



# CITY OF MILES CITY

## AGENDA

*Regular Council Meeting  
City Council Chambers  
And on zoom.us*

*June 22, 2021  
6:00 p.m.*

### CALL TO ORDER PLEDGE OF ALLEGIANCE ROLL CALL

1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES
  - A. Regular City Council Meeting 05/11/2021
  - B. Human Resources Committee Meeting 06/03/2021
2. SCHEDULE MEETINGS
3. REQUEST OF CITIZENS & PUBLIC COMMENT
4. APPOINTMENTS

**Solid Waste Board**  
- Council Member
5. PROCLAMATIONS
6. STAFF REPORTS
7. CITY COUNCIL COMMENTS
8. MAYOR COMMENTS
9. COMMITTEE RECOMMENDATIONS
  - A. Zoning Commission Recommends Approval of 2210 Valley Drive East from General Commercial to Highway Commercial.
  - B. Human Resources Committee Recommends Discussion of Planning Department Structure
10. BID OPENINGS
11. BID AWARDS
12. PUBLIC HEARINGS
13. UNFINISHED BUSINESS
  - A. **Discussion and Approval on Florence Stacy Fountain**
14. NEW BUSINESS
  - A. **RESOLUTION NO. 4403 - A RESOLUTION APPROVING AN AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES, TASK ORDER EDITION WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
  - B. **RESOLUTION NO. 4415 - A RESOLUTION ESTABLISHING CITY OF MILES CITY PERSONNEL POLICIES REGARDING POLICY DRUG AND ALCOHOL FREE WORKPLACE**

- C. **RESOLUTION NO. 4416 - A RESOLUTION ESTABLISHING CITY OF MILES CITY PERSONNEL POLICIES REGARDING POLICY DRUG AND ALCOHOL TESTING**
  
- D. **RESOLUTION NO. 4417 - A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "STATE OF MONTANA AGREEMENT MT-21-023 AMENDMENT 1" WITH THE STATE OF MONTANA HISTORIC PRESERVATION OFFICE INCREASING CURRENT FUNDING IN THE AMOUNT OF \$6000.00 TO THE HISTORIC PRESERVATION OFFICE FOR USE AS MATCHING FUNDS FOR THE BIG SKY TRUST FUND GRANT MATCH**

**15. ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under Request of Citizens, provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings

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# Minutes

**REGULAR COUNCIL MEETING May 11, 2021**  
**6:00 p.m.**

**CALL TO ORDER**

The Regular Council meeting was held Tuesday, May 11, 2021, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, Ken Gardner, Kathy Wilcox and Stacy Broell. Council Members Rick Huber and Elizabeth Patten were not present.

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Police Chief Doug Colombik, Police Captain Dan Baker, Fire Chief Branden Stevens, Planner in Training Ally Capps, Public Utilities Director Tom Speelmon and City Clerk/Minute Recorder Mary Rowe.

**PLEDGE OF ALLEGIANCE**

Mayor Hollowell led the Council in the Pledge of Allegiance.

**APPROVAL OF COUNCIL & COMMITTEE MINUTES**

**Public Service Committee Minutes: 4/22/2021**

\*\* *Councilperson Andrews moved to approve the minutes of the Public Service Committee Meeting of April 22, 2021, subject to any changes, and seconded by Councilperson Gardner. The motion passed by unanimous consent, 5-0.*

**Public Safety Committee Minutes: 4/22/2021**

\*\* *Councilperson Gardner moved to approve the minutes of the Public Safety Committee Meeting of April 22, 2021, subject to any changes, and seconded by Councilperson Andrews. The motion passed by unanimous consent, 5-0.*

**SCHEDULE MEETINGS**

None

**REQUEST OF CITIZENS & PUBLIC COMMENT**

None

**APPOINTMENTS**

Ward IV Council Member

One letter of interest was received from Steven Palmeri.

Councilperson Wilcox asked Mr. Palmeri why he would like to be on City Council. He said to give back to the community and help make Miles City better. He noted that he was also on the MCI<sup>2</sup> Board for the same reasons.

- \*\* *Councilperson Kassner moved to appoint Steven Palmeri, seconded by Councilperson Andrews and passed unanimously, 5-0.*

#### Zoning Commission

- \*\* *Councilperson Andrews moved to appoint Amber Trenka, Leif Ronning, Leroy Meidinger, and Nancy Mitchell, seconded by Councilperson Wilcox and passed unanimously, 5-0.*

#### Planning Board

- \*\* *Councilperson Andrews moved to appoint George Luther Jr. as the County Commissioner Recommended Planning Board Member, seconded by Councilperson Kassner and passed unanimously, 5-0.*

#### Police Commissioner

- \*\* *Councilperson Gardner moved to appoint Don Neese, seconded by Councilperson Andrews and passed unanimously, 5-0.*

### **PROCLAMATIONS**

Mayor Hollowell declared May 15<sup>th</sup>, 2021 as Kids to Parks Day

### **STAFF REPORTS**

Chief Colombik reported that crime rates have gone down; there were only a couple felonies. He also stated that Finance had met on Thursday to discuss Adult Probation and Parole (P&P) housing in the new Police Department Building. Captain Baker said the square footage needed by P&P is about 1340 square feet.

Mayor Hollowell inquired about additional cost to the City and made it clear that Council needed to approve any additional costs. He asked Architect Branden Janshen to get together a rough cost estimate.

Architect Branden Janshen stated that an Architect needed to be decided on, the architect would need to meet with P&P to set square footage requirement, floor print, and budget prior to preparing an estimate. He added that it should be done before setting a lease.

### **CITY COUNCIL COMMENTS**

None

### **MAYOR COMMENTS**

None

### **COMMITTEE RECOMMENDATIONS**

None

### **BID OPENINGS**

None

**BID AWARDS**

None

**PUBLIC HEARINGS**

**A. File # CV 2020-01 - Preliminary Plat Review of City View Subdivision, a Proposed Subsequent Minor Subdivision of Lot 2 of Block 5 of the Amended Plat of Southgate Meadows Subdivision**

Mayor Hollowell opened the hearing according to the subdivision review process from City of Miles City 2015 growth policy regulations under public hearings on subdivision proposals.

Planner-in-Training Capps gave an overview of the proposal which include four subsequent lots that are vacant and undeveloped that range from 9.92 acres to 11.198 acres. She stated that the Planning Board recommends approval to the proposed subsequent minor subdivision of the amended plat and two variances. She also noted that a correction was made to page 46, number seven, changing “76-3-607 (7)” to “76-3-604 (7)”

Mayor Hollowell opened to public for comments.

Councilperson Andrews had reviewed the report and noted that the soil profiles need to be landscaped with vegetation that is saline tolerant, the ones that are listed will not grow in the current environment. He also stated concern that two of the five natural minor drainages have been eliminated and pointed out that mother nature created them for a reason. Mayor Hollowell assured him that the Department of Environmental Quality (DEQ) will be reviewing and approving the drainage.

There being no further comments, the hearing was closed.

**UNFINISHED BUSINESS**

**NEW BUSINESS**

**A. ORDINANCE NO. 1348 (*First Reading*) – AN ORDINANCE AMENDING SECTION 22-245 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY ESTABLISHING REVISED TRUCK ROUTES.**

**\*\*** *Councilperson Wilcox moved to approve the Ordinance, read by title only and seconded by Councilperson Andrews. On roll call vote, the motion passed by unanimous consent, 5-0. Ordinance No. 1348 passed.*

- B. RESOLUTION NO. 4402 - A RESOLUTION APPROVING A REAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF MILES CITY AND BIG SKY CREMATION SERVICES L.L.C., LOCATED WITHIN THE INDUSTRIAL SITE OWNED BY THE CITY OF MILES CITY.**

*\*\* Councilperson Gardner moved to approve the Resolution, read by title only and seconded by Councilperson Andrews. On roll call vote, the motion passed by unanimous consent, 5-0. Resolution No. 4402 passed.*

- C. RESOLUTION NO. 4403 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

Mayor Hollowell removed item C. from the agenda. He and Council decided on a Consent Agenda for items D-H.

- D. RESOLUTION NO. 4404 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH BROSZ ENGINEERING, INC. FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- E. RESOLUTION NO. 4405 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH ROBERT PECCIA & ASSOCIATES, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- F. RESOLUTION NO. 4406 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH GREAT WEST ENGINEERING, INC. FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**
- G. RESOLUTION NO. 4407 - A RESOLUTION APPROVING A SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES WITH INTERSTATE ENGINEERING, INC., FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

**H. RESOLUTION NO. 4408 - A RESOLUTION APPROVING A STANDARD ABBREVIATED FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT FOR PROFESSIONAL SERVICES WITH SDI ARCHITECTS + DESIGN, FOR THE PROVISION OF ARCHITECTURAL SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

**\*\*** *Councilperson Wilcox moved to approve Resolutions 4404, 4405, 4406, 4407, and 4408, read by title only and seconded by Councilperson Gardner. On roll call vote, the motion passed by unanimous consent, 5-0. Resolution No. 4404, 4405, 4406, 4407, and 4408 passed.*

**I. RESOLUTION NO. 4409 - A RESOLUTION APPROVING A TASK ORDER BETWEEN THE CITY AND INTERSTATE ENGINEERING, INC. FOR SERVICES RELATED TO THE 2021 TRANSPORTATION ALTERNATIVES PROGRAM CAPITAL IMPROVEMENT PROJECT**

**\*\*** *Councilperson Andrews moved to approve the Resolution, read by title only and seconded by Councilperson Andrews.*

Director Gray explained that the State has opened the Transportation Alternative Program (TSEP) for sidewalks, bike paths, etc. He spoke with Department of Transportation (DOT) about the Southgate to roundabout sidewalk and came up with an approximate 80-90 thousand dollar match requirement for the guesstimated 600-700 thousand dollar project. He said this is a good starting point and will continue the "safe routes to school".

**\*\*** *On roll call vote, the motion passed by unanimous consent, 5-0. Resolution No. 4022 passed.*

**J. APPROVAL OF CITY OF MILES CITY PLANNING BOARD PRELIMINARY PLAT APPLICATION FOR THE CITY VIEW SUBDIVISION**

**\*\*** *Councilperson Kassner moved to approve the plat application and seconded by Councilperson Andrews. On roll call vote, the motion passed by unanimous consent, 5-0.*

**K. APPROVAL OF APRIL CLAIMS**

Item K was postponed until next Council Meeting.



## **ADJOURNMENT**

**\*\*** *Councilperson Wilcox moved to adjourn the meeting, seconded by Councilperson Kassner and passed unanimously.*

The meeting was adjourned at 6:50 p.m.

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**John Hollowell, Mayor**

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**Mary Rowe, City Clerk**

**Human Resources Committee**  
**June 3, 2021**

The **Human Resources Committee** met Thursday, June 3, 2021 at 4:15 p.m. in the City Hall Conference Room. Present were Committee Members Kathy Wilcox, Stacy Broell, Rick Huber, and Dwayne Andrews. Also present were: Police Captain Dan Baker, Building Inspector Russell Murphy, Fire Chief Branden Stevens, Public Utilities Director Tom Speelmon, City Planner-in-Training Ally Capps, and Human Resources Officer/Recorder Linda Wilkins.

Chairperson Wilcox called the meeting to order.

1. Request of Citizens

None

2. Committee Member Comments

None

3. Discussion of Building Inspector Contract

Inspector Murphy stated he will not be renewing his contract for the fiscal year 2021-2022. Chairperson Wilcox asked if there were things that could be improved. Inspector Murphy thought the position could easily be a 40-hours a week position and there was a need for improved communication. Committee Member Huber asked if there was anything that the City could do to salvage him from leaving. Inspector Murphy stated not at this time, but at a later it could be talked about. On the next Human Resource Agenda there will be an item writing a position description for a combined Fire Inspector / Building inspector and make the job an employee position rather than contracted.

4. Review and Approve Mechanic Position Description Revisions

Director Speelmon stated the revisions addressed references the position was a floating position between mechanic and heavy equipment operator.

*\*\*Committee Member Andrews moved to approve the mechanic position description as revised, seconded by Committee Member Broell. The motion passed unanimously 4-0.*

5. Review and Recommend Wage Step Increase Matrix for Non-union Employees

The matrix steps needed to be approved in conjunction with the personnel policy regarding the Non-Union wage matrix to provide a guideline for budgeting for the 2021-2022 fiscal year. Chairperson Wilcox recommended color coding the matrix to indicate where employee's wages were currently at in green and what wage they would be at if a step increase were granted in yellow,

*\*\*Committee Member Andrews moved to recommend the non-union wage matrix, seconded by Committee Member Huber. On roll call vote, the motion passed unanimously 4-0.*

6. Review and Recommend Wage Increase in Planner-in-Training/Grant Administer Wage

Planner-in-Training Capps submitted a lengthy letter to Mayor along with letters of support from directors and Land Solutions requesting a \$2/hour wage increase. A letter of recommendation from the Mayor was reviewed, however; the other supporting documentation was not available. The committee discussed the current structure of the planning position descriptions for the City. There was a discussion of progressive steps from Planner-in-Training up to Planner II. There should be

benchmarks for progression to each step. I was decided to have another meeting to review position descriptions. It was determined that this would be a topic of a forthcoming meeting.

*\*\*Committee Member Huber moved to postpone a wage increase recommendation, seconded by Committee Member Broell. On roll call vote, the motion passed unanimously 4-0.*

7. Next Meeting: June 8, 2021; 4:15 p.m.

8. Adjournment

*\*\*Committee Member Andres moved to adjourn, seconded by Committee Member Broell. The motion passed unanimously 4-0.*

The meeting was adjourned at 5:04 p.m.

Respectfully submitted,

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Chairperson Kathy Wilcox

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Recorder Linda Wilkins

Miles City Zoning Commission  
P.O. Box 910  
Miles City, MT 89301

May 26, 2021

Mayor Hollowell and City Council:

RE: 2210 Valley Drive East – Zone Change

The Miles City Zoning Commission conducted its public hearing on May 26, 2021 to consider the zone change to a property described as Tract 4 of the Dyba Addition located in Section 27, Township 8 N, Range 47 East, P.M.M., Custer County MT from GC, General Commercial to HWC, Highway Commercial.

After reviewing comments from the hearing, the Zoning Commission recommends approval of 2210 Valley Drive East from GC to HWC.

Please schedule this for review by the City Council at your earliest convenience.

Respectfully submitted,



Leif Ronning, Chairman  
Miles City Zoning Commission





**CITY OF MILES CITY**

**Position Description**

***Planner-in-Training/Grants Administration***

Last Revised	09/03/2019
Effective	09/17/2014
FSLA Exempt	Non-Exempt
Job Class	Full-time
Department	Public Works – Community Service & Planning
Accountable to	Public Works Director

**SUMMARY OF WORK**

This position has an emphasis in training for the duties of the City Planner. Provides support for the various programs administered under the Public Works department including short and long-term planning, assure local compliance with zoning ordinances, receive zone change requests, land use management and annexation. This position performs the duties of program administration, technical services, grants administration, and program operations to all City departments.

**ESSENTIAL ACCOUNTABILITIES AND EXPECTED OUTCOMES**

***PLANNER-IN-TRAINING***

1. Serves as planner-in-training, under the instruction and coordination of a Planning Professional, administering land use regulation through the Montana Subdivision and Platting Act (MSPA), local subdivision regulations and other land use regulations.
2. Provides technical assistance and information to staff and the public in the administration of planning program areas and ordinances, including maps, charts or tables.
3. Prepares staff reports and recommendations for special use permits and variances.
4. Prepares updates for the City Growth Policy, assists in annexation and public right-of-way vacation activities.
5. Responds to requests for information from the public regarding infrastructure, planning, and funding programs.
6. Provides technical and program information to the public regarding subdivision, Growth Policy and annexations.
7. Responds to requests for information from the public regarding infrastructure, planning, and funding programs
8. Provides required information to the Planning Board for review and recommendation
9. Frequent contact with the general public, city, county state and federal officials, fellow employees, contractors, business groups, special interest groups, non-profit groups, engineering firms, land developers, and financial institutions
10. Obtain a proficiency in the desirable qualities in this position description to work independently as an entry level city planner for the City

11. Provides administration of property leases for the City

### ***GRANTS ADMINISTRATION***

1. Preliminary research for sources of additional funding (grants, corporate giving, monetary donations, in-kind donations, etc.) requested by department directors to help offset the expense of providing essential services to the citizens of Miles City.
2. Provides grant preparation and administration guidance for acquisition of funding, in conjunction with department directors.
3. Provides technical assistance in the administration of additional funding once received by the city.

### **MINIMUM REQUIREMENTS**

#### Education (knowledge)

High School Diploma or equivalent

#### Experience (skills, abilities)

Read and interpret written material

Communicate effectively orally and in writing

Follow verbal and written instructions

#### Certificates/Licenses

### **DESIRABLE QUALIFICATIONS**

#### **Knowledge:**

- Land use regulations, Montana Subdivision and Platting Act (MSPA), environmental laws, annexations and the practical application thereof
- Budget and financial administration
- Community development strategies
- Computer-aided mapping
- Public contracting
- Funding research and applications and administrative tasks
- Surveying

#### **Skills:**

- Read and interpret legal documents, aerial photography, topographic maps, plat maps and drawings, complex rules/regulations, and engineering designs

#### **Abilities:**

- Interpret and apply federal law, state law and administrative regulations, and local ordinances Serve as liaison between local government and other community groups and governmental agencies
- Attend evening meetings

## **PERFORMANCE STANDARDS**

Individual performance evaluation shall be based on the following elements:

- Productivity/Independence/Reliability
- Job Knowledge
- Interpersonal Relationships/Cooperation/Commitment
- Attendance
- Adherence to Policy
- Overall Performance

## **WORKING CONDITIONS**

Stand - Occasionally

Sit - Frequently

Lift - Occasionally

Noise - Occasionally

Hazardous materials exposure - Never

Travel - Occasionally

Other

## **PHYSICAL REQUIREMENTS**





## CITY OF MILES CITY

### Position Description

#### *Planner One/Grants Administration*

*NEW- midpoint between Planner-in-Training PD and Planner II PD*

Last Revised	06/10/2021
Effective	06/23/2021
FSLA Exempt	Non-Exempt
Job Class	Full-time
Department	Public Works – Community Service & Planning
Accountable to	Public Works Director

#### SUMMARY OF WORK

This position has an emphasis on performing basic City Planning studies, projects, and reports for stakeholders independently, developing a Planning Calendar for various projects that meets City Budget, Planning staff and Council priorities, and continuing training for attaining the full competence and expertise needed to perform the complex research, planning and reporting the duties of the City Planner Two position independently.

This position provides support for the various programs administered under the Public Works department including lease management, short- and long-term land use planning, assuring local-compliance with federal, state, county and City zoning ordinances, receiving and supporting the resolution process for zone change, land use, subdivisions and annexation requests.

This position serves as and performs the duties of grants program administrator, providing grant research, technical and submission support services, funded grants administration, and other grant program operations to all City departments.

Commented [JN1]: This is unclear - not sure what's intended.

Commented [JN2]: Based on the way things seem to be structured, I'm curious if completing tasks 1 through 3 completely "independently" is what's expected of Planner One. Under Item 6, there's a continuation of planner training (being under instruction and coordination), and under #7, the position works with assistance of a planning professional. And I'm sure there's internal supervision that may play into the appropriateness of the term "independently". It does make sense to have some independence after three years of being P-I-T under the belt, but is it expected that the Planner One always do the first three items completely independently and without any oversight prior to final documents being released? My point is, there's a lot of dependence upon what area of planning the Planner is working in that dictates independence vs. training vs. seeking assistance. That might not be intended. For instance, Item 1 seems to be primarily zoning administration, which Scott is responsible for right now, but the planner is to "independently" prepare reports. It seems as worded those reports would be expected to go straight to the boards without oversight by the zoning administrator or planning professional.

#### ESSENTIAL ACCOUNTABILITIES AND EXPECTED OUTCOMES

##### **PLANNER ONE**

1. Independently prepares staff reports and recommendations for special use permits, current zoning maps and variance requests and reports for City Council.
2. Independently provides technical assistance and accurate information to staff, City Council and the public in the administration of planning program areas and ordinances, including maps, charts or tables.
3. Independently provides administration of property leases for the City.
4. Works with the Finance Committee, Planning Board, Mayor, City Council and other stakeholders to develop and implement a 5-year project calendar which aligns Planning projects and City resources. Provides calendar and reports progress to City Council monthly.
5. Schedules and hosts required public hearing meetings per the Montana Subdivision and

*Planner One/Grant Administrator*

Commented [JN3]: May want to add the Board of Adjustment and Zoning Commission to reflect the zoning focus of this item.

- Platting Act (MSPA) regulations and City Ordinances.
6. Continues planner training, under the instruction and coordination of a Planning Professional, administering land use regulation through the Montana Subdivision and Platting Act (MSPA), local subdivision regulations and other land use regulations. Successfully completes 40 or more hours of relevant training annually.
  7. Works with the assistance of a Planning Professional to:
    - a. Prepare and present technical and program information related to the City Growth Policy, annexation and subdivision projects, and public right-of-way vacation activities to the public and City stakeholders.
    - b. Respond to requests for information from the public regarding infrastructure, planning, and funding programs.
    - c. Submit required information to the City Planning Board for review, revision as needed and recommendations to the City Council.
    - d. Implement, revise as needed and keep current the 5-year City Planner Project Calendar, notifying City Council when revisions are necessary.
  8. Develops, submits and defends annual Fiscal Year Planning Department budget requests at the appointed times.
  9. Attains competency in complex as well as routine City Planning activities and can work independently in all areas of expertise in City Planning in order to advance to the City Planner Two position.

Commented [JN4]: This blurs the expectations relative to some of the other descriptions. That's probably okay, because some projects may be appropriate for independence, and some the Planner One may need assistance with. As worded, the independence is dependent upon the program; for example, under Item 1, the planner would have independence with zoning administration (seems like a change), whereas projects related to the growth policy, annexation, subdivision, and vacations of rights-of-ways (how often does the city deal with vacations of streets? Seems a little random.) would typically be performed with assistance.

Commented [JN5]: So it appears once the Planner One is deemed competent at doing everything independently, s/he may advance to Planner Two. To me, what may be intended is that the responsibilities should be listed and with increased independence and competence performing these responsibilities, the Planner One could successfully advance to the position of Planner Two. But as worded, there's a lot of program dependence on expectations, whereas what may be intended is a certain level of independence with most responsibilities.

#### GRANTS ADMINISTRATION

1. Routinely works with the SE Montana Development Corporation (SEMDC) to secure at least \$25,000 in grant funding for Miles City each fiscal year.
2. Preliminary research for sources of additional funding (grants, corporate giving, monetary donations, in-kind donations, etc.) requested by department directors to help offset the expense of providing essential services to the citizens of Miles City.
3. Provides grant preparation and administration guidance for City staff acquisition of funding in conjunction with department directors.
4. Provides technical assistance in the administration of additional funding once received by the City.

Commented [JN6]: Note these are "minimum" requirements, distinct from desirable qualifications (below).

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Commented [JN7]: FEMA is an agency - the floodplain management regulations are local (city) regulations. The laws that pertain are in the Code of Federal Regulations (CFR) and the Montana Flood Plain and Floodway Management Act, Title 76, Chapter 5, MCA. The city floodplain management regulations are adopted pursuant to the federal and state laws. None of them are really "FEMA regulations" - the CFRs are largely FEMA-administered, but the city floodplain person would typically interpret "floodplain requirements" (something general like that).

Does the planner actually administer floodplain requirements? I know Sam has been the floodplain administrator for years, so she could probably weigh in on the floodplain-related language.

#### MINIMUM REQUIREMENTS

Education (knowledge) Dwayne comment- min Assoc, preferred BS degree for Planner II,  
High School Diploma or equivalent  
A minimum 80 hours of City Planner training in content areas relevant to Miles City, MT.

#### Experience, Skills and Abilities

Minimum 3 years at Planner-in-Training level with successful completion of performance standards for that position, including developing and implementing a projects calendar.

Read and accurately interpret written material, including federal and state land use regulations, the MT Subdivisions and Platting Act (MSPA), FEMA Flood Plain regulations, and City ordinances and resolutions related to routine planning activities.

including zoning, variance requests and lease management.

Writing ability? See below

Collaborate effectively with City Council; City staff; Custer County, Montana State and Federal officials; the general public, contractors, business groups, special interest groups, non-profit groups, engineering firms, land developers, and financial institutions.

Certificates/Licenses Dwayne comment- require certification for Planner II

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None required

Commented [JN8]: I'm surprised a drivers license is not required or desirable.

### DESIRABLE QUALIFICATIONS

#### Knowledge:

- Significant knowledge of federal and state land use and flood plain regulations, Montana Subdivision and Platting Act (MSPA), environmental laws, City annexation and subdivision ordinances and resolutions, and the practical application thereof
- Budget, grants, leases and other financial administration practices
- Lease management
- Geographic Information System mapping (ie, computer-aided mapping)
- Survey and plat review
- Public contracting
- SEMDC and other sources of grant funding research, application submission and administration tasks.

Commented [JN9]: This probably fits better as a skill.

#### Skills:

- Read and accurately interpret complex rules/regulations, legal documents, aerial photography, topographic maps, plat maps and drawings, and engineering designs.
- Write reports and other technical documents, letters, notices, and other documents related to the duties listed above...
- Geographic Information System mapping (ie, computer-aided mapping).
- 

Commented [JN10]: These might fit better as a minimum qualification.

#### Abilities:

- Interpret and accurately apply to projects Federal, State, Custer County and City rules and regulations, interpretive guidelines, ordinances and resolutions.
- Serves as liaison between City government and other community groups and governmental agencies, including the Miles City Planning Board.
- Attends City Council meetings.

Commented [JN11]: Wording?

Commented [JN12]: These are listed as desirable abilities, but seem to be part of the position's responsibilities.

### PERFORMANCE STANDARDS

Individual performance evaluation shall be based on the following elements:

- Productivity/Independence/Reliability
- Job Knowledge
- Interpersonal Relationships/Cooperation/Commitment
- Attendance
- Adherence to Policy
- Overall Performance

**WORKING CONDITIONS & PHYSICAL REQUIREMENTS**

Stand - Occasionally

Sit - Frequently

Lift - Occasionally

Noise - Occasionally

Hazardous materials exposure - Never

Travel - Occasionally

Other

*I attest that this City of Miles City Position Description accurately reflects the major duties of this position.*

Position Immediate Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

*This City of Miles City Position Description has been reviewed and is recommended by City Human Resource Director.*

HR Director: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

*This City of Miles City Position Description has been reviewed and approved by City Human Resource Committee.*

*Planner One /Grant Administrator*

## **Job Classification Descriptions as per the American Planning Association**

**The American Institute of Certified Planners has researched job descriptions nationally.** Not all organizations dedicated to planning issues will offer employment at all levels. These summaries give relevant background information on a classification. Typical functions, knowledge, skills and qualifications will vary depending on the hiring organization.

Here are summaries of typical job descriptions for seven common planning classifications:

### Planning Director / Executive Director / Director / Owner / CEO / President

The employment level of Planning Director, Executive Director, Director, Owner, CEO, or President, is the top management level specializing in planning issues. Within a private sector planning firm or a nonprofit, the Executive Director directs all operations of the organization and reports to a Board of Directors. The Planning Director of a local, county or state government directs planning initiatives and typically reports to a Planning Commission, Town/City Manager, and/or Mayor/elected officials. Planning Directors are often given a significant degree of flexibility in accomplishing their tasks.

### Principal Planner / Planning Manager / Planner IV

The Principal Planner, also known as Planning Manager or Planner IV, supervises and participates in advanced, highly-complex professional planning activities. Depending on the organization, the Principal Planner often manages and supervises sections or divisions within the larger planning department of an organization.

Furthermore the Principal Planner may function as a deputy for the Planning Director or even serve as Acting Director. In other cases, the Principal Planner may possess a more limited supervisory role and rather function within an organization as the most senior planner with expertise in a particular specialization.

### Planner III / Senior Planner

The Planner III or Senior Planner most often requires advanced professional planning experience of high complexity and variety. Some functions are similar to those of the Planner II level, though the Planner III often leads or is significantly involved with larger, more complex planning assignments. Planners at this level exercise greater independence and judgment, receiving general supervision from senior management. The Planner III may supervise the Planning Technician, Planner I or II, depending on the structure of the organization.

### Planner II / Associate / Junior Planner

The position of Planner II, also known as Associate Planner or Junior Planner, requires professional planning work of moderate difficulty. It is characterized by increasingly specialized

knowledge of the planning field and a more elevated level of required duties and responsibilities compared with the Planner I. The Planner II is expected to possess in-depth knowledge within one or more planning specialties such as economic development, comprehensive planning, or environmental planning.

Although senior planners and supervisors closely review the work of the Planner II, planners at this level receive somewhat less immediate supervision when compared to the Planning Technician or Planner I.

### Planner I / Assistant Planner

The position of Planner I, also known as Assistant Planner, is the entry-level position within professional planning. A bachelor's degree or a master's degree is usually required, depending on the hiring organization. It is distinguished from the Planning Technician position because it involves professional-level duties and judgment, and fewer routine administrative tasks. This position level receives considerable immediate supervision from senior planners.

### Planning Technician

The position of Planning Technician, which may also be called GIS Technician/Analyst, Code Enforcement Technician, Zoning Technician, or other specialized technician, is entry-level paraprofessional work. The Planning Technician devotes a significant amount of time on routine administrative tasks. A Planning Technician often works closely with the public on a regular basis to provide customer service on planning issues. Successful Planning Technicians may be asked to perform professional-level (Planner I) duties of limited complexity as a trainee.

### Planning Intern

The internship level in the planning profession often represents the first practical contact a prospective planner makes with the profession. Successful internships yield valuable insight and practical knowledge for students as they refine their educational and career paths. Many internships are unpaid, yet they offer a wealth of opportunities for students, such as college credit or the possibility for permanent employment with the organization upon graduation. Interns usually are more marketable as they search for permanent employment because of their additional experience in the planning profession. Unlike most other positions within the planning profession, internship standards and circumstances vary considerably. Such variables include length of internship (from a few summer months to a year or longer), hours per week, expected tasks, amount of supervision, and areas of specialization.

Planner Certification Requirements <https://www.planning.org/certification/eligible/>  
Am Planning Assoc  
American Planning Association  
205 N. Michigan Ave., Suite 1200  
Chicago, IL 60601-5927

**Phone:** 312-431-9100

**Fax:** 312-786-6700

## AICP Certification Eligibility Requirements

Applicants must meet the following eligibility requirements before applying for AICP Certification:

1. Be a current member of the American Planning Association (APA).
2. Be engaged in professional planning, either currently or in the past, as defined by AICP.
3. **Have completed, at the time of application submission,** one of the combinations of education and corresponding years of professional planning experience listed in the chart below:

Level of Education*	Total Years of Professional Planning Experience Required**
Graduate degree in Planning from a program accredited by the PAB	2 years
Bachelor's degree in Planning from a program accredited by the PAB	3 years
Graduate degree in Planning from a program <i>not</i> accredited by the PAB	3 years
Any other post-graduate, graduate, or undergraduate degree	4 years
No college degree	8 years

### \*Education Details

1. The education may be obtained before, during, or after the experience.

2. Accredited degrees have been determined by the Planning Accreditation Board to meet standards approved by the American Institute of Certified Planners and the Association of Collegiate Schools of Planning or accredited by the Professional Standards Board (PSB) for Planning in Canada. AICP gives educational credit to applicants holding these degrees if the degree was received (1) during the period the university has been accredited (or previously recognized), and (2) by the time that an application for membership is filed. If you are unsure about the status of your planning degree, consult the Planning Accreditation Board's list or contact AICP.
3. Other degrees include non-accredited undergraduate planning degrees and degrees in related and other disciplines (i.e. Geography, Architecture, History, Music, etc.) at undergraduate and post-graduate levels.

### **\*\*Experience Details**

1. Internships, part-time positions, and volunteer work may count toward your professional experience. See the AICP Certification Application tips and AICP Certification Guide for more details.

## AICP Candidate Pilot Program

If you are currently enrolled in or have graduated from a degree program accredited by the PAB, you are eligible to participate in the AICP Candidate Pilot Program. This program allows you to take the AICP Certification Exam upon graduation, prior to completing your professional planning experience.

See also: Planner Candidate Pilot Program- <https://www.planning.org/aicp/candidate/>



# Unfinished Business



3722

## **72" Chanticleer Fountain with Surround and 6' Fiberglass Pool**

H72.25"BD84"

Weight: 1840 Lbs

Shown in #100 Biscayne Stone  
6FP Fiberglass Pool Included

 Fountain Set Up Instructions

---

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Massarelli's, 500 South Egg Harbor Road, Hammonton, NJ 08037

## SET UP INSTRUCTIONS

### 3722 – 72" CHANTICLEER FOUNTAIN WITH SURROUND AND 6' FIBERGLASS POOL

Open bag containing the pump kit **P70004**. In the kit you will find:

1 - 02527 (700 gallons per hour pump)    1 – 3/4" X 1/2" plastic tee    1 – 1/2" plastic ell    1 - tube of silicone  
1 - 3/4" clear tubing 72" long    1 - 1/2" kink free tubing 7" long    1 – putty tape 8" long    1 – hose clamp

1. Prepare a level base of 4" poured concrete or 6" compacted crushed limestone. The completed 6' fountain pool has an outside base diameter of 84".
2. Find the 6' fiberglass pool. In the center of the pool there is a threaded insert. Find the 1 1/4" male adapter, apply Teflon tape on the threaded end and screw it into the threaded insert. Find the piece of 1 1/4" PVC pipe 1 1/4" long and glue it into the slip end of the 1 1/4" male adapter. Find the pump and the rubber stopper. Slip the rubber stopper onto the power cord about 24" from the pump. Place the pump in the center of the pool and run the plug end of the power cord down through the adapter in the center of the pool. Retrieve the power cord from bottom side of pool. Find the tube of silicone and apply around the inside edge of the adapter and the outside edge of the rubber stopper. Insert the rubber stopper snugly into the PVC pipe in the center of the pool. Apply silicone on top and around the rubber stopper and power cord. **Don't skimp on the silicone you want a watertight seal.**
3. Place the 6' fiberglass pool in the center of the area where the fountain is to be displayed. Retrieve the power cord from bottom side of pool and place in the groove in the bottom of pool. Find the pedestal-pump house and carefully position it in the center of the pool. The opening in the pedestal-pump house riser should face toward back of fountain. Find the pedestal and carefully position it on the pedestal-pump house. Find the larger shell and position it on top of the pedestal. To level shell, place level on the top of the outside rim of the shell and level in all directions. Shim as needed.
4. Find the piece of 3/4" clear tubing 72" long and the hose clamp. Run one end of the 3/4" clear tubing down the hole that is in the center of the large shell and down through the hole in the center of the pedestal into the pedestal-pump house. Connect the 3/4" clear tubing to the outlet of the pump with the hose clamp. Position the pump in the pedestal-pump house and make sure that the pump is seated on the floor of the pool.
5. Find the second shell and run the 3/4" clear tubing up thru the hole in the center housing of the shell. Position shell on top of the larger shell and level as stated in step #3. Check to make sure that the pump is seated on the floor of the pool inside the pump house.
6. Cut the 3/4" clear tubing 1" below the top surface of the center housing in the second shell. Find the 3/4" X 1/2" plastic tee, the 1/2" plastic ell and the 1/2" kink free tubing. Attach one end of the 1/2" kink free tubing onto the middle connection of the 3/4" X 1/2" plastic tee. Attach the 1/2" plastic ell onto the opposite end of the 1/2" kink free tubing. Attach an end connection of the 3/4" X 1/2" plastic tee onto the end of the 3/4" clear tubing located in the center of the second shell. Attach the remainder of the 3/4" clear tubing onto the opposite end connection of the 3/4" X 1/2" plastic tee.
7. Find the third shell and run the 3/4" clear tubing up thru the hole in the center housing of the shell. Place the 1/2" kink free tubing in the groove located in the bottom of the third shell with the elbow on the outside of the center housing pointing down. Position shell on top of the second shell and level as stated in step #3.
8. Find the putty tape and apply the putty tape around the 3/4" clear tubing and down into the PVC pipe in the top cavity of the third shell. Keep the 3/4" clear tubing in the center of the PVC pipe while you apply the putty tape all the way around. **You want to create watertight seal so use all of the putty tape.**
9. Cut the 3/4" clear tubing 6" above the top surface of the center housing on the third shell. Find the finial. Slip the finial onto the 3/4" clear tubing and position the finial on top of fountain. Find the drain plugs and insert snugly into the drain inserts located in the pool and the larger shell of the fountain. Remove any tape and or dirt from the drain insert before you insert the drain plug.
10. Find the four pool wall sections. Position each piece of the wall section around the fiberglass pool, lining up the inside radius of the wall section with the inside radius of the fiberglass pool.
11. Fill the pool and shells with tap water and plug pump into a 110VAC GFCI protected outlet. To adjust the water flow to the finial, unplug the pump and remove the finial from the fountain. Trim the 3/4" clear tubing another 1/2" shorter and reposition the finial on the fountain. Repeat if necessary. This will regulate the water flow from the finial until the desired result is achieved. Find the plug and install into the opening in the pump house.

3722sup    4/1/12

FOR \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_

**Urgent**

**While You Were Out**

M. Milly Called

OF \_\_\_\_\_

PHONE \_\_\_\_\_

CELL \_\_\_\_\_

FAX \_\_\_\_\_

**Message**

Fountain Mantel  
 Massarelli's Moss-er-elli  
 \$9200 freight included  
 From Statuary Garden + gifts  
 Jeff Eminato

SIGNED

A9711  
T3002

406-591-4409

1217 6<sup>th</sup> Ave N. Billings.

1<sup>ST</sup> OF September

~~5 weeks~~ OUT

April 2 orders waiting

WWW - MASSARELLI - COM

Item# 3722

7210 CHANTIER  
FOUNTAIN

## Scott Gray

---

**From:** Travis Copper <Travis.Copper@kljeng.com> on behalf of Travis Copper  
**Sent:** Thursday, June 10, 2021 9:05 AM  
**To:** Scott Gray  
**Cc:** Matt Smith  
**Subject:** RE: FW:

Scott,  
In our opinion, the following would provide for a suitable base for this structure. Over excavate to 2-feet below the bottom elevation of the structure. Place a 6 ounce non-woven geotextile fabric on the subgrade to keep the overlying base rock from mixing with clayey materials. Backfill 18-inches with a non frost susceptible material, such as a crushed concrete with no chunks larger than 4-inches. Top the non frost susceptible material with a 1 1/2-inch minus leveling course. Compact the leveling course to 95-percent. No shop drawings were available at the time of this cursory assessment. It is based on limited information provided and assumption about the structure.

Let us know if we can be of any further assistance.

Regards,

Travis Copper  
KLJ  
406-247-2902 Direct  
406-839-1137 Cell  
2611 Gabel Road  
Billings, MT 59102-7329  
kljeng.com

-----Original Message-----

**From:** Scott Gray <sgray@milescity-mt.org>  
**Sent:** Thursday, June 10, 2021 8:27 AM  
**To:** Travis Copper <Travis.Copper@kljeng.com>  
**Cc:** Matt Smith <matt.smith@kljeng.com>  
**Subject:** FW:

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

FYI

-----Original Message-----

**From:** no.reply.mccopier@gmail.com <no.reply.mccopier@gmail.com>  
**Sent:** Thursday, June 10, 2021 8:27 AM  
**To:** sgray@milescity-mt.org  
**Subject:**

-----  
ECOSYS M8124cidn  
[00:17:c8:8d:14:1a]  
-----

**ORIGINAL FOUNTAIN**



**CURRENT CONDITION OF FOUNTAIN:**



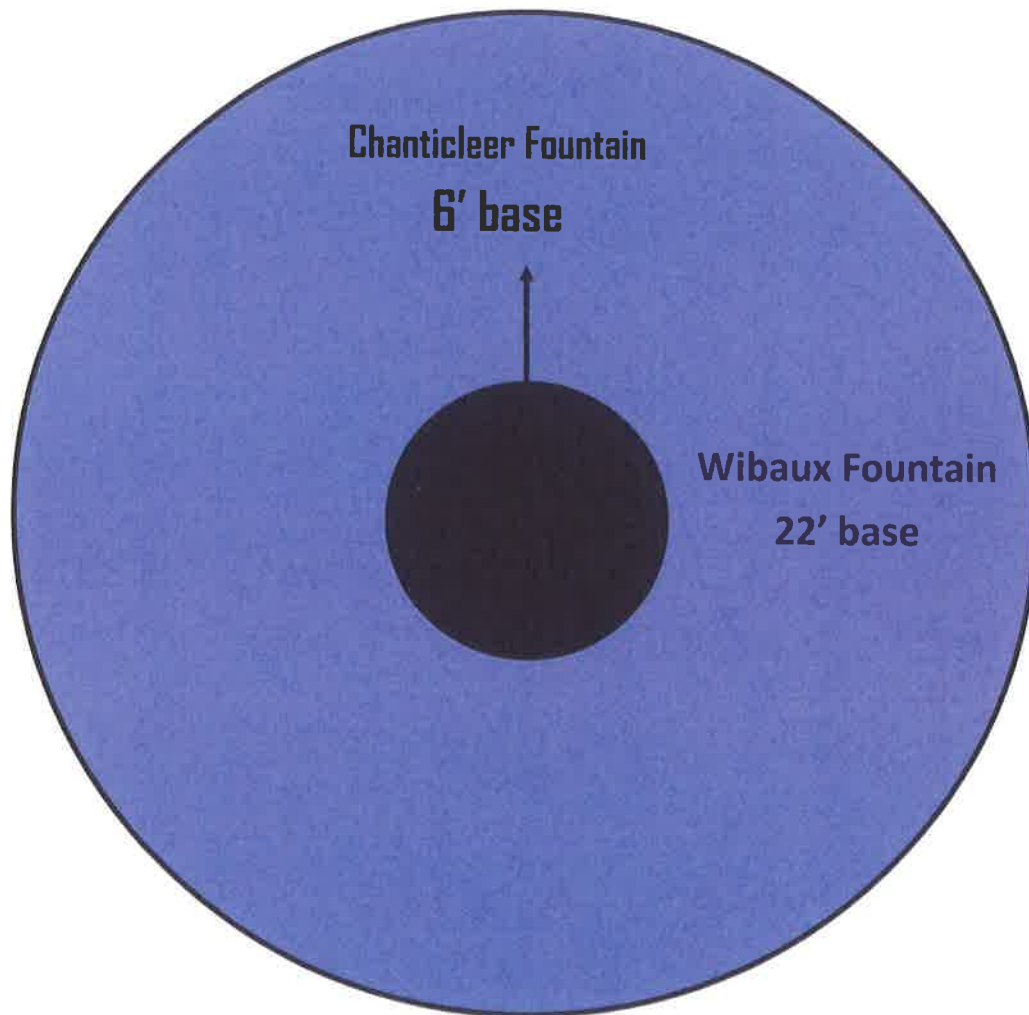
**Fountain Dimensions:**

<b>Slope of basin floor is 1:2</b>		<b>Inches</b>
Interior basin radius - to fountain base	8'	192"
Fountain base diameter	4'6"	54"
<b>Interior fountain diameter</b>		<b>246"</b>
Fountain wall diameter	10"	20"
<b>Total Exterior Fountain diameter</b>		<b>266"</b>

**Wibaux Fountain**  
**65"**



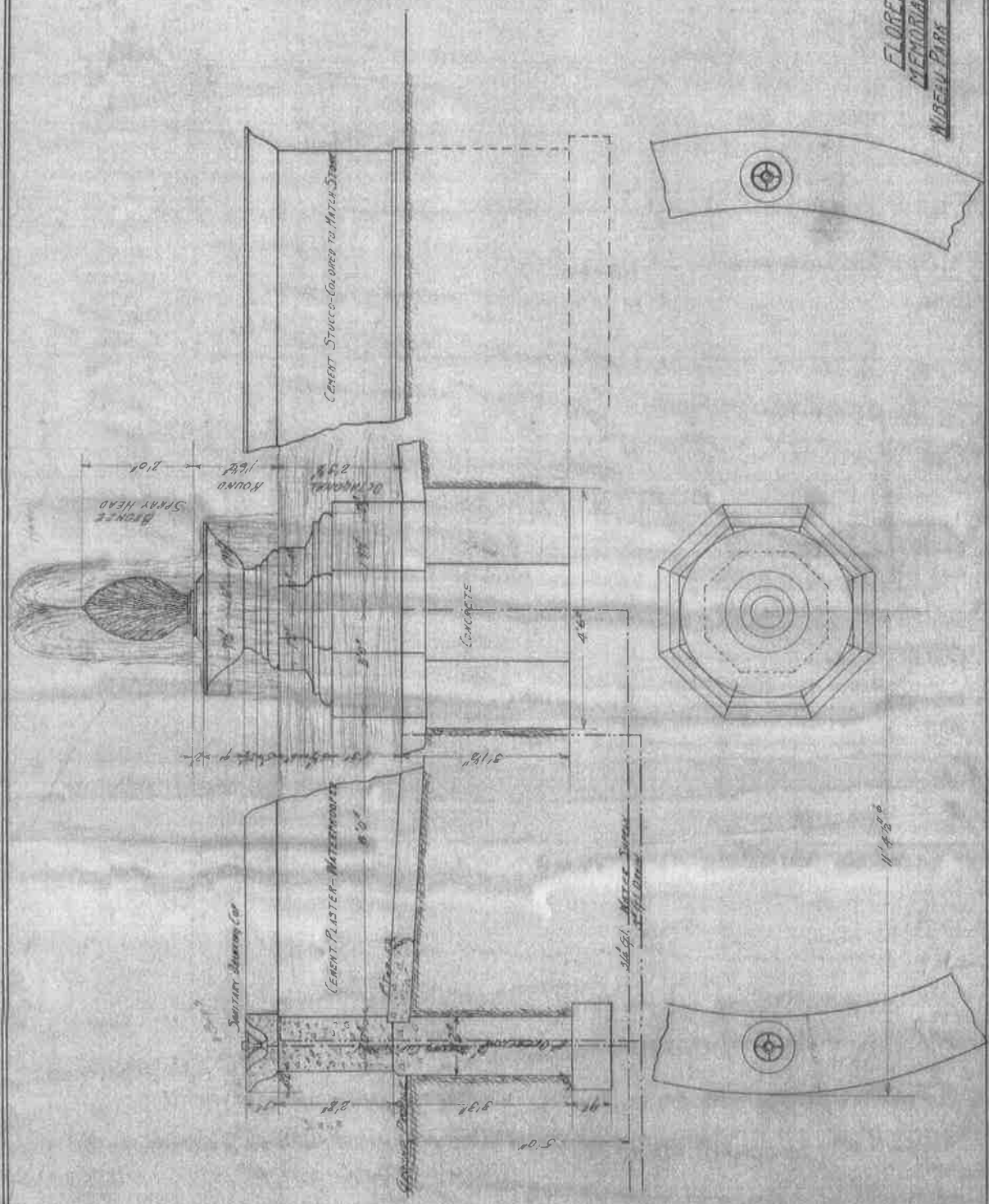
**Chanticleer Fountain**  
**72"**



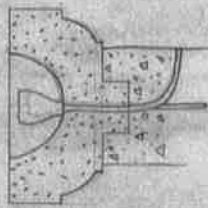
Original center of fountain was 4'6"



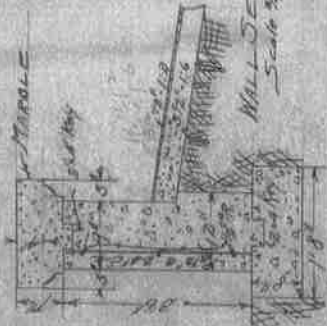
FLORENCE STACK  
 MEMORIAL FOUNTAIN  
 WISCONSIN PARK - MILWAUKEE



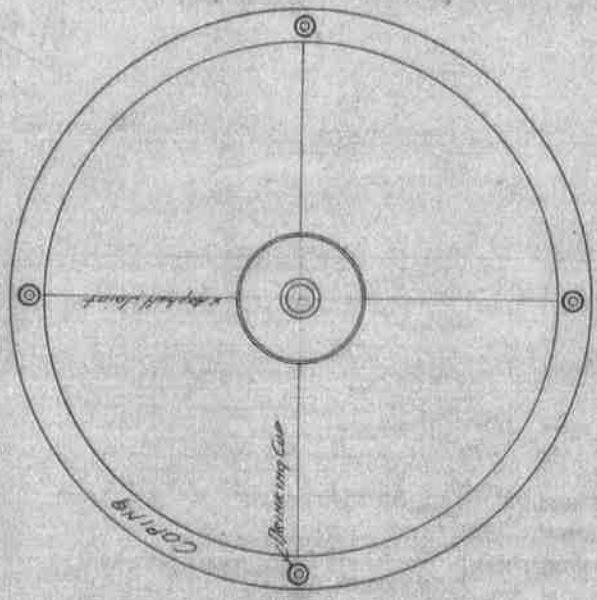
117  
 1922  
 124  
 D-4



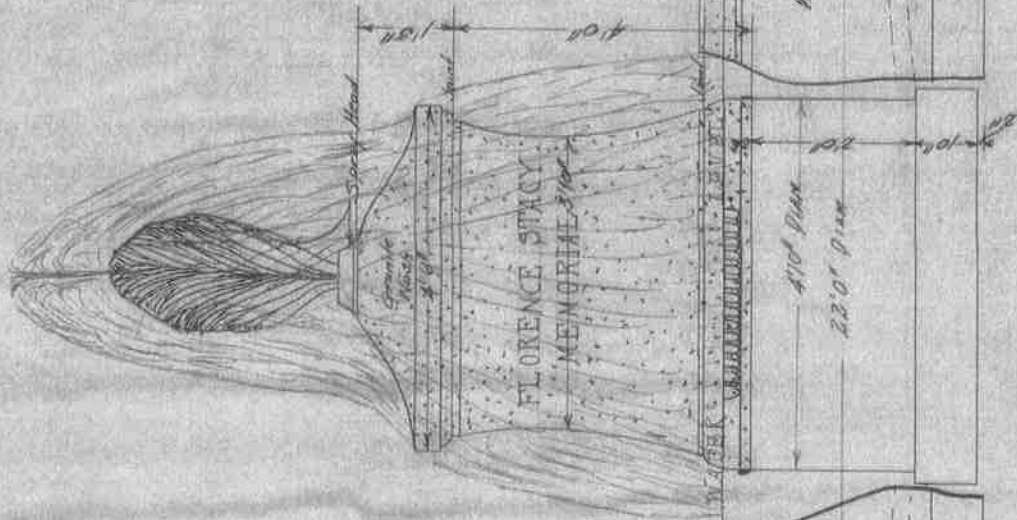
SECTION THRU SPRINKLING CUP  
Scale 1/8" = 1'-0"



WALL SECTION  
Scale 1/4" = 1'-0"



Plan  
Scale 1/4" = 1'-0"



FLORENCE STACY  
MEMORIAL FOUNTAIN  
Scale 3/4" = 1'-0"

133

4215  
0-4

# New Business

**RESOLUTION NO. 4403**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES, TASK ORDER EDITION WITH KADRMAS, LEE & JACKSON D/B/A KLJ, FOR THE PROVISION OF ENGINEERING SERVICES TO THE CITY OF MILES CITY FOR A 5-YEAR PERIOD.**

*WHEREAS*, the City of Miles City has the power to contract for engineering services without soliciting competitive bids, pursuant to MCA §7-5-4301;

*AND WHEREAS*, the City of Miles City wishes to contract with Kadrmas, Lee & Jackson d/b/a KLJ for the provision of general engineering services to the City, as may be requested by the City from time to time, for a five (5) year period;

AND WHEREAS, Kadrmas, Lee & Jackson d/b/a KLJ has agreed to be available to the City of Miles City to provide general engineering services upon request of the City during said five (5) year period;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The “Agreement Between Owner and Engineer for Professional Services, Task Order Edition,” attached hereto as Exhibit “A,” and made a part hereof, is hereby approved and adopted by this council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as may become necessary to carry out the terms of said agreement.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22<sup>ND</sup> DAY OF JUNE, 2021.**

---

John Hollowell, Mayor

ATTEST:

---

City Clerk

## "Exhibit A"

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

# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

## TASK ORDER EDITION

Prepared by



Issued and Published Jointly by



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

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National Society of Professional Engineers

1420 King Street, Alexandria, VA 22314-2794

(703) 684-2882

[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies

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

(202) 347-7474

[www.acec.org](http://www.acec.org)

American Society of Civil Engineers

1801 Alexander Bell Drive, Reston, VA 20191-4400

(800) 548-2723

[www.asce.org](http://www.asce.org)

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

**TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date of the Agreement”) between  
\_\_\_\_\_  
City of Miles City, 17 South 8th Street, Miles City, MT 59301 (“Owner”) and  
\_\_\_\_\_  
KLJ Engineering LLC, 4585 Coleman Street, Bismarck ND 58503 (“Engineer”).

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

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

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

**1.02 Task Order Procedure**

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



## ARTICLE 2 – OWNER’S RESPONSIBILITIES

### 2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer’s services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer’s services, the Work, the performance of any Constructor, or in Owner’s performance of its responsibilities under this Agreement.

## ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

### 3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for five (5) years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

### 3.02 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer’s services, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

#### ARTICLE 4 – INVOICES AND PAYMENTS

##### 4.01 *Invoices*

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

##### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse

Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

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

### 5.02 *Designing to Construction Cost Limit*

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

### 5.03 *Opinions of Total Project Costs*

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

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

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

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

#### 6.02 *Design Without Construction Phase Services*

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

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as

appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

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

#### 6.04 *Electronic Transmittals*

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

#### 6.05 *Insurance*

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.
- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of

payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

#### 6.06 *Suspension and Termination*

##### A. *Suspension*

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer. Engineer shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, Owner shall compensate Engineer for expenses incurred as a result of the suspension and resumption of its services, and Engineer's schedule and fees for the remainder of the Project shall be equitably adjusted.
2. By Engineer: Engineer may suspend services under a Task Order : (i) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or is in material breach of this Agreement; or (ii) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4. Engineer shall have no liability to Owner, and Owner agrees to make no claim for delay or damage as a result of such suspension caused by any breach of this Agreement by Owner. Upon receipt of payment in full of all outstanding sums due from Owner, or curing of such other breach which caused Engineer to suspend services, Engineer shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.
3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

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

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.

2. By Engineer:

- a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days , consecutive or in the aggregate by Owner; or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
- c. Engineer shall have no liability to Owner on account of such termination.
- d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.

D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.

E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.

F. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of



personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Specific Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):

1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

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

injury, sickness disease, or death or to injury or destruction of tangible property (other than the Work), 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, agent employees, consultants or others retained by or under contract to the Owner with respect to this Agreement or to the Task Order.

- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

#### 6.12 *Records Retention*

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

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, by facsimile or other electronic transmission, or by a commercial courier service. All notices shall be effective upon the date of receipt. Notices and correspondence sent by electronic transmission, including the signature of a Party delivered by facsimile or by a "pdf." format document sent electronically, will constitute original copies thereof and will be binding on the parties. Upon request, the receiving party may request an original of any document sent by electronic transmission.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders*: The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement*: Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
  - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
  - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).

6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.
22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Notice* – Wherever used in this Agreement, the term “days” shall mean consecutive calendar days of twenty-four (24) hours each, or a fraction thereof.
25. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
26. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
27. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
33. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
34. *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.
35. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
36. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
37. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
38. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the

result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.

39. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Suggested Form of Task Order***

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

### **8.02 *Exhibits Included:***

A. Exhibit A, Engineer’s Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order.

B. Exhibit B, Owner’s Responsibilities. This Exhibit applies to all Task Orders.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, “Payments to Engineer,” of the specific Task Order.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.

E. Exhibit E – **Not used**

F. Exhibit F- **Not used.**

G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.

H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.

I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.

J. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.

K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.



### 8.03 *Total Agreement*

- A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

### 8.04 *Designated Representatives*

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

### 8.05 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

### 8.06 *Affirmative Action:*

- A. Owner and Engineer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

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

OWNER:

ENGINEER: KLJ Engineering LLC

By: \_\_\_\_\_  
(Print Name)

By:   
(Print Name) Mark Anderson

Title: \_\_\_\_\_

Title: Vice President

Date Signed: \_\_\_\_\_

Date Signed: 5/19/2021

Firm's Certificate No.: \_\_\_\_\_  
State of: \_\_\_\_\_

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

City of Miles City  
P.O. Box 910  
Miles City, MT 59301  
(406) 234- 3493

KLJ Engineering LLC  
4585 Coleman Street  
Bismarck, ND 58503  
**Legal Notices to:** legal@kljeng.com

DESIGNATED REPRESENTATIVE

DESIGNATED REPRESENTATIVE

Name: Thomas Speelmon

Name: Matt Smith

Title: Public Utilities Director

Title: Area Manager

Address: P.O. Box 910

Address: 2611 Gabel Road

Miles City MT 59301

Billings, MT 59101

Phone: (406) 234- 3493

Phone: (406) 245-5499

Email: tspeelmon

Email: matt.smith@kljeng.com

**SUGGESTED FORM OF  
TASK ORDER**

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

**Task Order**

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

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

**1. Background Data**

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

**2. Services of Engineer**

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

***[Select one of the following three options and delete the other two.]***

- set forth in Part 1—Basic Services of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

***[or]***

- as follows: [ ] ***[Note: Insert scope of services here, or incorporate by reference a scope of services set out in a separate document such as a letter or proposal.]***

***[or]***

- the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference: ***[Note: If this option is selected, include only those sections below that are part of Basic Services for the specific Task Order, and delete those sections below that do not apply.]***

- Study and Report Services (Exhibit A, Paragraph A1.01)
- Preliminary Design Phase (Exhibit A, Paragraph A1.02)

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Task Order Form

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- Final Design Phase (Exhibit A, Paragraph A1.03)
- Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
- Construction Phase Services (Exhibit A, Paragraph A1.05)
  - including Resident Project Representative (RPR) services (A1.05.A.2)
  - **[or]** [not including Resident Project Representative (RPR) services (A1.05.A.2)]
- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)
- Commissioning Services (Exhibit A, Paragraph A1.07)

B. Resident Project Representative (RPR) Services

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

***[1. If RPR services are not in the scope of this Task Order, do not include any references to RPR services in Exhibit A (Paragraph A1.05.A.2) for this Task Order (or state "Does not apply" or similar), or in any other scope of services text or document.***

***2. If appropriate, modify Exhibit D for this specific Task Order, and attach it, rather than incorporating the Exhibit D that is included with the Agreement.]***

C. Designing to a Construction Cost Limit

***[If the design under this Task Order will be governed by a Construction Cost limit, then include the following clause, with blanks filled in, and thereby incorporate Exhibit F; if not, then delete the clause or indicate "Does not apply" or similar]***

Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$\_\_\_\_\_. The bidding or negotiating contingency to be added to the Construction Cost Limit is \_\_\_\_\_ percent.

D. Other Services

Engineer shall also provide the following services: ***[Summarize or provide a brief description of other services (if any) that are to be provided by Engineer as Basic Services, but have not been addressed in Paragraphs 2.A through 2.C. If applicable, categorize such other services by phases, such as other Study and Report Phase Services, other Preliminary Design Phase Services, and so on. If all Basic Services have been covered in Paragraphs 2.A through 2.C, then indicate "None" here in 2.D, or delete 2.D in its entirety.]***

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

### 3. Additional Services

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

**[Select one of the following three options and delete the other two.]**

- set forth as Additional Services in Part 2—Additional Services, of Exhibit A, “Engineer’s Services for Task Order,” modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]

- as follows: [ ] **[Note: Insert list of Additional Services here, or incorporate by reference a list of Additional Services set out in a separate document. Indicate whether advance authorization is needed, and include other governing terms and conditions.]**

[or]

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

### 4. Owner's Responsibilities

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

### 5. Task Order Schedule

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

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish [ ] review copies of the Report and other Study and Report Phase deliverables to Owner.	Within [ ] days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within [ ] days of the receipt of Report and other Study and Report Phase deliverables from Engineer.
Engineer	Furnish [ ] copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within [ ] days of the receipt of Owner’s comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish [ ] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [ ] days of Owner’s authorization to proceed with Preliminary Design Phase services.

Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within [ ] days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish [ ] copies of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [ ] days of the receipt of Owner's comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish [ ] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [ ] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within [ ] days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish [ ] copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [ ] days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

## 6. Payments to Engineer

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

***[Notes: 1. Delete line items that do not apply to this Task Order. 2. For each line item indicate either "Lump Sum," "Direct Labor," or "Hourly Rates" as the Basis of Compensation. 3. Cross-references are to Exhibit A. Revise if necessary, or delete cross-references if Exhibit A is not used to establish the scope of services under this Task Order.]***

	Description of Service	Amount	Basis of Compensation
1.	Basic Services (Part 1 of Exhibit A)	\$[ ]	[ ]
	a. Study and Report Phase (A1.01)	\$[ ]	[ ]
	b. Preliminary and Final Design Phase (A1.02, A1.03)	\$[ ]	[ ]
	c. Bidding or Negotiating Phase (A1.04)	\$[ ]	[ ]
	d. Construction Phase (A1.05)*	\$[ ]	[ ]
	e. Resident Project Representative Services* (A1.05.A.2).	\$[ ]	[ ]
	f. Post-Construction Phase (A1.06)	\$[ ]	[ ]
	g. Commissioning Phase (A1.07)	\$[ ]	[ ]
	h. Other Services (see A1.08, and 2.D above)	\$[ ]	[ ]
	<b>TOTAL COMPENSATION (lines 1.a-h)</b>	\$[ ]	
2.	Additional Services (Part 2 of Exhibit A)	(N/A)	[ ]

*[Many of the line items under Line 1, Basic Services, will frequently be governed by a single Basis of Compensation; however, it is not unusual to have some variation among the services so the table allows the user to establish different bases of compensation for the various Basic Compensation phases (1.a-1.h).]*

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

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

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

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

**8. Other Modifications to Agreement and Exhibits:**

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

**9. Attachments:**

**10. Other Documents Incorporated by Reference:**

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**Task Order Form**

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**11. Terms and Conditions**

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

OWNER: City of Miles City

ENGINEER: KLJ Engineering LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Firm's Certificate No. (if required): \_\_\_\_\_  
State of: \_\_\_\_\_

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_



## Engineer's Services for Task Order

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### *[Introductory Note to User:*

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

*Not all possible services are included in this exhibit. The user should revise and supplement the descriptions of services provided here for purposes of drafting the scope of Engineer's Services for each specific Task Order. The scope of services will typically include a list of potential Additional Services (see Paragraph A2.01) that may be needed as the Specific Project progresses. The user may choose to categorize some items shown here as Additional Services as Basic Services, or move some tasks listed in the Basic Services categories (Paragraphs A1.01 through A1.08) into Additional Services. Note that for the Additional Services in A2.01.A, Engineer is not authorized to perform and receive compensation for an Additional Service unless authorized by Owner to do so under a written amendment.]*

## PART 1—BASIC SERVICES

### A1.01 Study and Report Phase Services

#### A. As Basic Services, Engineer shall:

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

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

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**Exhibit A – Engineer's Services**

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14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.
  15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

A. As Basic Services, Engineer shall:

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

construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

**[Note to User**

***Some owners prefer to handle the preparation of bidding (procurement) and construction contract documents with little or no involvement by the Engineer (other than with respect to Engineer's preparation or furnishing of the Drawings, Specifications, and other design and technical documents), relying either on Owner's in-house staff and legal counsel for such services, or on third-parties such as a construction manager. When such is the case, the task item above, and related items in the Final Design Phase (Paragraph A1.03 below) and in Exhibit B, Owner's Responsibilities, should be modified to fit the requirements of the specific project.]***

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

**A1.03 Final Design Phase**

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
  3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
  5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
  6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
  7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
  8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
  9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
  10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

#### A1.04 *Bidding or Negotiating Phase*

##### A. As Basic Services, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
4. Consult with Owner as to the qualifications of prospective contractors.
5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

#### A1.05 *Construction Phase*

##### A. As Basic Services, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (the Edition of which is to coincide with the current Montana Public Works Standard Specifications in effect at the time of a specific Task Order),

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prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. **[If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D in the Task Order.]**
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

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Exhibit A – Engineer's Services

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- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
  11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
  12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of



the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Field Orders*: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters*: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
17. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests*:
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to

Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
  23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
  24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
  25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and

readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

#### A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
  - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

#### A1.07 *Commissioning Phase*

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

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

## **PART 2—ADDITIONAL SERVICES**

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

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following

services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

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

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

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Exhibit A – Engineer's Services

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19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
  20. Preparation of operation, maintenance, and staffing manuals.
  21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
  22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
  23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
  24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
  25. Overtime work requiring higher than regular rates.
  26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
  27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
  28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
  29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
  30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.

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Exhibit A – Engineer's Services

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



This is **EXHIBIT B**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

## **Owner's Responsibilities**

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

### *B2.01 Specific Responsibilities*

#### A. Owner shall:

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

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#### **Exhibit B— Owner's Responsibilities**

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- b. Zoning, deed, and other land use restrictions.
  - c. Utility and topographic mapping and surveys.
  - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
  - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
  6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
    - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
    - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
    - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
  7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
  8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

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**Exhibit B– Owner's Responsibilities**

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

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**Exhibit B— Owner's Responsibilities**

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20. Perform or provide the following: *[Here list any additional Owner responsibilities].*

This is **EXHIBIT C**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

## **Payments to Engineer for Services and Reimbursable Expenses**

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

### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

#### *C2.01 Basis of Compensation*

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
  1. Lump Sum (plus any expenses expressly eligible for reimbursement)
  2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
  3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)
  4. Cost Plus Fixed Fee (plus any expenses expressly eligible for reimbursement)

#### *C2.02 Explanation of Compensation Methods*

##### *A. Lump Sum*

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

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#### **Exhibit C – Payments to Engineer for Services and Reimbursable Expenses**

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B. *Standard Hourly Rates*

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

C. *Direct Labor Costs Times a Factor*

1. For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a factor of 3.4 for the services of Engineer's employees engaged on the Specific Project. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Exhibit C and the specific Task Order.
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, and reimbursable expenses (including Consultant's charges, if any).
4. The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus reimbursable expenses (including Consultant's charges, if any).
5. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

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**Exhibit C – Payments to Engineer for Services and Reimbursable Expenses**

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### C2.03 Reimbursable Expenses

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount includes the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of 1.0.
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of 1.15.
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

### ~~C2.04 Serving as a Witness~~

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

### C2.05 Other Provisions Concerning Payment

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

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#### Exhibit C – Payments to Engineer for Services and Reimbursable Expenses

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1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

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**Exhibit C – Payments to Engineer for Services and Reimbursable Expenses**

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

### **Reimbursable Expenses Schedule**

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A schedule of reimbursable expenses is not included. Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C and the specific Task Order. Reimbursement for expenses as of the date of the Agreement are at Engineer's cost.

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

**Standard Hourly Rates Schedule**

Standard hourly rates are subject to review and adjustment per Exhibit C.

2021 KLJ Hourly Rates

KLJ Staff Type	Standard Rate	KLJ Staff Type	Standard Rate
Archaeologist Technician	\$79	Document Controls	\$160
Archaeologist I	\$83	CAD Technician I	\$90
Archaeologist II	\$96	CAD Technician II	\$101
Archaeologist III	\$123	CAD Technician III	\$137
Archaeologist IV	\$147	GIS Analyst I	\$97
Environmental Technician	\$76	GIS Analyst II	\$108
Environmental Planner I	\$90	GIS Analyst III	\$126
Environmental Planner II	\$102	GIS Analyst IV	\$177
Environmental Planner III	\$130	GIS Technician	\$79
Environmental Planner IV	\$170	Engineering Technician I	\$79
Paleontologist	\$123	Engineering Technician II	\$108
Paleontologist Technician	\$79	Engineering Technician III	\$144
EIT I	\$109	Engineering Technician IV	\$162
EIT II	\$119	Project Assistant I	\$72
Associate Engineer	\$130	Project Assistant II	\$102
Engineer	\$153	Contract Administrator	\$108
Senior Engineer	\$198	Project Controls Specialist I	\$126
Principal Engineer	\$221	Project Controls Specialist II	\$160
Associate Planner	\$101	Survey Tech	\$83
Planner	\$133	Crew Chief	\$98
Senior Planner	\$170	Senior Crew Chief	\$120
Principal Planner	\$204	LSIT	\$120
Associate Designer	\$108	Professional Land Surveyor	\$143
Designer	\$144	Principal Land Surveyor	\$187
Senior Designer	\$162	1 Person Survey Crew	\$187
Senior Technical Advisor	\$259	2 Person Survey Crew	\$244
Associate Project Manager	\$157	Associate ROW	\$92
Project Manager	\$201	ROW Agent	\$116
Senior Project Manager	\$259	ROW Professional	\$130
Hydrogeological Technician	\$108	Senior ROW Professional	\$157

Exhibit C – Appendix 2 – Standard Hourly Rates Schedule

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Hydrogeologist	\$153	Pipeline Inspector	\$175
Government Relations Specialist I	\$109	Divisional Director	\$225
Government Relations Specialist II	\$123		
Government Relations Manager	\$164		

Reimbursable Expenses (if applicable)		
ATV, UTV, Snowmobile		Included in Hourly Rate
Survey Equipment		Included in Hourly Rate
CAD and GIS Work Station		Included in Hourly Rate
Postage and Routing Printing Cost		Included in Hourly Rate
Mileage		Included in Hourly Rate
Special Equipment/Software		Per Project Basis
Subsistence (Per Diem) - Lodging		Actual Cost
Subsistence (Per Diem) - Meals		Actual Cost

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

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

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

#### **D1.01 Resident Project Representative**

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

5. *Liaison*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
  - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
  - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

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

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

11. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.



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

## Insurance

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

### G6.05 Insurance

A. The limits of liability for the insurance required by Paragraphs 6.05.A and 6.05.B of the Agreement are as follows, unless and except as specifically modified by a specific Task Order:

1. By Engineer:

a.	Workers' Compensation:	Statutory
b.	Employer's Liability –	
	1) Bodily injury, each accident:	\$1,000,000
	2) Bodily injury by disease, each employee:	\$1,000,000
	3) Bodily injury/disease, aggregate:	\$1,000,000
c.	General Liability –	
	1) Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000
	2) General Aggregate:	\$2,000,000
d.	Excess or Umbrella Liability –	
	1) Each Occurrence:	\$2,000,000
	2) General Aggregate:	\$4,000,000
e.	Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):	\$1,000,000
f.	Professional Liability –	
	1) Each Claim Made:	\$2,000,000
	2) Annual Aggregate:	\$4,000,000

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Exhibit G - Insurance

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2. By Owner:
- a. Workers' Compensation: Statutory
  - b. Employer's Liability –
    - 1) Bodily injury, each accident: \$1,000,000
    - 2) Bodily injury by disease, each employee: \$1,000,000
    - 3) Bodily injury/disease, aggregate: \$1,000,000
  - c. General Liability –
    - 1) Each Occurrence  
(Bodily Injury and Property Damage): \$1,000,000
    - 2) General Aggregate: \$2,000,000
  - d. Excess or Umbrella Liability –
    - 1) Each Occurrence: \$2,000,000
    - 2) General Aggregate: \$4,000,000
  - e. Automobile Liability – Combined Single Limit  
(Bodily Injury and Property Damage): \$1,000,000
  - f. Professional Liability –
    - 1) Each Claim Made: \$2,000,000
    - 2) Annual Aggregate: \$4,000,000

B. Additional Insureds:

1. Engineer and the Consultants identified in the Task Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds.
2. During the term of each Task Order the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy.

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**Exhibit G - Insurance**

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **H6.09 Dispute Resolution**

- A. *Mediation:* 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, including any Task Order, or the breach thereof ("Disputes") to mediation by a mutually agreed upon mediator. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution method of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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

## Limitations of Liability

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

### I6.11.A *Limitation of Engineer's Liability*

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



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

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**Special Provisions**

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Paragraph(s) \_\_\_ of the Agreement is/are amended to include the following agreement(s) of the parties:

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

**Amendment To Task Order No.** \_\_\_\_\_

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**1. Background Data:**

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

**2. Description of Modifications**

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

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

*[List other Attachments, if any]*

**3. Task Order Summary (Reference only)**

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

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

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

OWNER:

ENGINEER: KLJ Engineering LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_



**RESOLUTION NO. 4415**

**A RESOLUTION ESTABLISHING CITY OF MILES CITY PERSONNEL POLICIES REGARDING POLICY DRUG AND ALCOHOL FREE WORKPLACE**

*WHEREAS*, the City of Miles City has established certain personnel policies for employees of the City of Miles City, which are set forth in the City of Miles City Personnel Manual;

*AND WHEREAS*, the City Council finds that certain revisions to such policies should be adopted;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. That the following new policy: Drug and Alcohol Free Workplace attached as Exhibit "A"
2. Such policy shall become effective June 22, 2021 upon the passage of this resolution.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22<sup>nd</sup> DAY OF JUNE, 2021.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk



**EXHIBIT "A"**  
**CITY OF MILES CITY**  
**PERSONNEL POLICY**

Section 6:

Workplace  
Standards

Effective:

10/25/2016

Last Revised:

06/22/2021

**DRUG AND ALCOHOL FREE WORKPLACE**

**Resolution #4415**

- **This policy supersedes all previous policies and/or handbooks published by the City of Miles City. Negotiated labor contracts that conflict with this policy will take precedence to the applicable extent.**

In compliance with the Drug-Free Workplace Act of 1988, (Title 41-10-701 through 707, U.S.C. as amended), the City of Miles City is committed to providing an alcohol-free and drug-free workplace. The City of Miles City prohibits the unlawful manufacture, distribution, sale, possession or use of a controlled substance, marijuana, including medical marijuana or alcohol in the workplace or while conducting business. All employees must comply with this policy and notify the Mayor and/or their designee in writing of any drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. The Mayor and/or their designee is responsible for notifying the appropriate federal granting agency of the conviction when the employee involved is working on a federal grant or contract, within ten (10) days of learning of the conviction. Employees who violate this policy may be subject to disciplinary action.

**RESOLUTION NO. 4416**

**A RESOLUTION ESTABLISHING CITY OF MILES CITY PERSONNEL POLICIES REGARDING POLICY DRUG AND ALCOHOL TESTING**

*WHEREAS*, the City of Miles City has established certain personnel policies for employees of the City of Miles City, which are set forth in the City of Miles City Personnel Manual;

*AND WHEREAS*, the City Council finds that certain revisions to such policies should be adopted;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. That the following new policy: Drug and Alcohol Testing attached as Exhibit "A"
2. Such policy shall become effective June 22, 2021 upon the passage of this resolution.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22<sup>nd</sup> DAY OF JUNE, 2021.**


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John Hollowell, Mayor

ATTEST:

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Mary Rowe, City Clerk

 <p style="text-align: center;"><b>EXHIBIT "A"</b> <b>CITY OF MILES CITY</b> <b>PERSONNEL POLICY</b></p>	Section #: 6	Employment Standards
	Effective:	02/01/2007
	Last Revised:	06/22/2021
<b>Drug and Alcohol Testing</b>		
<b>Resolution #4416</b>		

- **This policy supersedes all previous policies and/or handbooks published by the City of Miles City. Negotiated labor contracts that conflict with this policy will take precedence to the applicable extent.**

**PURPOSE**

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the use of alcohol and prohibited substances. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs. The Federal Highway Administration of the U.S. Department of Transportation has enacted 49 CFR Part 382, 391, 392 and 395, as amended, that mandate urine drug testing and breath alcohol testing for persons who are subject to Commercial Drivers License requirements and perform safety-sensitive functions.

This policy is also intended to comply with the Montana Workforce Drug and Alcohol Testing Act §39-2-205 through 39-2-211, MCA.

**POLICY**

Our employees are our most valuable resource. Therefore, it is our goal to prevent accidents and injuries resulting from the misuse of alcohol and prohibited substances, as well as to provide a healthy and safe working environment.

In meeting these goals, it is our policy to:

- A. Assure employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner;
- B. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances;
- C. Create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse;
- D. Recognize drug and alcohol abuse as a treatable illness and encourage employees to seek professional assistance any time alcohol or drug dependency adversely affects their ability to perform their duties;

- E. Maintain a work environment and promote work habits that foster public confidence; and,
- F. Strive to continually improve the service we provide the public and recognize the key role our city plays in public safety.

**Applicability**

Effective January 1, 1996, this policy applies to all employees who are subject to commercial driver's license requirements and perform safety-sensitive functions (hereafter referred to as covered positions). It applies to on-duty time as well as off-site breaks and lunch periods when an employee is scheduled to return to work. (See Attachment II)

**Designated Employer Representative (DER)**

Name: Linda J. Wilkins  
Physical Address: 17 S 8<sup>th</sup> Street  
Mailing Address: P. O. Box 910  
Miles City, MT 59301

**Alternate Designated Employer Representative (DER)**

Name: N/A  
Physical Address: N/A  
Mailing Address: N/A

**Collection Facility**

Name: Checkers, Inc.  
Physical Address: 223 N. Central Ave  
Mailing Address: P. O. Box 899  
Sidney, MT 59270

**Medical Review Officer (Chief MRO)**

Name: A. A. Armstrong, MD  
Company: Western Pathology Consultants, Inc. (WPCI)  
Physical Address: 1124 Broadway, Suite A  
Mailing Address: P. O. Box 1936  
Scottsbluff, NE 69363

**Consortium/Third Party Administrator (C/TPA)**

Name: Western Pathology Consultants, Inc. (WPCI)  
Physical Address: 1124 Broadway, Suite A  
Mailing Address: P. O. Box 1936  
Scottsbluff, NE 69363

**Prohibited Substances**

- A. Prohibited substances" addressed by this policy include the following:
- a. Illegally Used Controlled Substances or Drugs
  - b. Illegal use of controlled substances or drugs, which include marijuana, amphetamines, opiates, phencyclidine, and cocaine is prohibited.
  - c. Illegal use also includes the misuse of legally prescribed drugs and use of illegally obtained prescription drugs.

B. Marijuana, Including Medical Marijuana

- C. The City of Miles City acknowledges marijuana as an illegal drug which is identified in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812). Therefore, it will not accommodate Marijuana, including Medical Marijuana.

D. Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills or judgment may be adversely affected must be reported to the supervisor, and medical advice should be sought, as appropriate, before performing safety-sensitive functions.

A legally prescribed drug means that the employee has a prescription or other written approval, from a physician for the use of a drug in the course of medical treatment; and, the physician advises the employee that the substance does not affect the driver's ability to safely operate a commercial motor vehicle. It must include the patient's name, the name of the substance, quantity/amount to be taken and the period of authorization. The misuse or abuse of legal drugs while performing safety-sensitive functions is prohibited.

E. Alcohol

The use of beverages or substances, including medication, containing alcohol while performing safety-sensitive functions is prohibited. No employee shall perform safety-sensitive functions within four (4) hours after using alcohol. No employee shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. An employee who possesses alcohol will be subject to disciplinary action and will be removed from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours. The employee will also be referred to the Substance Abuse Professional (SAP), with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02. Follow-up testing may be required. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device (EBT). See CFR Part 40, as amended.

**Pre-Employment Testing**

The successful applicant for a covered position will be required to undergo urine drug testing and breath alcohol testing after an offer of employment has been made. The employment offer must be conditioned on receipt of a negative drug test and a confirmed alcohol test indicating alcohol concentration of less than 0.02.

Prior to hire, the prospective employee must provide a written release so that the City of Miles City can obtain from previous employers for the last two (2) years the required information as provided in 49 CFR Part 382, Section 382.413. This information must be obtained from employers for whom the prospective employee operated a commercial motor vehicle. If this information is not provided to the City of Miles City within fourteen (14) calendar days from the date the employment begins, the employee must be removed from performing safety-sensitive functions unless the City of Miles City can document contact was made with the previous employer, the results of that contact, and why the information was not obtained.

A prospective employee with a confirmed positive drug or alcohol test will be disqualified from consideration for the position being filled. This will not prevent this individual from being considered for any subsequent vacancy.

A prospective employee with a confirmed alcohol test result of 0.02 up to 0.04 must complete a second (2nd) test within twenty-four (24) hours with an alcohol concentration test result of less than 0.02. Failure to achieve these test results will disqualify the person for consideration for the position.

### **Reasonable Suspicion Testing**

Employees in covered positions may be subject to a fitness-for-duty evaluation which includes urine and breath testing when there is reason to believe that drug or alcohol use is a potential factor in affecting job performance.

A reasonable suspicion determination will be made by a supervisor who has been trained in reasonable suspicion and who believes that the employee has violated the prohibitions of these regulations based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

Reasonable suspicion determinations must be documented within twenty-four (24) hours of observation and by test results received. A description of the behaviors that led to the determination must be signed by the person who made the determination.

### **Post-Accident Testing**

Employees in covered positions will be required to undergo urine and breath testing if they are involved in an accident with a commercial motor vehicle which occurs on a public road and, EITHER

- involves a fatality; OR,
- a moving violation is issued to the commercial motor vehicle driver; AND,
- EITHER involves injury to a person who, as a result of injury, immediately receives medical treatment away from the scene of the accident; OR,
- one or more of the motor vehicles incur disabling damage as a result of the accident, requiring the vehicle to be towed away by a tow truck or other vehicle because, if it were to be driven it would incur additional damage.

(Note: Disabling damage means that which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It does NOT include damage to tires (even if a spare is unavailable), headlight or taillight, turn signal, horn or windshield damage.)

The employee will be tested within two (2) hours of the accident. If this cannot be done, reasons for non-testing must be documented. Attempts to test will cease after eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing.

Any employee in a covered position involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test. Any employee who leaves the scene of the accident without appropriate explanation prior to submission to drug and alcohol testing will be considered to have refused the test. This will be considered a positive test.

### **Random Testing**

Employees in covered positions will be subject to random, unannounced testing.

The selection for random testing will be made by a scientifically valid method, and each employee shall have an equal chance of being tested each time selections are made. A random number of those tested for drugs will also be subject to alcohol testing.

Drug testing may occur at any time during on-duty time. Alcohol testing will be performed before, during, or after the employee is performing safety-sensitive functions. In accordance with the regulations, the minimum annual percentage rate for alcohol testing will be completed for twenty-five percent (25%) of the average number of covered positions. Drug testing will be completed for fifty percent (50%) of the average number of covered positions. The City of Miles City is in a pool with other employers; the actual percentage of City employees may be higher or lower.

### **Return-to-Duty and Follow-Up Testing**

Employees who previously had a confirmed positive on a drug or alcohol test must have a negative test and be evaluated and released to duty by the Substance Abuse Professional (SAP) before returning to perform safety-sensitive functions for the City of Miles City.

Employees will be required to undergo unannounced follow-up alcohol and/or drug testing as directed by the Substance Abuse Professional (SAP). This will consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the employee's return to duty.

Additionally, employees with a second (2nd) occurrence of a confirmed alcohol concentration test of 0.02 or greater will be required to complete a return to-duty test and also be evaluated by the Substance Abuse Professional (SAP) before returning to work as indicated in Section 6 above.

### **Employee Requested Drug Testing**

An employee who questions the results of a confirmed positive drug test may request an additional test be conducted. This test must be conducted at a different certified testing laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. The method of collecting, storing and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a re-test must be made to the medical review officer within seventy-two (72) hours of notice of the initial test result. Requests after the seventy-two (72) hours



will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. All costs for a retest on the split sample will be paid by the employee unless the second (2nd) test invalidates the original test.

### **Testing Compliance Requirements**

Employees in covered positions will be subject to urine drug testing and breath alcohol testing.

Any employee or prospective employee who refuses to sign any required release(s) for release of information relative to test results or required follow-up evaluations by the Substance Abuse Professional (SAP), fails to comply with a request for testing, provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution shall be considered as having a positive test.

Refusal includes an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. (Note: If the employee or prospective employee is unable to provide the required amount of urine for drug testing, he/she will be instructed to drink not more than twenty-four (24) ounces of fluids and, after a period of up to two (2) hours, again attempt to provide a complete sample using a fresh collection container with the original insufficient specimen discarded.) Refusal to submit to testing and not being available for post-accident testing, unless injury prevents testing, will be considered insubordination and a positive test. Disciplinary action will be taken, which could include termination.

### **Testing for Prohibited Substances**

Employees in covered positions will be subject to the following tests: pre-employment; post-accident; random; reasonable suspicion; return-to-duty and follow-up. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities that have been approved by the U.S. Department of Health and Human Services. All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended. The City of Miles City will protect individual dignity, privacy and confidentiality throughout the testing process.

### **Drug Testing**

Drug testing may occur at any time during on-duty time. The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines (including methamphetamines) and phencyclidine.

An initial drug screen will be conducted on each specimen. For those specimens that are positive, a confirmatory Gas Chromatography/Mass Spectrometry test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds in 49 CFR Part 40, as amended.

The following actions will occur as a result of a confirmed positive drug test:

- **First Occurrence** - removal from performing safety-sensitive functions; and subject to long-term disciplinary suspension without pay (ten (10) or more working days), disciplinary demotion, or recommendation to the supervisor for termination. Unless a recommendation is

made to the supervisor for termination, the employee will be referred to the Substance Abuse Professional (SAP) for evaluation and a determination of what assistance, if any, the employee needs in resolving problems associated with controlled substances use; released to duty by the Substance Abuse Professional (SAP); and completion of a return-to-duty controlled substances test with a verified negative result for controlled substances use.

- **Second Occurrence** - removal from performing safety-sensitive functions; suspension without pay; and recommendation made to the supervisor for termination.

If the City of Miles City determines that an employee will undergo reasonable suspicion testing, the employee shall be removed from performing safety-sensitive functions until the City is notified of acceptable test results.

### **Alcohol Testing**

Alcohol testing shall be performed only when the employee is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions. (See the six numbered items under the definition of on-duty time.)

Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT).

If the initial-test indicates an alcohol concentration of 0.02 or greater, a second (2nd) test will be performed to confirm the results of the initial test.

A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test, and is prohibited conduct under 49 CFR 382.

The following actions will occur:

- A. Confirmed alcohol concentration of 0.02 up to 0.04:
  - **First Occurrence** - Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test; and completion of a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.
  - **Second and any Additional Occurrences** - Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. The employee will be referred to the Substance Abuse Professional (SAP) for evaluation to determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and be released to duty by the Substance Abuse Professional (SAP), with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02.
- B. Confirmed alcohol concentration of 0.04 up to 0.10 (positive test):
  - **First Occurrence** - Removal from performing safety-sensitive functions, and subject to long-term disciplinary suspension without pay (ten (10) or more working days), disciplinary demotion or a recommendation to the supervisor for termination. Unless a recommendation is made to the supervisor for termination, the employee will be referred to the Substance Abuse Professional (SAP) for evaluation to determine what assistance, if any, the employee needs in

resolving problems associated with alcohol misuse and be released to duty by the Substance Abuse Professional (SAP), with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02 and subject to follow-up testing as outlined in Section 6, Paragraph G, below.

- **Second Occurrence** - Removal from performing safety-sensitive functions; suspension without pay; and recommendation to the supervisor for termination.

C. Confirmed alcohol concentration of 0.10 or greater (positive test):

- **First Occurrence** - Removal from performing safety-sensitive functions suspension without pay, and recommendation made to the supervisor for termination.

### **Employee Assessment**

Any employee who has a confirmed positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40, as amended will be evaluated by the Substance Abuse Professional (SAP) designated by the City of Miles City. The employee must sign a release so that the City can obtain information on the rehabilitation program duration, completion and follow-up requirements.

The Substance Abuse Professional (SAP) will evaluate the employee to determine what assistance, if any, the employee needs in resolving problems associated with the prohibited use or abuse of drugs or alcohol, recommended a rehabilitation program and follow-up schedule and determine if the rehabilitation program has been successfully completed. The Substance Abuse Professional (SAP) will also determine if and when the employee can be released to return to duty.

If an employee is released to return to duty, he/she must properly follow the rehabilitation program prescribed by the Substance Abuse Professional (SAP) and have a verified confirmed negative return-to-duty test result as indicated in Section 6 above. Failure to follow the program will result in a recommendation to the supervisor for termination of employment.

### **Proper Application of Policy**

The City of Miles City is dedicated to assuring fair and equitable application of this policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and Impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to a subordinate, shall be subject to disciplinary action up to and including termination.

### **System Contact**

Any questions regarding this policy or any other aspects of the drug-free and alcohol-free City of Miles City program should contact the Mayor of the City of Miles City.

ADOPTED this 22<sup>ND</sup> day of JUNE, 2021.

CITY OF MILES CITY COUNCIL

## ATTACHMENT I

### Definitions

**Accident** - An occurrence involving a City of Miles City commercial motor vehicle operating on a public road: AND EITHER involves a fatality; OR a moving violation is issued to the commercial motor vehicle driver; AND EITHER involves injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; OR one (1) or more motor vehicles incurs disabling damage as a result of the accident, requiring the vehicle to be towed away by a tow truck or other vehicle because if it were to be driven, it would incur additional damage. (Note: Disabling damage means that which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It does NOT include damage to tires (even if a spare is unavailable), headlight or taillight, turn signal, horn or windshield damage.)

**Alcohol** - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

**Alcohol Concentration** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

**Alcohol Use** - The drinking or swallowing of any beverage, mixture, or preparation, including any medication containing alcohol.

**Breath Alcohol Technician (BAT)** - An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.

**Chain of Custody** – Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, the procedures shall require that an appropriate drug testing custody form (see CFR 49 part 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt the laboratory an appropriate laboratory chain of custody forms account for the sample within the laboratory.

**Collection Site** – A place designated by the employer where individuals present themselves for the purpose of providing specimen of their urine to be analyzed for the presence of drugs.

**Commercial Driver's License** – A license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, authorizing an individual to operate a class of commercial motor vehicle (CMV). The individuals required to have a CDL under 49 CFR part 383 are subject to controlled substances and alcohol testing. Individuals who are required to possess CDLs by virtue of State or local law or by employer policy, but not by Federal regulation, are not subject to the provisions of 49 CFR parts 382 and 383.

**Commercial Motor Vehicle (CMV)** - A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- has a gross combination weight of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight (GVW) rating of more than 101000 pounds; or
- has a gross vehicle weight rating of 26,001 or more pounds; or

- is designed to transport 16 or more passengers, including the driver; or is of any size and is used in the transportation of hazardous materials requiring placards.

**Confirmation Test** - For alcohol testing, this means a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration.

For controlled substances testing, this means a second analytical procedure to identify the presence of a specific drug or metabolite determined by Gas Chromatography/Mass Spectrometry (GC/MS) which is independent of the screen

test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

**Consortium/Third Party Administrator** – A service agent that provides or coordinates one or more drug and/or alcohol testing services to employers. C/TPAs typically provide or coordinate the provision of a number of such service and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes but is not limited to, groups of employers that join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not employers.

**Controlled Substance** – Any drug or other substance that impairs the ability or alertness of an employee performing a safety-sensitive function, regardless of whether the substance is legal or illegal. Legally, a controlled substance is a drug or other substance, or immediate precursor, listed in 21USC 812 (Controlled Substance Act). The term does not include distilled spirits, wine, malt beverages, or tobacco.

**Covered Positions** - Positions that are subject to Commercial Driver's License (CDL) requirements and perform safety-sensitive functions. (See ATTACHMENT II).

**Designated Employer Representative (DER)** – An individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the City. Service agents cannot serve as DERs.

**Driver** - Any person (volunteer or paid) who operates a CMV and is required to have a CDL. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

**Employee** – An individual designated in law or regulation as subject to drug testing and/or alcohol testing. As used in this policy, "employee" includes an applicant for employment.

**Evidential Breath Testing Device (EBT)** - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's September, 1993, or later "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the NHTSA, Office of Alcohol and State Programs. As of October 1, 1997, EBTs are considered evidentiary

**Medical Review Officer (MRO)** - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program, who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an

individual's confirmed positive test result, together with his or her medical history, and any other relevant biomedical information.

**Negative Test** - For drugs, a test with the amounts present that are at or below the minimum thresholds in 49 CFR Part 40, as amended. For alcohol, a concentration below 0.04.

**On-duty Time** - All time from the time a driver begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. On-duty time shall include:

1. All time at the city shop, city facilities or other property, or on any public property, waiting to be dispatched, unless the employee has been relieved from duty by the city.
2. All time inspecting to make sure that the parts, accessories and emergency equipment are in good working order and ready for use or otherwise inspecting, servicing, or conditioning any commercial vehicle.
3. All time spent at the driving controls of a commercial motor vehicle in operation.
4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth.
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipment loaded or unloaded.
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Performing a Safety-Sensitive Function** - Means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function. See items 1-6 above in the definition of on-duty time.

**Positive Test** - For a drug test, an amount above the minimum thresholds in 49 CFR Part 40, as amended. For an alcohol test, a breath alcohol concentration at 0.04 or greater.

**Refuse to Submit** - (to an alcohol or controlled substances test) means that a driver:

- Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part;
- Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or,
- Engages in conduct that clearly obstructs the testing process.

**Reasonable Suspicion** - Belief that the employee has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

***Safety-Sensitive Functions*** -. Employees who exercise a Commercial Driver's License (CDL employees), who also have additional regulations which apply to them, Employees who operate City Vehicles?

***Screening Test*** - (Also known as initial test) - in alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

***Substance Abuse Professional (SAP)*** - A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism, and Drug Abuse Counselors Certification Commission) with knowledge of a clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## **ATTACHMENT II**

City of Miles City Positions Requiring a Commercial Driver's License

All employees who are, or may, operate equipment in excess of 26,000 pounds gross vehicle weight (GVW.)



**ATTACHMENT III**

**EMPLOYEE ACKNOWLEDGMENT**

Of Receipt of Drug and Alcohol Policy

The undersigned, an employee of the City of Miles City, hereby certifies that he/she has received a copy of the City of Miles City's Drug and Alcohol Policy. The undersigned also certifies that he/she has reviewed and read said policy, understands the contents thereof and agrees to abide by its terms.

\_\_\_\_\_  
EMPLOYEE

\_\_\_\_\_  
Employee's Signature  
(Print Name)

\_\_\_\_\_  
Witness' Signature  
(Print Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**RESOLUTION NO. 4417**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "STATE OF MONTANA AGREEMENT MT-21-023 AMENDMENT 1" WITH THE STATE OF MONTANA HISTORIC PRESERVATION OFFICE INCREASING CURRENT FUNDING IN THE AMOUNT OF \$6000.00 TO THE HISTORIC PRESERVATION OFFICE FOR USE AS MATCHING FUNDS FOR THE BIG SKY TRUST FUND GRANT MATCH**

*WHEREAS*, the City of Miles City desires to enter into an agreement with the Montana State Historic Preservation Office to assist in the funding of the Miles City Historic Preservation Officer position. Amending the agreement to accept \$6,000.00 in additional funding for the purpose of allocating the additional funding to the Big Sky Trust Fund for a feasibility study for the Miles City BNSF Depot:

*AND WHEREAS*, the Montana State Historic Preservation Office has prepared an Agreement setting for the obligations of the City and the State, and the City of Miles City desires to enter into such Agreement;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The "State of Montana Agreement MT 21-023 Amendment 1," attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 22<sup>ND</sup> DAY OF JUNE, 2021.**

\_\_\_\_\_  
John Hollowell, Mayor

ATTEST:

\_\_\_\_\_  
Mary Rowe, City Clerk

**STATE OF MONTANA AGREEMENT MT-21-023  
AMENDMENT 1**

This is an amendment to State of Montana Agreement MT-21-023 made between Miles City, 17 South Eighth Street, Miles City, MT 59301, DUNS# 134230325 (the "Subgrantee") and the Montana State Historic Preservation Office, Montana Historical Society ("MHS"), 225 North Roberts, PO Box 201202, Helena, Montana 59620-1202 (the "Grantor").

The two parties, in consideration of mutual covenants and stipulations described in the agreement and below, agree to amend the agreement as follows:

The following amendment replaces the original language noted for the Section 1, Section 2, and Subsection 3.1 of Section 3 as indicated:

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

The Agreement shall take effect as of April 1, 2021, and shall terminate March 31, 2022, unless a new termination date is set or the Agreement is terminated as provided in this Agreement. Total payments by the Grantor for all purposes under this Agreement shall not exceed **\$12,000.00**. In the event that the Grantor does not receive full funding from the National Park Service, the total grant award may be reduced, as outlined in "The Montana Certified Local Governments Manual."

Payment shall be made on a reimbursement basis by request of Subgrantee to the Grantor. In no event is this Agreement binding on the State unless State's authorized representative has signed it. Any legal counsel signature approving legal content of the Agreement and any procurement officer signature approving the form of the Agreement do not constitute an authorized signature.

**2. SERVICES AND/OR SUPPLIES**

The Subgrantee shall:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals, and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Ensure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Designate a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the Subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
  - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
  - b. Provide technical assistance, direction, and/or literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
  - c. Evaluate historic properties for potential and feasible reuse and rehabilitation;
  - d. Coordinate, promote and participate in events such as National Historic Preservation Month and/or other preservation related activities;
  - e. Cooperate and communicate with the Grantor and fellow HPO/HPCs in Montana and elsewhere as appropriate; and
  - f. Submit semi-annual progress reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify the benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO

carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

6. Send at least one (1) person from the Certified Local Government to a SHPO- approved training. The attendee shall attend the entire training and report back to their HPC.
7. Work to hire a qualified historic architect to prepare a feasibility study and condition assessment report for the National Register-listed Northern Pacific Railway Depot at 500 Pacific Avenue in Miles City, MT 59301 and submit both products to the Grantor by March 31, 2022.

All work completed under this funding Agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantor. Final products or services that do not fulfill the requirements of this Agreement, and do not comply with the appropriate Secretary of the Interior's Standards, will not be reimbursed, and any advance payments made in connection with such products or services must be repaid to the Grantor.

### 3. CONSIDERATION/PAYMENT

**3.1 Payment Schedule.** In consideration of services rendered in this Agreement, the Grantor agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit Semi-Annual Progress Reports, meeting minutes, and Requests for Reimbursement. Reports will be accompanied by the following documentation:
  - a. The Subgrantee's name, address, and Agreement Number MT-21-023;
  - b. A report discussing the work completed during the reporting period. Include meeting agendas and minutes;
  - c. An itemized listing of cash or in-kind donations that comprise the non-federal match;
  - d. An itemized listing of project expenses that are charged to the federal grant. If indirect costs (IDC) are claimed for reimbursement (or match), the IDC rate must be in accordance with 2 CFR Part 200.414. A copy of the IDC approval letter from the Cognizant agency must be submitted to the Grantor and approved prior to any reimbursement;
  - e. Receipts, invoices, and/or financial reports sufficient to document each expenditure;
  - f. The net request for payment (reimbursement); and
  - g. Products produced during the reporting period.
2. All Requests for Reimbursement must be approved by the Grantor prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of three (3) years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allowability under Chapters 12, 13, and 14 of the NPS Historic Preservation Fund Manual and the Montana Certified Local Governments Manual. The Subgrantee may request a copy of the Montana Certified Local Governments Manual from the Grantor and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Subgrantee shall, at minimum, provide documentation detailing matching non-federal funds for the overall grant award. In order to receive the full grant award of \$12,000.00, the minimum dollar amount of match necessary to be provided by the Subgrantee is \$4,000.00 in matching in-kind services or cash. In the event that the grant award is reduced, the match requirement would be reduced proportionally. Requests for Reimbursement require the

same documentation relative to the amount requested. The accepted Grant Application, reviewed and approved by the Grantor, provides an estimation of sources and amounts of matching funds from the Subgrantee.

5. The Grantor may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

All other terms and conditions outlined in the Agreement and any modifications thereto remain unchanged. To express the parties' intent to be bound by the terms of this Amendment, they have executed this document on the date set out below:

BY: Denise King	BY:
Centralized Services Division Administrator, Montana Historical Society	(Name/Title)

SIGNATURE:	SIGNATURE:
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DATE:	DATE:
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