

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between City of Mitchell (Owner) and Infrastructure Design Group, Inc. (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as "Pump Station, Ground Storage Reservoir, and Water Distribution System Modifications Project" (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as preparation of SRF loan application, SRF Facility Plan, design and preparation of construction bid documents for improvements to the City of Mitchell's water distribution system.

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:
 - 1. design objectives and constraints;
 - 2. space, capacity, and performance requirements;
 - 3. flexibility and expandability needs;
 - 4. design and construction standards;
 - 5. budgetary limitations; and
 - 6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through 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; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Surveys, topographic mapping, and utility documentation.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. 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; appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- C. Owner shall 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.
 - D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.
 - E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.
 - F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
 - G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- 2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents
- A. Owner shall 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) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
 1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;

2. insurance and bonding requirements;
 3. protocols for electronic transmittals during bidding and construction;
 4. Owner's safety and security programs applicable to Contractor and other Constructors;
 5. diversity and other social responsibility requirements;
 6. bidding and contract requirements of funding, financing, or regulatory entities;
 7. other specific conditions applicable to the procurement of construction or contract documents;
 8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.
- B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.
1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement.

2.03 Owner-Furnished Services

- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:
1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
 3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
- B. Owner shall 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. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.

- D. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
 - 1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and
 - 2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.
- E. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

2.04 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.
- B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.
- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.
- D. Owner shall 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 this Agreement.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items. Engineer shall notify Owner in the event Engineer is aware that Owner supplied information is inaccurate or questionable.
- G. 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: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project,

including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:
 1. 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.
 2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.
 - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.
 - b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.
 3. Authorize Engineer to provide Additional Services as set forth Exhibit A of the Agreement, as required.
 4. Perform or provide the following:
 - a. Contract with a Geotechnical firm to complete necessary soil borings and analysis.

2.05 Payment

- A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.
- B. Engineer's compensation is summarized as follows; if there is a conflict between the following summary and the contents of Exhibit J, then Exhibit J will prevail.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Article 1 of Exhibit A)	\$720,128	Per Work Plan
2.	Additional Services (Article 2 of Exhibit A)		Hourly Rates

ARTICLE 3—SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

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

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit B, and are hereby agreed to be reasonable.

- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- D. If Engineer fails, for reasons within control of Engineer, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled ~~as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Engineer.~~ To an equitable reduction in the contract price.

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 progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. 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. 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. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.
- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer 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 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, 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 will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost (if any) 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 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs will 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.

5.03 Opinions on Cost Subject to Standard of Care

- A. Notwithstanding the limitations stated in Paragraphs 5.01 and 5.02, Engineer's opinions of Costs shall be prepared and provided consistent with the standard of care.

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. However, such disclaimer of warranties shall not limit or otherwise alter Engineer's duty to complete the work consistent with the standard of care.
- 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. Engineer's Subcontractors and Subconsultants: Engineer may retain such Engineer's Subcontractors and Subconsultants 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 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. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations,
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. General Conditions of Construction Contract: The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.
- G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.
- H. 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 conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- J. 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.
- K. 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.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

- M. Engineer's services do not include providing legal advice or representation.
- N. 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.
- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

P.A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer, subject to the following provisions:

1. All raw data, studies, reports, and other work products of Engineer for this project ("Project Documents") are instruments of service for the project only and shall be deemed the joint property of Engineer and City whether the project is completed or not. The City may make and retain copies of the Project Documents which may be used by the City and others. Both Engineer and City may use the Project Documents for their own purposes outside of the project when appropriate. However, the Project Documents are not intended or represented to be suitable for reuse by the City or others on extensions of the project or on any other project. Any such use without written verification or adaptation by Engineer for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Engineer and the City shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants from any and all liability claims, losses, damage and expenses, including attorney's fees, arising out of or resulting from the negligent use of the Project Documents by City without written verification, completion or adaptation by Engineer.

1.2. Nothing herein limits the Engineer's right of use or reuse of Previously/Independently Created Works or any of Engineer's non-Documents work product.

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

R.C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of intellectual property rights, then ~~Owner and~~ Engineer shall notify Owner of such inclusion and, if Owner does not object to such inclusion, Engineer and Owner shall share equally the costs of defending against, settling, or paying such claims.

~~S.D.~~ Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

~~6.026.03~~ Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).
 - 1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.
 - 2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

~~6.036.04~~ Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G.
- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
 - 1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
 - 2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
 4. not seek contribution from insurance maintained by the additional insured.
- C. Owner shall procure and maintain insurance ~~as set forth in Exhibit G.~~
- D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.

If Engineer is responsible for preparing such Contractor contracts as part of the services provided herein, then Engineer shall ensure that provisions satisfying the requirements of this section are included in such Contractor Contracts.

~~D-E.~~ Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.

~~E-F.~~ All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.

~~F.—The builder's risk relating to the project must 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, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, 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 such builder's risk relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must 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, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, 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 such builder's risk or similar policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.~~

- G. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, 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 primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.
- H. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, 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 Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.046.05 Suspension and Termination

A. Suspension

- 1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.
- 2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:
 - a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;
 - b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
 - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.

B. Termination for Cause

- 1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 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 will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:
 - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
 - b. if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or
 - c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.
 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- C. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- D. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.
- E. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.
1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
 2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, 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 Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.

6.056.06 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 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to

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

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. 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.
 - 2. Nothing in this Agreement will 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.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

~~6.06~~6.07 Dispute Resolution

- A. Unless otherwise required by Exhibit H, Owner and Engineer shall resolve all disputes in the following manner:
 - 1. 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 mediation.
 - 2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
 - 3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then:
 - a. either or both may invoke the applicable dispute resolution procedures of Exhibit H for final resolution of Disputes.
 - b. If Exhibit H is not included, or if no final dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

~~6.07~~6.08 Controlling Law; Venue

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project; ~~or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the Project is located.~~

~~6.08~~6.09 Environmental Condition of Site

- A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner's knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as "undisclosed" Constituents of Concern.
 - 1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.
 - 2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.
 - 3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under this Agreement, then:
 - 1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in

the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or

2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days' written notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.096.10 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, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the 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, Subconsultants, or Engineer's Subcontractors. 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. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the 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 obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- ~~D. 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, will 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.~~

~~E.D.~~ Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, 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 or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

~~6.106.11~~ Records Retention

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

~~6.116.12~~ Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.
- B. Survival: Subject to applicable Laws and Regulations, 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 will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.
- D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will 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 this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.
3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.
6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.
7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. Construction Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. Construction Contract Documents—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer's Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. Contractor—The entity or individual with which Owner enters into a Construction Contract.
17. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.
18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. Electronic Means—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. Engineer—The individual or entity named as such in this Agreement.
23. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.
24. 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.
25. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
26. 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.
27. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
28. Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
29. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
30. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.
31. 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.
32. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
33. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way

and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

34. 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.
35. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.
36. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
37. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
38. 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.
39. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
40. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

41. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
 42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
 43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. Terminology
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits to Agreement

The following exhibits are incorporated by reference and included as part of this Agreement:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Deliverables Schedule.
- C. Exhibit C, Amendment to Owner-Engineer Agreement (form).
- ~~D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~
- ~~E. Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (form).~~
- ~~F-D.~~ Exhibit F, Electronic Documents Protocol (EDP).
- ~~G-E.~~ Exhibit G, Insurance.
- ~~H-F.~~ Exhibit H, Dispute Resolution.
- ~~I-G.~~ Exhibit I, Limitations of Liability.
- ~~J-H.~~ Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

8.02 Total Agreement

- A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral

understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to this Agreement.

8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

8.04 Engineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything 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.

8.05 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
 - 1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
 - 2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

This Agreement's Effective Date is **[insert date]**.

Owner:

City of Mitchell

(name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attach evidence of authority to sign.

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

612 N. Main Street

Mitchell, SD 57301

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

Engineer:

Infrastructure Design Group, Inc.

(name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Phil Gundvaldson

(typed or printed)

Title:

Vice-President

(typed or printed)

Attach evidence of authority to sign.

Attest:

(individual's signature)

Title:

President

(typed or printed)

Address for giving notices:

520 N. Lawler Street; Suite 400

Mitchell, SD 57301

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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EXHIBIT A—ENGINEER’S SERVICES

See attached Exhibit A.

EXHIBIT B—DELIVERABLES SCHEDULE

EXHIBIT C—AMENDMENT TO OWNER-ENGINEER AGREEMENT

EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

EXHIBIT G—INSURANCE

EXHIBIT I—LIMITATIONS OF LIABILITY

COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

APPENDIX 1: STANDARD HOUR RATES AND REIMBURSABLE EXPENSES SCHEDULE

APPENDIX 1: STANDARD HOUR RATES AND REIMBURSABLE EXPENSES SCHEDULE

EXHIBIT A

City of Mitchell Scope of Work

Project Description:

Preparation of SRF loan application, SRF Facility Plan, and construction bid documents for improvements to the City of Mitchell's water distribution system. The improvements will likely be bid as four separate construction projects. Following is a summary of the individual construction contracts.

Project Team:

Infrastructure Design Group, Inc. (InfrastructureDG) is the lead consultant. Subconsultants include Advanced Engineering and Environmental Services, Inc. (AE2S), JLG Architects (architectural for PS & CF facility), and KFI Engineers (mechanical and plumbing for PS & CF facility).

Contract #1 - Pump Station and Chemical Feed Facility. It is assumed that this PS&CF facility will consist of:

- A 40' x 50' climate-controlled building with rest room,
- Three (3) 2,000 GPM pumps and a firm capacity of 4,000 GPM,
- Two (2) 600 GPM pumps for the new south pressure zone,
- Chemical feed systems (chlorine and ammonia) to manage chloramine disinfectant residuals and lead and copper corrosion control,
- Associated electrical, instrumentation and controls systems,
- On-site natural gas backup generator, and
- Site work, stormwater management and, yard piping connections.

Contract #2 - 2.5-million-gallon Ground Storage Reservoir. The GSR will be located near or adjacent to the PS&CF building.

- GSR will consist of either a reinforced concrete or steel tank.
- Design of the GSR structural components will be delegated to the GSR Contractor.
- Design Team will prepare designs for site civil, process, electrical, and instrumentation and controls.

Contract # 3 - Water Distribution System Modifications. It is assumed that the water distribution system modifications will consist of:

- Additional piping at the WTP to allow for a by-pass (north side of building),
- South connection piping improvements (approximately 2,050 LF of 20" water main from Burr Street west to Cabela Drive, then along Cabela Drive to the existing crossing under I-29),

- South pressure zone piping and valving (at the four locations of water main crossings under I-29), and
- Demolition of the Burr Street Tower (includes tank demolition and one block of water main reconstruction/upsizing).

Scope of Work:

1. Study & Report Phase services generally consisting of SRF Loan Application, Facility Plan, and SRF Public Hearing for the three contracts included and a basis of design report documenting the recommendation for final design.

1.1. Engineer's Services include:

- A. Assistance in Preparing the SRF Loan Application including
 - i Provide limited assistance in the preparation of the SRF Application Worksheet. It is assumed that the City and/or Planning District will lead the competition of the Application Worksheet consisting of financial statements, selection of bond counsel, and capacity assessment of the utility to repay the loan.
 - ii Preparation of the SRF Facility Plan for inclusion in the loan application materials. The purpose of the SRF Facility Plan is to provide a basis for environmental approvals to be obtained for the projects. The Engineer will prepare a facility plan documenting the project as described above using the SDDENR required outline and updated Opinion of Probable Costs.
 - iii Assist the City in preparing for the required SRF Public Hearing. It is assumed for this scope of work that City will present the information at a City Commission meeting and the Engineer will provide meeting materials consisting of figures and limited PowerPoint slides.
- B. Prepare a Basis of Design Report documenting the technical decisions and recommendations for the design and implementation of the contracts as described above. Basis of Design Report will include the following:
 - i Documentation of supplemental hydraulic modeling to support the design recommendations for the pump station, ground storage reservoir, and distribution system modifications,
 - ii Recommendation for pump station and pressure zone operations and maintenance,

- iii Identify easement, real estate, and permits to be acquired during design development and prior to bidding,
 - iv Updated Opinion of Probable Construction Costs,
 - v Coordination for the selection of a third party for geotechnical data collection. Recommendations for geotechnical exploration and data to be collected during the design development. It is assumed that the City will contract for geotechnical services directly.
 - vi Coordination for the selection for third party for environmental field work that may be identified from the SRF solicitation of views. Field work may include aquatic resource survey, cultural survey, and other potential requirements identified from the solicitations of views.
- C. General project management and coordination that does not fit under the items listed above. These activities may include general communication with the City, coordination with subconsultants, and monthly reports to the City on progress of the project.

1.2. Meetings:

- A. Study and Report Phase meetings
- i Kick-off meeting to review the scope of work and schedule. Meeting will be attended by the Engineer's PM and key technical staff from subconsultants.
 - ii Pressure zone optimization review meeting between the Engineer and City to review the recommendations of the Basis of Design report. Meeting will be attended by the Engineer's PM and key technical staff from subconsultants.
 - iii SRF coordination meeting with the SD DENR staff to review the facility plan and other submittal materials. Meeting will be attended the Engineer's PM and one subconsultant. It is assumed that this meeting will occur at the State offices in Pierre or via virtual methods.
- B. It is assumed that all City/Engineering coordination meetings will be held in Sioux Falls at the Engineer's office or other location that allows for virtual attendance. Engineer and subconsultant staff local to Sioux Falls will attend in person and other staff will participate via virtual methods.

1.3. Deliverables

- A. SRF Facility Plan consisting of a report and necessary figures for approval by the SD DENR.

- B. Basis of Design report consisting of a technical memorandum documenting the project design recommendations and necessary figures.
- C. Engineer will provide a PDF electronic copy and up to four hard copies of all deliverables.

2. Preliminary Design Phase Services 30% Design Package generally consisting of the development of 30% plans and specifications for the three construction contracts identified in the Project Description.

2.1. Engineer's services include:

- A. Preparation of a 30% Design Package for Contract #1 PS & CF consisting of
 - i. 30% Design Drawings defined as follows:
 - a. Civil Site Plan for to define the project limits for land acquisition, building and ground storage reservoir locations, grading, document geotechnical data, site screening and landscaping requires, and access to public roadways.
 - Engineer will utilize the building layouts completed and provided by subconsultants. Additional information including existing surface features, utilities, roadways, utility services, and surfacing will be included in a site layout plan.
 - Engineer will complete a site grading plan to convey overland runoff as existing drainage currently flows.
 - Engineer will complete the drainage analysis and provide recommendations on detention and water quality methods which can be used to meet the requirements.
 - b. Process Design consisting of major equipment selection, development of Process & Instrumentation Diagrams (P&IDs) to document space needs, and recommendations for preliminary building sizing to the architectural subconsultant.
 - c. Structural Design consisting of initial building system designs and coordination with the architectural subconsultant.
 - d. Electrical Design consisting of preliminary equipment layout, review of the P&IDs, recommendations for space needs, coordination with power provider, recommendations for backup power, and coordination with the architectural subconsultant.

- e. Mechanical Design consisting of preliminary HVAC equipment sizing and space needs, interior plumbing and drainage, selection backup power generator, and coordination with the architectural subconsultant.
 - f. Architectural Design consisting of development of building floor plan incorporating the space need recommendations from the Process, Structural, Electrical, and Mechanical disciplines, development of an exterior elevation view of the proposed pump station building.
 - g. PS building approximate size and schematic elevations.
 - ii 30% Specifications consisting of:
 - a. Outline of procurement documents utilizing the EJCDC front end documents. For this scope of work it is assumed that the 2018 version of the C-Series EJCDC documents will be used.
 - b. Outline of City Standard Specifications and recommend Special Provisions for use on the project.
 - iii Updated Opinion of Probable Construction Cost
- B. Preparation of a 30% Design Package for Contract #2 GSR
 - i 30% Design Drawings consisting of:
 - a. Civil Site Plan documenting the general size and elevations for the proposed ground storage reservoir and yard piping connection. Communication with tank erectors to confirm site specific considerations or constraints.
 - Engineer will utilize the GSR layout completed and provided by subconsultants. Additional information including existing surface features, utilities, roadways, utility services, and surfacing will be included in a site layout plan.
 - Engineer will complete a site grading plan to convey overland runoff as existing drainage currently flows.
 - Engineer will complete the drainage analysis and provide recommendations on detention and water quality methods which can be used to meet the requirements.
 - Engineer will obtain, review, and compile any previously completed applicable drainage studies and drainage improvements within the project area. This data along with survey information will aid in the

development of a drainage model representing the existing conditions.

- Engineer will perform hydrologic calculations to determine the existing condition peak flows for the 5 and 100-year events.
- A hydraulic model will be created for the drainage basin to understand the existing drainage system. The capacity of the major culverts, storm sewers and all structures will be evaluated. Areas not meeting Engineering Design Standards (EDS) will be identified within the Existing Conditions model(s).
- Locations where design standards are not met in the areas that experience flooding will be identified.
- Engineer will utilize the conceptual design information to determine potential improvements to the storm sewer system in both the 5-year and the 100-year storm events.
- Engineer will complete the detention/BMP facility design along with the grading design and compute cut and fill quantity take offs for the final design grading.

- b. Process Design consisting of equipment selection and documentation of the operation with the pump station.

ii 30% Specifications consisting of:

- a. Outline of procurement documents utilizing the EJCDC front end documents. For this scope of work it is assumed that the 2018 version of the C-Series EJCDC documents will be used.
- b. Outline of City Standard Specifications and recommend Special Provisions for use on the project.

iii Updated Opinion of Probable Construction Cost

C. Preparation of a 30% Design Package for Contract #3 Water System Distribution Modification

i 30% design drawings consisting of:

- a. Exhibits documenting the location and size of major bid items. These exhibits will be used for 30% quantities for the OPCC.
- b. Design Elements
 - Engineer will determine the sequence of operations and compile general notes for the plans.

- Engineer will complete plans sheets illustrating the ROW within the project areas. Sheets will illustrate the existing and proposed horizontal and vertical geometrics of roadways, existing ROW and easement areas, along with proposed ROW and easement areas.
- Engineer will determine necessary traffic control sequencing for work in traffic and pedestrian areas.
- Engineer will compile a SWPPP with applicable erosion control measures to meet the City of Mitchell and EPA requirements. Engineer will also complete NOI forms where required for these sites.
- Engineer will identify roadway and sidewalk impacts and overall project improvement limits. Private utility conflicts, issues, or intended work by utilities will also be identified.
- Engineer will compile plan and profile sheets within the project areas. Sheets will illustrate the existing and proposed horizontal and vertical geometrics of roadways, water main, and any other affected utilities.
- Engineer will identify street and sidewalk construction limits.
- Engineer will develop alignments of new water mains in each project area.
- Engineer will complete BNSF application for pipeline crossing and submit necessary design information for permitting.
- Design and plans of four new pressure reducing valves located at existing crossings of Interstate 90.
- Engineer will create plan sheets for the removal of the Burr Street Tank along with any other utility modifications necessary with this removal.

ii 30% Specifications consisting of:

- a. Outline of Front-End Documents using EJCDC or City Standard
- b. Outline of Technical Specifications (does the City have a Public Works Specification)

iii Updated Opinion of Probable Construction Cost

D. Property Acquisition Assistance

i Boundary Surveying and Legal Descriptions

- a. Engineer will complete a boundary survey consisting of locating and surveying property pins adjacent to project areas. Section corners will be located and surveyed within the project limits and extending to the next section line adjacent to the project limits as necessary to complete Certified Land Corner Records. This data will be completed at a level

accurate enough for future platting and easement elements of this project if necessary. All information applicable to the work and in possession of the City or County will be made available to Engineer without cost.

- b. Engineer will complete legal property research on parcels adjacent project areas. Ownerships will be identified along with easements as listed in the title certificates. Easements will be identified and delineated on the base mapping.
- c. County records will be researched to establish locations of property lines, right-of-way lines, and property ownership for the properties affected by the project.

ii Purchase Negotiations and Contracts

iii Geotechnical Exploration

- a. As a subconsultant to Engineer, GeoTek Engineering & Testing Services, Inc. will complete the geotechnical analysis and recommend solutions to the City and Engineer.
- b. Geotek's involvement throughout the project consists of conducting soil borings, providing earthwork design and recommendations in various cut/fill areas, and for recommendations for the GSR, PS and CF building and areas of deep pipe installations.
- c. Recommendations and soil boring information will be provided in a final report.

iv Cultural Survey and Environmental Field Work

- a. Engineer will coordinate with South Dakota State Historical Society, SDDENR, SD Game, Fish, and Parks, and US Fish and Wildlife to obtain environmental and cultural clearances. A wetland delineation, US Army Corps of Engineers 404 Permit, or archeological survey are not anticipated and subsequently not included in this proposal.

E. Topographic and Data Collection Surveys

i GSR and PS Site

- a. Horizontal and vertical control necessary to complete the survey items identified within this SOS will be established. Horizontal and vertical control will be established based on the current City of Mitchell datum and coordinate system.

- b. Existing property monuments will be located when completing the topographic survey described below.
 - c. Engineer will complete a topographic survey of the property to supplement any available contour and utility information provided by others. Survey limits will be completed within the limits of the project and approximately an additional 25' in all directions. Improvements are not anticipated to extend beyond the proposed property limits.
 - d. A South Dakota One Call will be completed for the project limits. Survey will locate surface features and public and private utilities necessary to establish the existing conditions base map.
 - e. Topographic survey will locate marked and visible utilities only. Utility depths for water, storm sewer, and sanitary sewer will be determined with the survey.
 - f. Engineer will compile all existing topographic information into an existing conditions base map. The base map will be utilized as the starting point for completing the design items of the project. The base map will identify those items surveyed and described above. Base map will be established in .dwg format to be utilized in Civil 3D.
- ii Distribution System
- a. Horizontal and vertical control necessary to complete the survey items identified within this SOS will be established. Horizontal and vertical control will be established based on the current City of Mitchell datum and coordinate system.
 - b. Existing property monuments will be located when completing the topographic survey described below.
 - c. Engineer will complete a topographic survey of the property to supplement any available contour and utility information provided by others. Survey will be completed within the ROW and extend 50 feet into private property as necessary to design the improvements.
 - d. A South Dakota One Call will be completed for the project limits. Survey will locate surface features and public and private utilities necessary to establish the existing conditions base map.
 - e. Topographic survey will locate marked and visible utilities only. Utility depths for water, storm sewer, and sanitary sewer will be determined with the survey.
 - f. Engineer will compile all existing topographic information into an existing conditions base map. The base map will be utilized as the starting point for completing the design items of the project. The base

map will identify those items surveyed and described above. Base map will be established in .dwg format to be utilized in Civil 3D.

- F. General project management and coordination that does not fit under the items listed above. These activities may include general communication with the City, coordination with subconsultants, and monthly reports to the City on progress of the project.

2.2. Meetings will include:

- A. Preliminary Design Phase meetings
 - i Kick-off meeting to review the preliminary design scope of work and schedule. Meeting will be attended by the Engineer's PM and key technical staff from subconsultants.
 - ii Up to six progress or coordination meetings between the City and the Engineering team. It is assumed that these meeting will be attended by the Engineer's PM and key technical staff from the subconsultants.
 - iii 30% Deliverable meeting to review the project drawings, opinions of costs, and final design requirements as identified by the City comments on the 30% Deliverable. It is assumed that these meeting will be attended by the Engineer's PM and key technical staff from the subconsultants.
 - iv Design team will meet with private utilities on one (1) occasion over the duration of the design. The meeting will be held to discuss the overall project improvements, schedule, utility conflicts, and overall project coordination. Design Team will prepare the agenda, exhibits, and meeting minutes necessary to conduct the meeting. Effort has also been included for communications between the established meetings for phone and email correspondence. Effort has been based on the meeting averaging three (3) hours of actual meeting time, preparation, and documentation for four (4) Design Team staff. An additional half (0.5) hours of general communication and coordination has been assumed for each utility for one (1) Design Team staff.
- B. It is assumed that all City/Engineering coordination meetings will be held in Sioux Falls at the Engineer's office or other location that allows for virtual attendance. Engineer and subconsultant staff local to Sioux Falls will attend in person and other staff will participate via virtual methods.

2.3. Deliverables

- A. Exhibits. Plat, Legal Description for property acquisition.
- B. Topographic Surveys
- C. 30% Design Packages; Plans, Specifications, and OPCC, and
- D. Geotechnical Data Report.
- E. Engineer will provide a PDF electronic copy and up to four hard copies of all deliverables.

3. Final Design Phase Services- Prepare final Drawing and Specifications to obtain competitive bids for three contracts.

3.1. Engineer's services include:

- A. Preparation of 60% Design Package Design Package for Contract #1 PS & CF consisting of:
 - i. 60% Design Drawings defined as follows:
 - a. General Documents consisting of cover sheet, location map, general notes, and SWPPP.
 - b. Civil Design consisting existing conditions, removals, grading plan, underground piping, stormwater management, and construction details. At the project 60% stage it is assumed that the Civil Design will be 90% completed.
 - c. Process Design consisting of final equipment selection and location for the pumps, location and selection chemical feed equipment, manifold/by-pass design, and construction details. At the project 60% stage it is assumed that the Process Design will be 90% completed.
 - d. Structural Design consisting of sizing of project specific structural members for the building and equipment supports, building foundation design, identification of construction details, and coordination with the Architectural subconsultant. At the project 60% stage it is assumed than the Structural Design will be no more than 50% completed.
 - e. Electrical Design consisting of equipment selection, confirmation of space needs, and coordination with the Architectural and Mechanical subconsultants. At the project 60% stage it is assumed than the Electrical Design will be no more than 50% completed.

- f. Mechanical Design consisting of sizing of HVAC system, coordination with natural gas provider for backup power generation, interior plumbing and drainage, construction details, and coordination with the Architectural subconsultant. At the project 60% stage it is assumed that the Mechanical Design will be 90% completed.
 - g. Architectural Design consisting of development of project specific building floor plan, exterior elevations, construction details, and material selection recommendations. At the project 60% stage it is assumed that the Architectural Design will be no more than 50% completed.
 - ii 60% Specifications consisting of
 - a. Final front end documents incorporating the City comments from the 30% design review and the SRF required special conditions.
 - b. Draft Special Provisions for the Civil, Process, Mechanical, and Architectural disciplines
 - iii Updated Opinion of Probable Construction Costs
- B. Preparation of 60% Design Package Design Package for Contract #2 GSR consisting of:
 - i 60% Design Drawings defined as follows:
 - a. General Documents consisting of cover sheet, location map, and general notes.
 - b. Civil Design consisting existing conditions, removals, grading plan, underground piping, and construction details. At the project 60% stage it is assumed that the Civil Design will be 90% completed.
 - c. Process Design consisting of final equipment selection, yard piping, and construction details. At the project 60% stage it is assumed that the Process Design will be 90% completed.
 - d. Electrical Design consisting of equipment selection and coordination with Process discipline for control requirements. At the project 60% stage it is assumed that the Electrical Design will be no more than 50% completed.
 - ii 60% Specifications consisting of
 - a. Final front end documents incorporating the City comments from the 30% design review and the SRF required special conditions.

- b. Draft Special Provisions for the Civil and Process disciplines
 - iii Updated Opinion of Probable Construction Costs
- C. Preparation of 60% Design Package Design Package for Contract #3 Water Distribution Improvements:
 - i 60% Design Drawings defined as follows:
 - a. Title Sheet, Legend, Orientation/Data Control
 - b. Estimate of Quantities
 - c. Typical Sections
 - d. Sequence of Operations / General Notes
 - e. Table of ROW and Easements
 - f. Traffic Control
 - g. Erosion Control
 - Engineer will complete a SWPPP with applicable erosion control measures to meet the City of Mitchell and EPA requirements.
 - The project will also require a construction storm water discharge permit (Notice of Intent, NOI) be completed and filed with the SDDENR.
 - Engineer will complete the required form and provide to the City of Mitchell for signature and submission.
 - h. Existing Conditions and Removals
 - i. Detailed Removal Plans for Bur Street Tank
 - j. Plan and Profile View Sheets
 - Final water main profiles, connections, temporary water (if necessary), PRV valves and related piping, and service connections
 - Restorations as necessary
 - Section will also be utilized to identify any private utility conflicts, issues, and/or intended work limits.
 - k. Permanent Signage
 - l. Cross Sections
 - m. Details / Standard Plates
 - ii 60% Specifications consisting of
 - a. Final front end documents incorporating the City comments from the 30% design review and the SRF required special conditions.
 - b. Draft Special Provisions for the Civil and Process disciplines

- iii Updated Opinion of Probable Construction Costs
- D. After receiving City comments on the 60% Design Submittal. Preparation of 90% Design Package Design Package for Contract #1 PS & CF consisting of:
 - i 90% Design Drawings defined as follows:
 - a. General Documents consisting of cover sheet, location map, general notes, and SWPPP as final documents incorporating City comments from the 60% submittal review.
 - b. Civil Design consisting existing conditions, removals, grading plan, underground piping, stormwater management, and construction details. Civil Design will be final documents incorporating City comments from the 60% submittal review.
 - c. Process Design consisting of final equipment selection and location for the pumps, location and selection chemical feed equipment, manifold/by-pass design, and construction details. Process Design will be final documents incorporating City comments from the 60% submittal review.
 - d. Structural Design consisting of sizing of project specific structural members for the building and equipment supports, building foundation design, identification of construction details, and coordination with the Architectural subconsultant. Process Design will be final documents incorporating City comments from the 60% submittal review.
 - e. Electrical Design consisting of development of final electrical plan and controls plans, and coordination with the Architectural and Mechanical subconsultants. At the project 90% stage it is assumed than the Electrical Design will be no more than 75% completed.
 - f. Mechanical Design consisting of sizing of HVAC system, coordination with natural gas provider for backup power generation, interior plumbing and drainage, construction details, and coordination with the Architectural subconsultant. Mechanical Design will be final documents incorporating City comments from the 60% submittal review.
 - g. Architectural Design consisting of development of project specific building floor plan, exterior elevations, construction details, and material selection recommendations. At the project 90% stage it is assumed than the Architectural Design will be no more than 75% completed.

- ii 90% Specifications consisting of
 - a. Final front end documents incorporating the City comments from the 30% design review and the SRF required special conditions.
 - b. Final Special Provisions from all disciplines.
 - iii Updated Opinion of Probable Construction Costs
- E. After receiving City comments on the 60% Design Submittal. Preparation of 90% Design Package Design Package for Contract #2 GSR consisting of:
- i 90% Design Drawings defined as follows:
 - a. General Documents consisting of cover sheet, location map, and general notes as final documents incorporating City comments from the 60% submittal review.
 - b. Civil Design consisting existing conditions, removals, grading plan, underground piping, and construction details as final documents incorporating City comments from the 60% submittal review.
 - c. Process Design consisting of final equipment selection, yard piping, and construction details as final documents incorporating City comments from the 60% submittal review.
 - d. Electrical Design consisting of equipment selection and coordination with Process discipline for control requirements as final documents incorporating City comments from the 60% submittal review.
 - ii 90% Specifications consisting of
 - a. Final front end documents incorporating the City comments from the 30% design review and the SRF required special conditions.
 - b. Final Special Provisions from all disciplines.
 - iii Updated Opinion of Probable Construction Costs
- F. After receiving City comments on the 60% Design Submittal. Preparation of 90% Design Package Design Package for Contract #3 Water Distribution Improvements:
- i 90% Design Drawings will incorporate City comments and include the same plan sections as the 60% submittal.
 - ii 90% Specifications consisting of

- a. Final front end documents incorporating the City comments from the 30% design review and the SRF required special conditions.
 - b. Final Special Provisions for the Civil and Process disciplines
 - iii Updated Opinion of Probable Construction Costs
- G. After receiving City comments on the 90% design packages. Prepare final issued for bid documents incorporating the City comments for:
 - i Contract #1 PS & CF consisting of:
 - a. Issued for Bid Construction Plans
 - b. Issued for Bid Construction Specifications
 - c. Updated Opinion of Costs
 - ii Contract #2 GSR consisting of:
 - a. Issued for Bid Construction Plans
 - b. Issued for Bid Construction Specifications
 - c. Updated Opinion of Costs
 - iii Contract #3 Water Distribution improvements consisting of:
 - a. Issued for Bid Construction Plans
 - b. Issued for Bid Construction Specifications
 - c. Updated Opinion of Costs
 - iv Submit IFB Packages to the SD DENR for review and comment. SD DENR comments will be incorporated by revisions to the IFB documents or bid addendums.
- H. City review comments from the 30%, 60%, and 90% submittal packages will be reviewed and addressed with documentation of action taken on each comment. The final design plans will be developed consistent with the current City of Mitchell Design Standards.
- I. General project management and coordination that does not fit under the items listed above. These activities may include general communication with the City, coordination with subconsultants, and monthly reports to the City on progress of the project.

3.2. Meetings

- A. Final Design Phase Services meeting will consist of
 - i Fina Design kick-off meeting to review the scope of work and schedule to be attended by the Engineer's PM and key subconsultant staff.
 - ii City and Engineering team progress meetings on a bi-weekly basis to be attended by the Engineer's PM and key subconsultant staff. It is assumed that these meeting will be less than 2-hours in duration.
 - iii Deliverable Review meetings for the 60% Design Package and 90% Design Package to be attended by the Engineer's PM and one member of each discipline team.
 - iv Attendance by the Engineer's PM at a City Commission meeting to present the project and request authorization to bid.
- B. It is assumed that all City/Engineering coordination meetings will be held in Sioux Falls at the Engineer's office or other location that allows for virtual attendance. Engineer and subconsultant staff local to Sioux Falls will attend in person and other staff will participate via virtual methods.

3.3. Deliverables

- A. 30% Design Package consisting of a PDF electronic copy for City review and comment.
- B. 60% Design Package consisting of a PDF electronic copy and one hard copy for City review and comment.
- C. 90% Design Package consisting of a PDF electronic copy and one hard copy for City review and comment.
- D. IFB Documents consisting of electronic sealed final documents as a PDF electronic copy and up to four hard copies (two for the City and two for the SDDENR).

4. Bidding & Negotiation Phase Services– Obtain competitive bids for up to three construction contracts.

4.1. Engineer's services include:

- A. Assist the City in advertise for bids and maintaining a list of bidders,
- B. Facilitate and lead a Pre-Bid meeting,
- C. Respond to bidder questions and issue addenda as needed,

- D. Assist the City in administering a bid opening,
- E. Review bids, bidder qualifications, summarize bids and make a recommendation to award to the appropriate responsible bidder,
- F. Prepare and issue Notification of Award on behalf of the City,
- G. Review Bonds and Certificates submitted by the apparent low Bidder as required by the Contract Documents.
- H. Prepare and issue Contract Documents to the City and Contractor,
- I. Facilitate and chair the Pre-Construction meeting,
- J. Recommend and facilitate issuing Notice to Proceed to the Contractor.

4.2. Meetings

- A. Bidding & Negotiation Phase meetings consisting of
 - i Pre-Bid Meeting at the City attended by the Engineer's PM and up to two additional Engineering team staff,
 - ii Bid Opening at the City attended by the Engineer's PM,
 - iii Bid Award presentation to the City Commission attended by the Engineer's PM,
 - iv Preconstruction Meeting and up to two additional Engineering team staff.

4.3. Deliverables:

- A. Meeting Minutes from Pre-Bid meeting,
- B. Bid Addenda,
- C. Bid Summary and Recommendation to Award Letter,
- D. Notice to Proceed, and
- E. Issued for Construction Documents (Not Conforming Documents) consisting of an electronic PDF version for the City and Contractor and up to four hard copies for the City.

4.4. Additional Services

Any work requested by the City that is not included in one of the items listed will be classified as Additional Services and are not included as a part of this SOS. Refer to Article 2 of Exhibit A for Additional Services. Additional services shall also include, but are not limited to:

- A. Supplemental engineering work required to meet the requirements of regulatory or funding agencies that become effective after the date of this agreement.
- B. Additional property owner meetings, exhibits, letters, and/or correspondence not described within this SOS.
- C. Additional platting, easements, exhibits, meetings, negotiations, or surveys beyond the limits of what is stated in this SOS.
- D. Additional drainage analysis or modeling beyond what is stated in this SOS.
- E. Design of adjustments of utilities beyond what is stated in this proposal.
- F. Street lighting design and plans.
- G. Structural design of any culverts or retaining walls.
- H. Any environmental analysis or review beyond what is stated in this SOS.
- I. Any archeological and historical studies beyond what is stated in this SOS.
- J. Army Corps of Engineers field wetland delineation, Hydrogeomorphic (HGM) Analysis, and 404 permitting and mitigation plan are not included in this SOS.
- K. Any construction administration or construction staking services.

5. Construction Phase Services – TBD

6. Commission Phase Services – TBD

7. Post Construction Phase Services - TBD

EXHIBIT B—DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Agreement are supplemented by the following paragraph and table.

Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [number] review copies of the Report and other Study and Report Phase deliverables to Owner.	1.02.A.17	Within [number] days of the Effective Date.
Owner	Submit comments regarding the Report and other Study and Report Phase deliverables to Engineer.	1.02.A.18	Within [number] days of the receipt from Engineer of the Report and other Study and Report Phase deliverables.
Engineer	Submit [number] copies of the revised Report and other Study and Report Phase deliverables to Owner.	1.02.A.18	Within [number] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Submit [number] review copies of the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.17	Within [number] days of Owner's authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	1.03.B.18	Within [number] days of the receipt from Engineer of Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit [number] copies of the revised Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.18	Within [number] days of the receipt of Owner's comments regarding the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit [number] copies of the first Final Design Phase draft of Drawings and Specifications to Owner.	1.04.B.1	Within [number] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the first Final Design Phase draft of Drawings and Specifications to Engineer.	1.04.B.1	Within [number] days of the receipt of the first final Design Phase drafts of Drawings and Specifications from Engineer.

Exhibit B—Deliverables Schedule.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.
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and American Society of Civil Engineers. All rights reserved.

Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [number] copies of the second Final Design Phase drafts of Drawings and Specifications to Owner.	1.04.B.2	Within [number] days of the receipt of Owner's comments and instructions regarding the first Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit [number] of copies of draft Bidding/Proposal and Front-End Construction Contract Documents, as required, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Owner.	1.04.D.3; 1.04.F.8	Concurrent with submittal to Owner of the second Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications to Engineer.	1.04.B.2	Within [number] days of the receipt from Engineer of the second Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit [number] copies of the final, completed, pricing-ready and construction-ready Drawings and Specifications to Owner.	1.04.B.3 and 1.04.G.1	Within [number] days of the receipt of Owner's comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications to Engineer.	1.04.G.2	Within [number] days of the receipt from Engineer of the final, completed, pricing-ready and construction-ready Drawings and Specifications.
Owner	Submit comments and instructions regarding drafts of Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Engineer.	1.04.D.3; 1.04.F.8	Concurrent with Owner's submittal of comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications.

Exhibit B—Deliverables Schedule.

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Party	Action	Exhibit A Reference	Schedule
Engineer	Submit to Owner: [number] copies of the revised final, completed, pricing-ready and construction-ready Drawings and Specifications; and [number] of copies of assembled Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.	1.04.G.2 1.04.G.3	Within [number] days of receipt of Owner's final comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications, the Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.
Engineer	Submit [number] copies of Bidding/Proposal Phase deliverables (if any) identified in Exhibit A Paragraph 1.05.A.9.a to Owner.	1.05.A.9.a	Within [number] days of written authorization by Owner to proceed with Bidding/Proposal Phase services.
Engineer	Submit [number] copies of Construction Phase deliverables (if any) identified in Exhibit A Paragraph 1.06.B.26.a to Owner.	1.06.B.26.a	Within [number] days of [applicable benchmark event such as commencement of the Construction Contract Times]
Engineer	Submit [number] copies of Post-Construction Phase deliverables (if any) identified in Exhibit A Paragraph 1.07.A.3.a to Owner.	1.07.A.3.a	Within [number] days of Substantial Completion.

Exhibit B—Deliverables Schedule.

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EXHIBIT C—AMENDMENT TO OWNER-ENGINEER AGREEMENT

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. [Enter Amendment Number]

Owner: **City of Mitchell**

Engineer: **Infrastructure Design Group, Inc.**

Project: **Pump Station, Ground Storage Reservoir, and Water Distribution System Modifications**

Effective Date of Owner-Engineer Agreement: **[Effective Date of Agreement]**

Nature of Amendment: (Check those that apply)

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

Description of Modifications:

[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary. Include cost breakdown and documentation, if applicable.]

Agreement Summary:

Original agreement amount: \$

Net change for prior amendments: \$

This amendment amount: \$

Adjusted Agreement amount: \$

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

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner

Engineer

(typed or printed name of organization)

(typed or printed name of organization)

By:

(individual's signature)

By:

(individual's signature)

(Attach evidence of authority to sign.)

(Attach evidence of authority to sign.)

Date:

(date signed)

Date:

(date signed)

Name:

(typed or printed)

Name:

(typed or printed)

Title:

(typed or printed)

Title:

(typed or printed)

EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

ARTICLE 1—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

Paragraph 6.03 of the Agreement is supplemented by the following Exhibit F Paragraph 1.01 and Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange:

1.01 Electronic Documents Protocol

- A. Electronic Transmittals: The parties shall conform to the following provisions together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. Basic Requirements

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents by Electronic Means using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Agreement.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Agreement.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between the Owner and Engineer and any third party for any portion of the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Engineer, or any Contractor or other entity directly contracted with the Owner to furnish Program-related services. Nothing herein will modify the requirements of the Agreement and applicable Construction Contract Documents regarding communications between and among the individual third parties and their respective subcontractors and consultants, except to the extent that any respective subcontractor or consultant exchanges Electronic Documents with the Owner or Engineer.
- e. When transmitting Electronic Documents, the transmitting Party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving Party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation (1) in the Agreement to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or

Exhibit F—Electronic Documents Protocol (EDP).

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(3) to comply with any notice requirements limiting or otherwise modifying the acceptance of Electronic Documents for such notice.

2. System Infrastructure for Electronic Document Exchange

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP and any explicit system requirements specified by attachment to this EDP, it will be the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an e-mail attachment for exchange of Electronic Documents under this EDP is 10 MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it will not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties will cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Engineer, not reasonably anticipated under the original EDP, Engineer shall be entitled to compensation as Additional Services for its costs associated with the revisions to the EDP, delayed adoption of Exhibit L or implementation of other Electronic Documents protocols.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of any Project contract/agreement under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the Parties may

rely for document archiving during the specified term of operation of such project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of project documents, as each party deems necessary for its own purposes, after the term of contract, or termination of the project document archive, if one is established.

- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

B. Software Requirements for Electronic Document Exchange; Limitations

- 1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
- 2. ~~The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes~~The parties shall take reasonable measures to ensure that any alterations to or alternative uses of electronic documents are done so as a separate file and do not overwrite, replace, or otherwise alter the original version of such electronic document. The parties shall also take reasonable measures to ensure that any modified electronic document is not used for project purposes without Engineer's knowledge and deliberate inclusion.
- 3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in the following Attachment 1 to this EDP, including software version, if listed.

C. Format and Distribution of Deliverables

- 1. By definition, "Documents" as used in this Agreement are documents expressly identified as deliverables from Engineer to Owner. Exhibit A of the Agreement identifies various Documents that Engineer is required to deliver to Owner as part of Engineer's services; Exhibit B is a schedule of such Documents. Engineer will transmit such Documents to Owner in the formats identified in Attachment 1 to this Protocol. If no specific format is identified for a deliverable Document, the format will be Portable Document Format (PDF).

2. If a Document will be distributed to third parties, such as prospective bidders and contractors, reviewing agencies, or lenders, the transmittal format for distribution will be as identified in Attachment 1 to this Protocol; provided, however, that if a format for distribution of a specific Document is expressly stated in Exhibit A, then the Exhibit A format will take precedence. If no specific format is identified for distribution of a deliverable Document to third parties, the format will be Portable Document Format (PDF).
 - a. If a format for Document distribution other than Portable Document Format (PDF) is specified, Owner shall first obtain a written, signed release from each third party to which the deliverable Document is distributed, establishing agreement to the following conditions:
 - 1) The content included in the Electronic Documents prepared by or for Engineer and covered by the request was prepared as an internal working document for Engineer's purposes solely, and is being provided to the third party on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, the third party is advised and acknowledges that the content may not be suitable for the third party's application, or may require substantial modification and independent verification by the third party. The content may include limited resolution of models; not-to-scale schematic representations and symbols; use of notes to convey design concepts in lieu of accurate graphics; approximations; graphical simplifications; undocumented intermediate revisions; and other devices that may affect subsequent reuse.
 - 2) Electronic Documents containing text, graphics, metadata, or other types of data that are provided to the Requesting Party are only for the convenience of the third party. Any conclusion or information obtained or derived from such data will be at the third party's sole risk and the third party waives any and all claims against Engineer or Owner arising from the use of the Electronic Documents covered by the request, or of any data contained in such Electronic Documents.
 - 3) The third party shall indemnify and hold harmless Owner, Engineer, and Engineer's Subcontractors and Subconsultants, from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from the third party's use, adaptation, or distribution of any Electronic Documents provided under the request.
 - 4) The third party agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the request and is limited to the third party's subcontractors and consultants. The third party warrants that subsequent use by the third party's subcontractors and subconsultants will comply with all terms of the Construction Contract Documents and any specific instructions or conditions established by Owner.

- b. If Engineer is required to assist or participate in obtaining such releases from third parties, such services will be categorized as Additional Services.

D. Requests by Project-Related Parties for Electronic Documents in Other Formats

1. Owner may release (or direct Engineer to release) an Electronic Document version of a Document prepared by or for Engineer, including but not limited to a deliverable Document as set forth in Exhibit F Paragraph 1.01.C, in a format other than those identified in Exhibit F Paragraph 1.01.B or 1.01.C of the Electronic Documents Protocol, or elsewhere in the Agreement, ~~only if (a) a Contractor or other Project-related party (Requesting Party) makes a good faith request for such release, (b) Owner determines in its sole discretion that such release is prudent and will be beneficial to the Project, and (c) Owner obtains Requesting Party's written consent~~ such release obligates the third party's to the four conditions set forth in Exhibit F Paragraph 1.01.C.2.a.1-4 above.
2. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under this Exhibit F Paragraph 1.01.D are Additional Services. Such services may include but are not limited to preparing the data in a manner deemed appropriate by Engineer. Owner may require reimbursement from the Requesting Party for the cost of such Additional Services, but compensation by Owner to Engineer for the Additional Services is not contingent upon Owner obtaining reimbursement from the Requesting Party.

EXHIBIT G—INSURANCE

ARTICLE 1—INSURANCE

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
Commercial General Liability	
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
Automobile Liability	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Excess or Umbrella Liability	
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000
Professional Liability	
Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000
Unmanned Aerial Vehicle Liability Insurance – provided within General Liability coverage	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/26/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC 300 N Cherapa PL Suite 601 Sioux Falls SD 57103	CONTACT NAME: D'one Hanisch, CISR Elite, CCIP PHONE (A/C, No, Ext): 605-339-3874 E-MAIL ADDRESS: D.Hanisch@marshmma.com FAX (A/C, No): 605.339.3620
INSURED Infrastructure Design Group Inc 1111 N Lake Ave Sioux Falls SD 57104-1356	INSURER(S) AFFORDING COVERAGE INSURER A: Travelers Property Casualty Co of Amer INSURER B: Lexington Insurance Company INSURER C: Charter Oak Fire Insurnace Company INSURER D: Travelers Indemnity Company INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 985341440**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			6802L311644	9/4/2020	9/4/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
D	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA8P456265	9/4/2020	9/4/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP2L320340	9/4/2020	9/4/2021	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input type="checkbox"/>	N / A	UB0P387181	9/4/2020	9/4/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability			031711159	9/4/2020	9/4/2021	Each Claim: \$2,000,000 Aggregate: \$2,000,000 Deductible: \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)Unmanned Aircraft Liability provided within the General Liability coverage.
Proof of Insurance.**CERTIFICATE HOLDER****CANCELLATION**City of Mitchell
612 N Main
Mitchell SD 57301

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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1.02 Additional Insureds

~~A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Agreement) as additional insureds:~~

Name of Additional Insured	Address
Infrastructure Design Group, Inc.	3241 E. Bison Trail, Sioux Falls, SD 57108
AE2S	4050 Garden View Drive, Grand Forks, ND 58201
JLG Architects	232 S. Main Avenue, Sioux Falls, SD 57104
KFI Engineers	670 County Road B West, St. Paul, MN 55113

- ~~A. Owner is a member of the South Dakota Public Assurance Alliance (SDPAA) and, as such, is not permitted to add non-qualifying entities as additional insureds to Owner's policies as a matter of South Dakota law. Engineer is a non-qualifying entity for purposes of SDPAA coverage.~~
- B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance. However, such Subconsultant or Subcontractor may not be added as an additional insured to Owner's policies if they are a non-qualifying entity.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.
- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.

EXHIBIT I—LIMITATIONS OF LIABILITY

ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) **1.01, Mutual Indemnification; 1.02, Limitation of Engineer's Liability; or both**]:

1.01 Mutual Indemnification

- A. Indemnification by Owner: 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 Subconsultants, and Engineer's Subcontractors, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage 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 Owner or Owner's officers, directors, members, partners, agents, employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

1.02 Limitation of Engineer's Liability

- A. Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's Subcontractors, officers, directors, members, partners, agents, employees, and Subconsultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project, to Engineer's or its Subconsultants' or Engineer's Subcontractor's services, or to this Agreement, from any cause or causes whatsoever, 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 Subconsultants, or Engineer's Subcontractors, will not exceed the total amount of \$100,000 or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

ARTICLE 1—COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraphs 1.01, 1.02, and 1.03:

- 1.01 Compensation for Basic Services (other than Resident Project Representative)—Standard Hourly Rates Method of Payment
- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:
1. An amount equal to the cumulative hours charged to the Project by Engineer's personnel times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses, plus Engineer's Subcontractors' and Subconsultants' charges, if any.
 2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Subcontractor's and Subconsultants' charges.
 3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit J as Appendices 1 and 2.
 4. The total compensation for such services is estimated to be **\$731,728.00**
 5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by Owner. See also Exhibit J Paragraph 1.03.C.2 below.
 6. The total estimated compensation for Engineer's services incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Subcontractor's and Subconsultants' charges.
 7. The amounts billed for Engineer's services under Exhibit J Paragraph 1.01 will be based on the cumulative hours charged to the Project during the billing period by Engineer's employees times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses and Engineer's Subcontractor's and Subconsultants' charges.
- 1.02 Compensation for Reimbursable Expenses
- A. Owner shall reimburse Engineer for Reimbursable Expenses directly related to the provision of Basic Services, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings,

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Compensation Packet BC-2: Basic Services—Standard Hourly Rates.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.

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Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

1.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed to Engineer by Engineer's Subconsultants times a factor of **1.04**.
- B. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **April 2021**) to reflect equitable changes in the compensation payable to Engineer.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES
COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

ARTICLE 2—COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 3.01:

2.01 Compensation for Additional Services—Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
 - 1. For services of Engineer's personnel engaged directly on the Project pursuant to Exhibit A Paragraph 2.01 or 2.02, except for services as a consultant or witness under Exhibit A Paragraph 2.02.A.28 (which if needed will be separately negotiated based on the nature of the required consultation or testimony), an amount equal to the cumulative hours charged by each class of Engineer's personnel providing such Additional Services times Standard Hourly Rates for each applicable billing class, plus Additional Services-related Reimbursable Expenses and Additional Services-related Engineer's Subcontractors' and Subconsultants' charges, if any.
- B. Compensation for Reimbursable Expenses
 - 1. For those Reimbursable Expenses that are directly related to the provision of Additional Services, and are not already accounted for in the compensation for Basic Services or RPR-related services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
 - 2. Such Reimbursable Expenses include, to the extent Additional Services-related, the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. Other Provisions Concerning Payment for Additional Services
 - 1. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of **1.04**.
 - 2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
 - 3. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of **February 2021**) to reflect equitable changes in the compensation payable to Engineer for Additional Services-related services and expenses.

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