - Water Supply Facility Planning									
Existing Facilities							2		
Alternatives Considered							0		
Description							3.5		
Design Criteria							7		
Map							7		
Environmental Impacts							7		
Land Requirements							7		
Potential Construction Problems							3.5		
Sustainability Considerations							3.5		
Cost Estimates							17.5		
Selection of an Alternatives									
Life Cycle Cost Analysis							4		
Non Monetary Factors							2		
Proposed Project Recommended Alternative									
Preliminary Project Design Criteria							2.5		
Project Schedule							2		
Permits Required							2		
Sustainability Considerations							0.5		
Total Project Cost							2		
Annual O&M							4		
Funding Strategy							2		
TASK HOURS		0	0	0	0	0	79	0	79
TASK FEE:									\$ 11,692.00

CONTINUED ON NEXT PAGE

ESTIMATED FEE SUMMARY:

Phase 021 - Hydraulic Analysis and Calibration Using Existing WaterCAD

Model



Personnel:	Wendt, PE	Hanson	Goldade, EIT	Voeller	Emeneth	
Role:	PM	Hydr. Modeler	Project Engr.	QA/QC	Admin. Asst.	
Classification:	ENGR IV	ENGR III	ENGR II	ENGR VI	COORD. III	
2022 Rates:	\$203	\$177	\$148	\$177	\$132	1

TASKS

TOTALS:

Phase 021: Hydraulic Model Calibration and Analysis

Task 01: Preliminary Matters						
Kick off Meeting	4	6	4			
Data Collection			6			
Planning Periods	1	1				
Study Area	1	1				
Project Population						
Project Land Consumption	1	2				
Define Growth Areas		2				
Develop Landuse Demand Characteristics		2				
High Service Pumpage		1	3			
Customer Billing Records		1	4			
Determine Current Landuse Demands w/ GIS		3				
Extrapolation of Historical Well Pumpage		1				
Per Capita Demand forecasting		1				
Determination of landuse demand factors		2				
Average Day & Maximum Day Demands (growth)		2				
Population and Demands for UBO	1	2				
Maximum Fire Flow Requirements	0.5	1				
Recommendations for Improving ISO Classification	1	2				
TASK HOURS	9.5	30	17	0	0	
TASK FEE:						\$ 9,754.50
Task 02: USE WATER CADD MODEL PROVIDED BY CITY						
TASK HOURS	0	0	0	0	0	
TASK FEE:						\$ -
Task 03: Water Demand Allocation & Hourly Demand						
Spreadsheet model for hourly demands		4				
Develop Demand Scenario (max day, ave day, peak hr.)		2				
Integrate demands with Hydraulic Model.		1				
TASK HOURS	0	7	0	0	0	
TASK FEE:						\$ 1,239.00
Task 04: Distribution Field Calibration						
Preliminary Matters and Mobilization	1	12	4			
Kickoff Meeting		1	1			
Setup pressure recorders at tower site		2	10			
Fire Flow Hydrant Tests (10 Locations) (w/ assistance from one City personnel)		2	24			
Extended Pressure Monitoring (10 locations for 14 days)		2	8			
TASK HOURS	1	19	47	0	0	
TASK FEE:						\$ 10,522.00
Task 05: Hydraulic Model EPS Calibration						
Review System Operation Historic Data		2				
Compile data from field test.		4	2	2		
TASK HOURS	0	6	2	2	0	
TASK FEE:						\$ 1,358.00
Task 06: Existing Distribution System Analysis						
Water Main Capacity Analysis		2				
Water Storage Capacity Analysis		6				
Low Pressure Area Analysis		4				
Fire Flow Capacity Assessment		4				
Document System Deficiencies	2	4		1		
TASK HOURS	2	20	0	1	0	
TASK FEE:						\$ 3,946.00
Task 07: Analysis of Growth Area						
Define growth area	2	3				
Allocate demands to growth areas per land use		3				
Evaluate future water supply connections		5				
Evaluate future water main extensions & improvements		8				
Evaluate future storage improvements		8				
Provide future system map		12				
Review Meeting		2				
TASK HOURS	2	41	0	0	0	
TASK FEE:						\$ 7,663.00
Task 08: Preliminary Engineering Report						
Prepare PER		16		2		
Prepare Supporting Memorandum Sections and Documentation		8		2		
Development of Maps and Figures		8				
Review Meeting		2		1		
Final publishing		24		1	12	
TASK HOURS	0	58	0	12	12	
TASK FEE:						\$ 11,850.00
ESTIMATED TOTAL FEE:						\$ 46,332.50



Libby, Montana Water System Preliminary Engineering Report - 2022

AE2S PROJECT No.: P10074-2021-006

Attachment A-3: Proposed Outline of Preliminary Engineering Report

Engineer will use the following outline as a guide for Report organization, development, and project delivery. Final outline may differ from the outline described below as the actual Report develops and engineering analysis and findings provide further insight to the organization of the Report.

1.0 - Executive Summary

1.01 - Planning Area

1.02 - Population

1.03 - Current and Projected Water Demand

1.04 - Permitting

1.05 - Funding

1.06 - Community Engagement

1.07 - Agency Comments

1.08 - Supply Facilities

a) Existing Conditions Summary

b) Alternatives Considered

c) Cost Estimate Summary

1.09 - Treatment Facilities

A) Existing Conditions Summary

B) Alternatives Considered

C) Cost Estimate Summary

1.10 - Distribution Facilities

A) Existing Conditions Summary

B) Alternatives Considered

C) Cost Estimate Summary

2.0 - Project Planning

2.01 - Location Map

2.02 - History

2.03 - Environmental Resources Present

2.04 - Population Trends

2.05 - Financial Status of Existing Utility

2.06 - Water Audits

A) Projected Demands

B) Leak Assessment and Water Loss Analysis

2.07 - Water Rights Summary

2.08 - Permitting

2.09 - Funding Sources

2.10 - Community Engagement

2.11 - Agency Comments

3.0 – Need for Project

3.01 - Health, Sanitation, and Security

3.02 - Aging Infrastructure

3.03 - Reasonable Growth

4.0 - Water Supply Facilities Planning

4.01 - Existing Facilities

4.02 - Alternatives Considered **(See Expected Alternatives on Last Page)**

A) Description

B) Design Criteria

C) Map (?)

D) Environmental Impacts

E) Land Requirements

F) Potential Construction Problems

G) Sustainability Considerations

- i. Water and Energy Efficiency**
- ii. Green Infrastructure**
- iii. Other**

H) Cost Estimates

4.03 - Selection of an Alternative

A) Life Cycle Cost Analysis

B) Non-Monetary Factors

- i. Technical Feasibility**
- ii. Environmental Impacts**
- iii. Public Health & Safety**
- iv. Operational Ease**
- v. Public Acceptance**
- vi. Financial Feasibility**

4.04 - Proposed Project / Recommended Alternative

A) Preliminary Project Design Criteria

B) Project Schedule

C) Permit Requirements

D) Sustainability Considerations

- i. Water and Energy Efficiency**
- ii. Green Infrastructure**
- iii. Other**

E) Total Project Cost Estimate

F) Annual O&M Costs

G) Funding Strategy

5.0 - Water Treatment Facilities Planning

5.01 - Existing Facilities

5.02 - Alternatives Considered (See Expected Alternatives on Last Page)

A) Description

B) Design Criteria

C) Map (?)

D) Environmental Impacts

E) Land Requirements

F) Potential Construction Problems

G) Sustainability Considerations

- i. Water and Energy Efficiency**
- ii. Green Infrastructure**
- iii. Other**

H) Cost Estimates

5.03 - Selection of an Alternative

A) Life Cycle Cost Analysis

B) Non-Monetary Factors

- i. Technical Feasibility**
- ii. Environmental Impacts**
- iii. Public Health & Safety**
- iv. Operational Ease**
- v. Public Acceptance**
- vi. Financial Feasibility**

5.04 - Proposed Project / Recommended Alternative

A) Preliminary Project Design Criteria

B) Project Schedule

C) Permit Requirements

D) Sustainability Considerations

- i. Water and Energy Efficiency**
- ii. Green Infrastructure**
- iii. Other**

E) Total Project Cost Estimate

F) Annual O&M Costs

G) Funding Strategy

6.0 - Water Distribution Facilities Planning

6.01 - Existing Facilities

6.02 - Alternatives Considered (See Expected Alternatives on Last Page)

A) Description

B) Design Criteria

C) Map (?)

D) Environmental Impacts

E) Land Requirements

F) Potential Construction Problems

G) Sustainability Considerations

- i. Water and Energy Efficiency**
- ii. Green Infrastructure**
- iii. Other**

H) Cost Estimates

6.03 - Selection of an Alternative

A) Life Cycle Cost Analysis

B) Non-Monetary Factors

- i. Technical Feasibility**

- ii. **Environmental Impacts**
- iii. **Public Health & Safety**
- iv. **Operational Ease**
- v. **Public Acceptance**
- vi. **Financial Feasibility**

6.04 - Proposed Project / Recommended Alternative

A) Preliminary Project Design Criteria

B) Project Schedule

C) Permit Requirements

D) Sustainability Considerations

- iv. **Water and Energy Efficiency**
- v. **Green Infrastructure**
- vi. **Other**

E) Total Project Cost Estimate

F) Annual O&M Costs

G) Funding Strategy

7.0 - Conclusions and Recommendations

7.01 - Project Funding Schedule

7.03 – Annual Operating Budget Impacts

A) Income

B) Annual O&M Costs

C) Debt Repayment

D) Reserves

7.02 - Conclusions

Alternatives to be Analyzed:

Water Supply Facilities Alternatives:

Alternative S1: No Action

Alternative S2: Define Scope of Study Needed at Lower Reservoir

Alternative S3: Perform Structural Improvements to Lower Flower Creek Dam

Alternative S4: Emergency Overflow Improvements

Alternative S5: Water Intake Screening Improvements

Water Treatment Facility Alternatives

Alternative T1: No Action

Alternative T2: Corrosion Improvements to Trident Microfloc Filter Basins

Alternative T3: Ventilation & Hatch Seal Optimization in Operations Space

Alternative T5: Raw Water Screen Replacements

Water Distribution System Facilities Alternatives:

Alternative D1: No Action

Alternative D2: Water Meter Program Management

Alternative D3: Project #1 Identified in Hydraulic Model (WaterCAD)

Alternative D4: Project #2 Identified in Hydraulic Model (WaterCAD)

Alternative D5: Project #3 Identified in Hydraulic Model (WaterCAD)

Alternative D6: Project #4 Identified in Hydraulic Model (WaterCAD)

PROFESSIONAL SERVICES CONTRACT
Grant Administration Services

This Contract is entered into this _____ day of May, 2022, by and between the City of Libby, Montana, herein referred to as the City and 3BD Services LLC, whose address is 815 Minnesota Avenue, Libby, MT. 59923, herein referred to as the "Contractor,":

WHEREAS, the Montana Department of Commerce, and other governments may from time to time award to the City of Libby grant and loan funds for various purposes including water and sewer improvements, planning and community development, but not limited to ; and

WHEREAS, the City of Libby desires to engage the Contractor to render certain services related to the administration of the above described CDBG project; and

WHEREAS, the City of Libby has complied with state and federal procurement requirements regarding the selection of contractors; and

WHEREAS, the City of Libby desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of projects;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. LIAISONS.

For the City of Libby:

Sam Sikes, City Administrator, 952 East Spruce Street, Libby, MT. 59923, 406-293-2731x4.

For the [CONTRACTOR]:

3BD Services LLC, 815 Minnesota Avenue, Libby, MT. 59923, Phone Number: 406.544.6578

2. EMPLOYMENT OF CONTRACTOR. The City of Libby agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of grant writing and grant and loan administration of grant and or loan projects for the City of Libby as approved by the Department.
3. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the City of Libby for purposes of tax, retirement system, or social security (FICA) withholding.
4. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING. The Contractor may not assign, transfer, or subcontract its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the City of Libby. Any subcontractor or assignee will be bound by the terms and conditions of this Contract.

5. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract shall take effect upon execution by the parties and will terminate upon completion of the SCOPE OF SERVICES hereunder as determined by the City of Libby, unless terminated earlier in accordance with the terms of this Contract.
6. SCOPE OF SERVICES. The Contractor will perform but not limited to the following services:
 - a. Grant and loan application preparation.
 - b. Compliance with any applicable environmental or labor requirements.
 - c. Assisting the Grant or Loan Recipient with all requirements related to effective project start-up and implementation and developing a contract with the funding agencies.
 - d. Preparing any legal notices required to be published, and processing and conducting any required public hearings or informational meetings.
 - e. Establishing and maintaining complete and accurate project files and preparing all documentation and reports incidental to administration of grants and loans.
 - f. Reviewing all proposed project expenditures or requests for payment to ensure their propriety and proper allocation of expenditures to the project budget.
 - g. In cooperation with the Clerk-Treasurer, processing payment requests and preparing requests for reimbursement to the funding agency or agencies, including, but not limited to Request for Payment, Status of Funds Report, Invoice Tracking Spreadsheet and the Project Progress Report.
 - h. Monitoring the contractor selection process, including the bid advertising, tabulation and award process and construction contract provisions in conformance with applicable laws.
 - i. Attending the preconstruction conference and monthly construction progress meetings.
 - j. Monitoring contractor compliance with applicable requirements.
 - k. Assuring compliance with all state labor standards requirements. Responsibilities will include the review of weekly payroll reports to assure compliance with state prevailing wage requirements; periodic visits to the construction site to assure that required equal opportunity, labor standards, and prevailing wage determinations have been posted; and conducting on-site interviews with construction personnel to assure prevailing wage compliance.
 - l. Assuring compliance with applicable equal opportunity requirements.

- m. Preparing all required performance reports and project closeout documents for submittal to the Department.
- n. Attending Council meetings, as needed, to provide project status reports and representing the project at any other public meetings, as deemed necessary by the local officials.
- o. Receiving official project complaints and ensuring that complaints are reasonably addressed in a timely manner.

It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the City of Libby's financial officer, legal advice, fiscal audits, or assistance with activities not related to grant and loan funded projects.

- 7. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the City of Libby will pay the Contractor in the manner set forth in the attached Attachment A, attached hereto and specifically incorporated herein by this reference. Each specific service the Contractor will provide under this Contract, that the City of Libby will pay the Contractor for each of these services, is set forth in the attached Attachment A.

The amount to be paid will be calculated according to the hourly billing rate for the Contractor as described in Attachment A. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

- 8. CONTRACT AMENDMENT. Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.
- 9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the City of Libby of funds from the various grant and loans and that, in the event that said funds are not provided, the City of Libby incurs no responsibilities or liabilities under this Contract.
- 10. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:
 - (a) Termination due to loss of funding. The City of Libby may, at its sole discretion, terminate or reduce the scope of this Contract if available funding is eliminated or reduced for any reason. If a termination or modification is required, the City of Libby will, to the extent permitted by available funds, compensate the Contractor for eligible work elements the Contractor has completed and for approved, eligible, reasonable, and necessary expenses incurred by the Contractor as of the revised termination date. The City of Libby will give the Contractor written notice of the

effective date of the modification or termination of this Contract and, if a reduction in funding is required, will provide the Contractor with a modified Project budget.

(b) Termination for cause.

- (i) If the City of Libby determines that the Contractor has failed to comply with the terms and conditions of the Contract, the City of Libby may terminate this Contract in whole or in part at any time. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the City of Libby by reason of the Contractor's failure to comply with this Contract.

Any costs or expenses incurred by the Contractor from obligations arising during a suspension or after termination of this Contract are not allowable unless the City of Libby expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Contractor costs incurred during suspension or after termination are allowable if:

- 1) They result from obligations properly incurred by the Contractor before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, non-cancellable; and
- 2) The costs would be allowable if the Contract were not suspended or expired normally at the end of the funding period in which the termination takes effect.

- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the City of Libby for damages sustained by the City of Libby by virtue of any breach of this Contract by the Contractor, and the City of Libby may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the City of Libby from the Contractor is determined.

11. AVOIDANCE OF CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG project that would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performing this Contract, it will employ no person who has any such interest. The Contractor will comply with the provisions of the applicable HUD regulations of 24 C.F.R. Parts 84, 85, and 570.611, and with sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

12. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the City of Libby, and the Department, which both have royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating

thereto. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the City of Libby, and the Department.

To the extent the funds dispersed under this Contract will be used by any small business firm or non-profit organization, as defined in 37 C.F.R. 401.2, such firm(s) or organization(s) are subject to the standard patent rights clause set forth in its entirety in 37 C.F.R. 401.14 and specifically incorporated herein by this reference.

13. ACCESS TO AND RETENTION OF RECORDS. The Contractor agrees to provide the City of Libby, the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of four (4) years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Contractor's offices in 815 Minnesota Avenue, Libby, MT 59923.
14. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the City of Libby to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City of Libby or its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the City of Libby.
16. PROJECT MONITORING. The City of Libby, the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE OF ACTIVITIES, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor's records and accounts. The City of Libby will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the City of Libby.
17. INDEMNIFICATION. The Contractor agrees to protect, defend, and save the City of Libby and the State, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, and subcontractors.

18. INSURANCE.

- A. General Requirements. The Contractor shall maintain for the duration of this Agreement, at its cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in this Contract by the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- B. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City of Libby, the Department, the State of Montana, and their elected or appointed officers, officials, employees, or volunteers. The City of Libby and the State's insurance coverage is excess to the Contractor's insurance coverage and shall not contribute with it.
- C. General Liability Insurance. The Contractor shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of \$500,000 per occurrence and \$1,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, employees, representatives, assigns, or subcontractors. The City of Libby, the State, the Department, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.
- E. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the City of Libby prior to beginning any use, occupancy, operation, or management of the subject property under this Contract. The Contractor shall notify the City of Libby immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The City of Libby reserves the right to request complete copies of the Contractor's insurance policies at any time, including endorsements.

19. CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VII, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

20. COMPLIANCE WITH NONDISCRIMINATION LAW. The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination laws, rules, and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 109 of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 of Sept. 24, 1965, and Section 504 of the Rehabilitation Act of 1973. Any contracting, subletting, or subcontracting by the Grantee subjects contractors, subcontractors, and subrecipient entities to the same

provision. In accordance with Mont. Code Ann. § 49-3-207, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

21. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the City of Libby under this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the City of Libby or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and any renewal documents must be sent to the City of Libby.

22. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor will comply with the following provision:

No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

23. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to lower income project area residents. Further, the Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

24. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG recipient upon request.

25. JURISDICTION AND VENUE. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

This Contract will be construed under and governed by the laws of the State of Montana.

26. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.
27. ELIGIBILITY. The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)
28. DEBARMENT. The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the City of Libby.

The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

29. FORCE MAJEURE. Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.
30. SEPARABILITY. A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.
31. NOTICE. All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons as identified herein either by first class mail or personal service.
32. REFERENCE TO CONTRACT. The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.
33. NO ARBITRATION. Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under this Contract.
34. NO WAIVER OF BREACH. No failure by the Department to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be

deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Grantee.

35. **INTEGRATION.** The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the _____ day of _____.

3BD Services, LLC:

Tina Olyphant

City Of Libby:

BY: [Signature]

BY: _____

TITLE: Managing Member

TITLE: _____

DATE: 5/2/22

DATE: _____

Attachment A:

Contractor will charge a hourly billable rate of \$75.00, plus expenses for printing, supplies for City's record keeping and travel beyond the City limits of the City of Libby.

The above hourly rate is effective through March 2024.

Fee estimates will be provided for each task or service provided by the Contractor.

PROFESSIONAL SERVICES CONTRACT
Grant Administration Services

This Contract is entered into this _____ day of May, 2022, by and between the City of Libby, Montana, herein referred to as the City and 3BD Services LLC, whose address is 815 Minnesota Avenue, Libby, MT. 59923, herein referred to as the "Contractor,":

WHEREAS, the Montana Department of Commerce, and other governments may from time to time award to the City of Libby grant and loan funds for various purposes including water and sewer improvements, planning and community development, but not limited to ; and

WHEREAS, the City of Libby desires to engage the Contractor to render certain services related to the administration of the above described CDBG project; and

WHEREAS, the City of Libby has complied with state and federal procurement requirements regarding the selection of contractors; and

WHEREAS, the City of Libby desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of projects;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. LIAISONS.

For the City of Libby:

Sam Sikes, City Administrator, 952 East Spruce Street, Libby, MT. 59923, 406-293-2731x4.

For the [CONTRACTOR]:

3BD Services LLC, 815 Minnesota Avenue, Libby, MT. 59923, Phone Number: 406.544.6578

2. EMPLOYMENT OF CONTRACTOR. The City of Libby agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of grant writing and grant and loan administration of grant and or loan projects for the City of Libby as approved by the Department.
3. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the City of Libby for purposes of tax, retirement system, or social security (FICA) withholding.
4. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING. The Contractor may not assign, transfer, or subcontract its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the City of Libby. Any subcontractor or assignee will be bound by the terms and conditions of this Contract.

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 - g. In cooperation with the Clerk-Treasurer, processing payment requests and preparing requests for reimbursement to the funding agency or agencies, including, but not limited to Request for Payment, Status of Funds Report, Invoice Tracking Spreadsheet and the Project Progress Report.
 - h. Monitoring the contractor selection process, including the bid advertising, tabulation and award process and construction contract provisions in conformance with applicable laws.
 - i. Attending the preconstruction conference and monthly construction progress meetings.
 - j. Monitoring contractor compliance with applicable requirements.
 - k. Assuring compliance with all state labor standards requirements. Responsibilities will include the review of weekly payroll reports to assure compliance with state prevailing wage requirements; periodic visits to the construction site to assure that required equal opportunity, labor standards, and prevailing wage determinations have been posted; and conducting on-site interviews with construction personnel to assure prevailing wage compliance.
 - l. Assuring compliance with applicable equal opportunity requirements.

- m. Preparing all required performance reports and project closeout documents for submittal to the Department.
- n. Attending Council meetings, as needed, to provide project status reports and representing the project at any other public meetings, as deemed necessary by the local officials.
- o. Receiving official project complaints and ensuring that complaints are reasonably addressed in a timely manner.

It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the City of Libby's financial officer, legal advice, fiscal audits, or assistance with activities not related to grant and loan funded projects.

- 7. COMPENSATION. For the satisfactory completion of the services to be provided under this Contract, the City of Libby will pay the Contractor in the manner set forth in the attached Attachment A, attached hereto and specifically incorporated herein by this reference. Each specific service the Contractor will provide under this Contract, that the City of Libby will pay the Contractor for each of these services, is set forth in the attached Attachment A.

The amount to be paid will be calculated according to the hourly billing rate for the Contractor as described in Attachment A. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

- 8. CONTRACT AMENDMENT. Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.
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effective date of the modification or termination of this Contract and, if a reduction in funding is required, will provide the Contractor with a modified Project budget.

(b) Termination for cause.

- (i) If the City of Libby determines that the Contractor has failed to comply with the terms and conditions of the Contract, the City of Libby may terminate this Contract in whole or in part at any time. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the City of Libby by reason of the Contractor's failure to comply with this Contract.

Any costs or expenses incurred by the Contractor from obligations arising during a suspension or after termination of this Contract are not allowable unless the City of Libby expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Contractor costs incurred during suspension or after termination are allowable if:

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- 2) The costs would be allowable if the Contract were not suspended or expired normally at the end of the funding period in which the termination takes effect.

- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the City of Libby for damages sustained by the City of Libby by virtue of any breach of this Contract by the Contractor, and the City of Libby may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the City of Libby from the Contractor is determined.

11. AVOIDANCE OF CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG project that would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performing this Contract, it will employ no person who has any such interest. The Contractor will comply with the provisions of the applicable HUD regulations of 24 C.F.R. Parts 84, 85, and 570.611, and with sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

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14. REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the City of Libby to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City of Libby or its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the City of Libby.
16. PROJECT MONITORING. The City of Libby, the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE OF ACTIVITIES, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor's records and accounts. The City of Libby will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the City of Libby.
17. INDEMNIFICATION. The Contractor agrees to protect, defend, and save the City of Libby and the State, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, and subcontractors.

18. INSURANCE.

- A. General Requirements. The Contractor shall maintain for the duration of this Agreement, at its cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in this Contract by the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- B. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City of Libby, the Department, the State of Montana, and their elected or appointed officers, officials, employees, or volunteers. The City of Libby and the State's insurance coverage is excess to the Contractor's insurance coverage and shall not contribute with it.
- C. General Liability Insurance. The Contractor shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of \$500,000 per occurrence and \$1,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, employees, representatives, assigns, or subcontractors. The City of Libby, the State, the Department, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.
- E. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the City of Libby prior to beginning any use, occupancy, operation, or management of the subject property under this Contract. The Contractor shall notify the City of Libby immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The City of Libby reserves the right to request complete copies of the Contractor's insurance policies at any time, including endorsements.

19. CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VII, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

20. COMPLIANCE WITH NONDISCRIMINATION LAW. The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination laws, rules, and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 109 of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 of Sept. 24, 1965, and Section 504 of the Rehabilitation Act of 1973. Any contracting, subletting, or subcontracting by the Grantee subjects contractors, subcontractors, and subrecipient entities to the same

provision. In accordance with Mont. Code Ann. § 49-3-207, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

21. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the City of Libby under this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the City of Libby or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and any renewal documents must be sent to the City of Libby.

22. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor will comply with the following provision:

No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

23. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to lower income project area residents. Further, the Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

24. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG recipient upon request.

25. JURISDICTION AND VENUE. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

This Contract will be construed under and governed by the laws of the State of Montana.

26. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.
27. ELIGIBILITY. The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)
28. DEBARMENT. The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the City of Libby.

The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

29. FORCE MAJEURE. Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.
30. SEPARABILITY. A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.
31. NOTICE. All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons as identified herein either by first class mail or personal service.
32. REFERENCE TO CONTRACT. The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.
33. NO ARBITRATION. Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under this Contract.
34. NO WAIVER OF BREACH. No failure by the Department to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be

deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Grantee.

35. **INTEGRATION.** The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the _____ day of _____.

3BD Services, LLC:

Tina Oliphant

City Of Libby:

BY: 

BY: _____

TITLE: Managing Member

TITLE: _____

DATE: 5/2/22

DATE: _____

Attachment A:

Contractor will charge a hourly billable rate of \$75.00, plus expenses for printing, supplies for City's record keeping and travel beyond the City limits of the City of Libby.

The above hourly rate is effective through March 2024.

Fee estimates will be provided for each task or service provided by the Contractor.

ORDINANCE NO. 2002

An Ordinance of the City Council of the City of Libby, Montana, amending Title 17, Zoning Regulations, Chapter 17.04 – Definitions, Chapter 17.24 – Downtown District, Chapter 17.25 – Highway Commercial District; and Title 5, Business Licenses, Chapter 5.04 – General Provisions, of the Libby City Code.

WHEREAS, in 2020 the citizens of Montana passed I-190 legalizing recreational marijuana for adult use, and the citizens of Libby supported the initiative with 63% in favor; and

WHEREAS, the legislature subsequently passed HB 701, further refining the program; and

WHEREAS, it will be in the best interests of the City of Libby and its inhabitants to adopt the proposed amendments to the zoning regulations; and

WHEREAS, the process for adoption of these changes has been carried out pursuant to Municipal Code; and

WHEREAS, the Zoning Commission recommends the proposed changes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Libby, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The amendments to Title 17, Zoning Regulations, as provided in Exhibit A are hereby adopted.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Libby, Montana, and signing by the mayor thereof.

First Reading, this 2nd day of May 2022

Passed and adopted by the City Council of the City of Libby, Montana, this 16th day of May 2022.

Attest:

Peggy Williams, Mayor

Leann Monigold, Clerk/Treasurer

- A. All permitted or conditionally permitted marijuana retail establishments must be sited and operated in full compliance with Montana law as well as all zoning and building code requirements, parking standards, and any conditions of approval. Marijuana facilities may not be operated as a home occupation
- B. Commercial marijuana cultivation is not permitted in the city limits.
- C. No marijuana retail facility is permitted from locales within 500 feet of and addressed on the same street as a building used exclusively as a church or public school pursuant to state law, or a public park. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the marijuana sales premises. A lawfully operating facility shall not be rendered in violation of these provisions by the subsequent location of a church or public school.
- D. Marijuana dispensaries must have a building façade that visually blends in with the design, style, and appearance of adjacent storefronts, including signage, security measures, and lighting, and must be reviewed and approved by the Zoning Commission when required.
- E. Window signs on marijuana dispensaries are limited to a maximum window sign coverage of 20% of the window area, and otherwise no window shall be covered or made opaque in any way. No security bars, metal screens, grates, or other visible security devices other than door locks and recessed or otherwise discrete security cameras are permitted on the storefront exterior unless required by State law.
- F. If the applicant is not the property owner, a notarized authorization executed by the property owner authorizing and consenting to the proposed use of the property as a marijuana facility is required.
- G. Marijuana dispensaries must at all times be operated in such a way as to ensure the health, safety, and welfare of the public and workers. They must not create a public nuisance or adversely affect the health or safety of the nearby residents, businesses, or its employees by creating dust, glare, light pollution, heat, noise, noxious gasses, odor, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, and runoff of water, pesticides or wastes.
- H. All marijuana dispensaries must have sufficient security systems, including surveillance cameras, alarm systems on doors and windows, deadbolt locked exterior doors, and safes to store cash and retail marijuana products when closed
- I. Marijuana remnants and byproducts must be secured and properly disposed of and not be placed within the facility's exterior refuse containers at any business operating pursuant to this section unless rendered unusable. Outdoor storage of marijuana merchandise, raw materials, or other marijuana materials associated with the production of marijuana is prohibited
- J. All signage must meet state licensing requirements as well as any Sign Regulations found in the City's Municipal Code.
- K. Marijuana facilities are required to operate during the hours authorized by state law.

EXHIBIT A

Business Licenses

5.04.030 Unlawful activities not licensed.

To the extent permitted by relevant law, no provision contained in Sections 5.04.020 through 5.04.190 shall be construed so as to license any trade, business, occupation, vocation, pursuit, profession, or entertainment prohibited by any law of the United States, of the State of Montana, or prohibited by the provisions of this code or other ordinance of the city.

(Ord. 751 § 1.02, 1973)

Zoning Districts

17.24 Downtown Business District

17.24.050 Conditional uses.

A. Adult-Use or Medical Marijuana Dispensary

1. Window signs on marijuana dispensaries are limited to a maximum window sign coverage of 20% of the window area, and otherwise no window shall be covered or made opaque in any way. No security bars, metal screens, grates, or other visible security devices other than door locks and recessed or otherwise discrete security cameras are permitted on the storefront exterior unless required by State law.

2. Marijuana dispensaries must have a building façade that visually blends in with the design, style, and appearance of adjacent storefronts, including signage, security measures, and lighting, and must be reviewed and approved by the Zoning Commission when required.

A. Drive-through Facilities. Drive-through facilities for restaurants, financial institutions, pharmacies, etc. are allowed as conditional uses in the DBD subject to the following conditions:

1. The drive-through facility shall not interfere with pedestrian traffic.
2. The drive-through facility shall be positioned at the side or rear of the primary structure.
3. Access to the drive-through facility shall be via an alley or side street, and access from Mineral Avenue or California Avenue is not permitted.

B. Outdoor Storage. Outdoor storage shall be located behind buildings and screened so as not to be visible from adjacent properties, public streets and sidewalks. Temporary storage as defined in this chapter is also permitted.

C. Parking Lots and Residential Parking.

1. Parking lots, for the intended purpose of providing parking spaces as a commercial enterprise to the general public, must be paved and must contain a minimum of ten (10) percent landscaping within its borders.

2. Parking lots integrated into the design of a building shall be located in the rear of a building and must be paved.

3. Parking for upper-story residential uses must be located in the rear of the building.

D. Residential Uses on the Ground Floor.

1. Residential uses on the ground floor are not permitted at the street-front on Mineral Avenue and California Avenue.

2. Ground-floor residential space must be located in the rear of buildings.

3. Parking for any such use must be located in the rear of the building.

(Ord. No. 1963, 7-20-2020)

17.25 Highway Commercial District

17.25.030 Use.

Prohibited:

A. Single-family (including manufactured and mobile homes), duplex, and tri-plex residential uses.

B. Mobile, manufactured homes sales.

C. Cell/wireless towers.

D. Cemeteries.

E. Crematoriums.

F. Commercial storage units as primary use.

G. Correctional facilities.

H. Fuels storage, bulk.

I. Inpatient or emergency health care facilities (excluding urgent care facilities).

J. Kennels.

Conditional:

A. Multi-family. Multi-family structures are permitted in the Highway Commercial District only when the first floor is restricted to commercial uses ancillary and complementary to residential uses, i.e., coffee shops, restaurant, laundry, salons, etc.

B. Auto Repair. Auto repair facilities are permitted in the Highway Commercial District when the following conditions are met:

1. Areas for the temporary parking of cars waiting service shall be located in the rear of the building. When the rear of the building is not available, the parking area shall be screened at seventy percent opacity (70%).

2. Service bays shall be designed so as to approach from the side of the building; or when located on a corner lot, from the lower classification street.

C. Adult-Use or Medical Marijuana Dispensary

1. Window signs on marijuana dispensaries are limited to a maximum window sign coverage of 20% of the window area, and otherwise no window shall be covered or made opaque in any way. No security bars, metal screens, grates, or other visible security devices other than door locks and recessed or otherwise discrete security cameras are permitted on the storefront exterior unless required by State law.

2. Marijuana dispensaries must have a building façade that visually blends in with the design, style, and appearance of adjacent storefronts, including signage, security measures, and lighting, and must be reviewed and approved by the Zoning Commission when required.

From: peggy.williams@cityoflibby.com
Sent: Thursday, May 12, 2022 2:34 PM
To: clerk.treasurer@cityoflibby.com
Subject: FW: Health Board Governing Body

From: Josh Letcher <jletcher@libby.org>
Sent: Tuesday, May 3, 2022 9:43 AM
To: Peggy Williams <peggy.williams@cityoflibby.com>
Subject: Health Board Governing Body

Peggy,

In 2021 the Montana Legislature passed into law HB 121 <https://leg.mt.gov/bills/2021/billhtml/HB0121.htm> . Its my understanding that part of the intent of HB 121 was to firm up the advisory role of the health boards and the authority of the elected officials.

Under MCA 50-1-101 section (8) we must define the Local Governing Body.

(8) "Local governing body" or "governing body" means:

- (a) the board of county commissioners that oversees a county local board of health;
- (b) the elected governing body of a city that oversees a city local board of health; or
- (c) the entity identified as the governing body as established in the bylaws, interlocal agreement, or memorandum of understanding creating a city-county local board of health or a local district board of health.

According the Board of Health legal counsel, Jinn Merriman, we have several avenues we can approach.

1. The Health Board can revise their bylaws to define the governing body.
2. The County and each City can revise the interlocal agreements that created the City/County Board of Health to define the governing body.

Once we determine which avenue to use to define the Governing body we need to define the governing body. There are several options. The governing body could be:

1. The 3 County Commissioners
2. The 3 County Commissioners plus the Mayors from each city.

HB 121 Section 2 states that [the Health Board will] ...propose for adoption by the local governing body necessary regulations...

The local governing body will have to create a process and hold a meeting to adopt or approve the regulations proposed by the health board.

If the commissioners and city mayors become the Governing Body they would all have to attend and hold a public meeting to vote on the proposals. I think it would be a simpler process (and what other city/county BOH have done) if the county commissioners were the "Governing Body" but I would like to hear your thoughts and ideas.

Sincerely,

Josh Letcher

Lincoln County Commissioner

District 3

406-249-8909 Cell

406-297-3139 Office

jletcher@libby.org