

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Amanda Grint, Water Resources Engineer

SUBJECT: Papio Hydrology Contract with FYRA Engineering

DATE: June 3, 2016

A flood study of the Papillion Creek Watershed has been ongoing since 2003. This study is a collaboration between the Federal Emergency Management Agency (FEMA), US Army Corps of Engineers (USACE) and the District. In 2010, the flood maps for the West Papillion basin were completed and published. The study for the Big and Little Papillion branches began in June 2008 and it was intended for flood maps to be published in 2013 however, due to delays in USACE funding, the timeline has changed and it is currently anticipated that the maps will be published in 2019.

As part of the Big and Little Papio project, new hydrology for the watershed was completed in 2010 by the USACE. The peak flows increased substantially in many parts of the watershed. The next step of the study, the hydraulics, began in 2011 but the USACE funding stalled and in 2014 it was determined that the USACE could not complete the project. FEMA provided the funding to finish the hydraulics using their contractor and the initial results were presented at a March 2016 Flood Risk Review meeting. Significant increases in flows and floodplains are seen on the proposed flood maps especially along the Little Papillion Creek.

As District and the community staff continue to review this information, the District was presented with a proposal by FYRA Engineering to refine the 2010 hydrology to align with new federal guidelines. There has been new data published by the National Oceanic and Atmospheric Administration (NOAA) updating rainfall intensities and distribution patterns. Additionally, the District and the Papillion Creek Watershed Partnership has or will complete four flood control reservoirs by 2019. FYRA Engineering presented this information to the District and indicated that an update of the hydrology provides the most current data and could make a significant impact on the proposed flood maps.

FYRA Engineering has prepared a scope to update the hydrology in the Papillion Creek Watershed using the new NOAA data and Applied Weather Associates as a subcontractor. The scope and fees are included for review. Because of this team's unique knowledge of the rainfall distribution patterns, experience with the process having those patterns approved by FEMA as well as their proposal to gather the data to present to FEMA in a short timeframe, staff recommends waiving current District policy for consultant selection and selecting this team to complete the work.

The scope includes development of temporal distributions, calibration to rainfall events, hydrologic modeling and preliminary hydraulic routing to compare floodplain mapping at four locations. An initial scope of \$25,000 was executed in mid-May to gather preliminary hydrology and distribution information. This was necessary to provide to FEMA so it could be determined if an updated study would be of significant benefit. This proposed contract would complete the remaining scope necessary to provide

updated hydrology for the study. Since the hydraulics have already been completed, it will be necessary to contract that work at a later time.

The Papillion Creek Partnership is considering a contribution of \$150,000 toward these hydrology and hydraulics updates. A vote will be taken at the June meeting and if approved, the contribution will offset the District's costs.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to waive District Policy 15.2 and execute the proposed contract with FYRA Engineering for an update of the Papillion Creek Watershed hydrology in the amount of \$167,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

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**

Original Version

Prepared by



Issued and Published Jointly by



MODIFIED VERSION

Papio-Missouri River Natural Resources District

A redline comparison copy of this document highlighting the changes made to the original version will be made available to you upon request.

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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.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES
(P-MRNRD MODIFIED)**

THIS IS AN AGREEMENT effective as of June 9, 2016 ("Effective Date") between Papio-Missouri River Natural Resources District ("Owner") and [FYRA Engineering] ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: [Papillion Creek Watershed Hydrologic Modeling Update] ("Project").

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

Engineer's services under this Agreement are generally identified as follows: [Review of past modeling methodologies in Papillion Creek Watershed and assessment of potential advances in hydrologic assessments and rainfall distribution information to determine potential effect on proposed draft floodplain map updates from FEMA]

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

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

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- D. Owner shall give written notice to Engineer as soon as reasonably practicable whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

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

3.02 Time for Completion

- A. Engineer shall complete its obligations as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended and such changes or delays increase the time of performance of 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services in writing, then Owner shall pay Engineer compensation based on Engineer's normal hourly rates for time actually and necessarily devoted to services rendered in completing the additional services or shall negotiate an agreed upon fixed amount to perform such additional services, and the time for completion of Engineer's services shall be adjusted equitably, as agreed upon in writing by the parties.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to unreasonably delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure in addition to any other remedies to which Owner may be entitled.

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 and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis by the last business day of the month. Invoices are due and payable within 45 days of receipt. Notwithstanding anything to the contrary, in no event shall Owner be obligated to make any payment, whether as compensation for services or relating to charges by consultants, reimbursement and/or otherwise, that would result in exceeding the Maximum Amount unless Owner otherwise agrees in a signed written agreement entered into pursuant to this Agreement.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* Subject to Paragraph 4.02.C, if Owner fails to make any payment due Engineer for services and expenses within 45 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 this Agreement 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 as soon as reasonably practicable 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. Engineer shall continue performing services while any dispute is pending provided Owner has paid all undisputed amounts. Owner may withhold payment to the extent required to protect Owner from loss arising out of Engineer's performance or failure to perform any services.
- D. *Sales or Use Taxes:* If after the Effective Date of this Agreement any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

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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.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession currently practicing under similar circumstances at the same time and in Nebraska. 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 and solely 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.

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

1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Owner's policies, procedures, performance standards and other information (collectively, the "Owner Policies") are accessible at <http://www.papionrd.org/about-nrd/policies-and-manuals/>. Engineer shall comply with any and all such Owner Policies and with any other instructions of Owner relating to Engineer's performance of services under this Agreement that Owner provides to Engineer in writing (collectively with Owner Policies, the "Owner Requirements"), subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. This Agreement is based on Laws and Regulations and Owner Requirements as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation, as applicable:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of new or different Owner Requirements.
 4. Prior to the Effective Date, Engineer shall promptly notify Owner in writing of any objections to the Owner Requirements or conflicts between the Owner Requirements and Laws and Regulations and the parties shall use their best efforts to resolve such objections or conflicts.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee and amended and/or supplemented by the parties (the "Standard General Conditions"), unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time directly supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have direct authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor unless such action or omission is caused in whole or in part by Engineer.

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- I. *Intentionally deleted.*
- 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 or caused to be made by Engineer or its Consultants or other agents or representatives.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements except to the extent otherwise provided for in this Agreement, Addenda, the Contract Documents and/or any other agreement between Engineer and Owner.
- L. Engineer's services do not include providing legal advice or representation.
- M. Except to the extent otherwise agreed to by Owner and Engineer in writing, Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs. Engineer understands, acknowledges and agrees that Engineer is responsible for ensuring that it, its Consultant, and their employees and representatives are aware and know of the applicable requirements of Contractor's and Owner's safety programs

6.02 *Design Without Construction Phase Services*

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

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and shall become property of Owner without restriction or further limitation on their use, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and

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subject to Owner acknowledging that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other purpose, without written verification or adaptation by Engineer or another engineer. Engineer acknowledges that the Project is a public project subject to the Nebraska public record statutes, Neb. Rev. Stat. § 87-712, *et seq.*

- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations. If requested by Owner, at no additional expense, Engineer shall make Documents available in an electronic format to be agreed upon by the parties.
- C. *Intentionally deleted.*
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

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

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer with a waiver of subrogation for such additional insureds.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 6.03 of the "Standard General Conditions of the Construction Contract," No. C-700 (Rev. 1) as amended and/or

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supplemented by the parties, and shall cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.

- 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 prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project 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 or additional insured thereunder or against Engineer or its Consultants.
- 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. At any time, 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, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project upon seven days written notice to Engineer.
- 2. *By Engineer:* Subject to Paragraph 4.02.C, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for undisputed invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

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

- 1. For cause,
 - a. by Owner upon 7 days written notice if Engineer fails to fulfill in a timely and proper manner any of its obligations hereunder. Owner shall be entitled to withhold payment to Engineer until the Project is completed and the damages to Owner due to Engineer's default have been determined. Engineer shall be entitled to payment

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for the value of services performed less a deduction for the damages suffered by Owner as a result of the default.

b. by Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 120 days for reasons beyond Engineer's control; or
- 3) as set forth in Paragraph 6.10.D.
- 4) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 7 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 7 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, 30 days after the date of receipt of the notice.

2. For convenience, by Owner for any reason or no reason and with or without cause effective upon Engineer's receipt of notice from Owner.

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

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have full ownership and rights to 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.D.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

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termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C and incurred prior to the effective date of the termination. Under no circumstances shall Owner be responsible for Engineer's indirect or consequential damages, including, but not limited to, lost or anticipated profits.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state of Nebraska.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer 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. Engineer may not 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 Owner, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge Engineer from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to 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.

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6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, then Engineer may, at its option and without liability, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- D. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- E. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification 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, managers, partners, agents, consultants, and employees, from and against any and all claims, costs, losses, damages, and judgments (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 this Agreement and/or the Project, provided that any such claim, cost, 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 or intentional misconduct of Engineer or Engineer's principals, officers, directors, managers, members, partners, agents, employees, or Consultants or other representatives.

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- B. *Indemnification by Owner:* To the extent permitted by Laws and Regulations, 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, damages, and judgments (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 this Agreement and/or the Project, provided that any such claim, cost, loss, damages, or judgment is directly 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 or intentional misconduct of Owner or Owner's officers, directors or employees with respect to this Agreement or to the Project.
- 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 and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph 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. *Intentionally deleted.*
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, 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 or the Project, from any cause or causes; provided, however, that this waiver does not apply to restrict or limit available insurance or indemnity claims arising from third-party claims.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at no cost to Owner.

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 facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Non-Discrimination.* Engineer shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Project, with respect to his/her hire, tenure, terms, conditions, or privileges of employment, because of his or her race, color, religion, sex, disability, or national origin.
- G. *Ethics in Public Contracting.* Engineer represents and warrants that it has not and will not pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any Nebraska or other government officer, board member, employee or evaluator based on the understanding that the receiving person's vote, actions, or judgment will be influenced thereby. Engineer further represents and warrants that it is prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure any contract in any way relating to the Project. It is the intent of this Paragraph 6.13.F to assure that the prohibition of government contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the Owner that the process of evaluation of proposals and award of the Work and the Project be completed without external influence. It is not the intent of this Paragraph 6.13.F to prohibit any party from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this or any other contract or agreement or proposal. Engineer may not refer to receiving the award of this Agreement or the Project in advertising in such a manner as to state or imply that it or its services are endorsed or preferred by Owner. News releases pertaining to the Work shall not be issued without prior written approval from Owner. If Engineer is found to be in non-compliance with this Paragraph 6.13.F, Engineer may forfeit

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the Agreement and the Project and any contract or other agreement relating to the Project awarded to it.

- H. *Sovereign Immunity*. Nothing in this Agreement or in any other agreement between the parties shall be construed as a waiver of all or any part of, or as in any way limited, the sovereign immunity afforded to Owner pursuant to Laws and Regulations.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, in the following provisions, in the Standard General Conditions, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Owner and Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

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8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract or other arrangement with Engineer to furnish services with respect to this Project.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

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17. *Day*—A calendar day of 24 hours measured from midnight to the next midnight.
18. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
19. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the proposed Work to be performed by Contractor in accordance with and for the benefit of the Project.
20. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
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. *Maximum Amount*—The aggregate amount of _____ (\$_____.____), which is the maximum to be paid by Owner with respect to and/or pursuant to this Agreement under any and all circumstances unless Owner agrees otherwise in a signed written agreement entered into pursuant to this Agreement.
25. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
26. *Project*—As defined on the first page of this Agreement, and including the total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
27. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

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28. *Reimbursable Expenses*—The expenses incurred reasonably and directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project, as detailed in Exhibit C.
29. *Resident Project Representative*—The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
30. *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.
31. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
32. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
33. *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.
34. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
35. *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.
36. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
37. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances

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

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

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- ~~D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~
- ~~E. Exhibit E, Notice of Acceptability of Work.~~
- ~~F. Exhibit F, Construction Cost Limit. NOT USED.~~
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- ~~I. Exhibit I, Limitations of Liability. NOT USED.~~
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

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8.02 *Total Agreement*

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

8.03 *Designated Representatives*

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

8.04 *Engineer's Certifications*

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

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

Owner:
Papio-Missouri River Natural Resources District

Engineer: [FYRA Engineering]

By: []
Print name: John Winkler
Title: General Manager
Date Signed: []

By: []
Print name: [Michael K. Sotak]
Title: [Owner/Principal Engineer]
Date Signed: []

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

[E-8759]

State of: [Nebraska]

Address for Owner's receipt of notices:

P-MRNRD
8901 S. 154th Street
Omaha, NE 68138-3621

Address for Engineer's receipt of notices:

[12702 Westport Parkway]
Suite 300
Omaha, NE 68138

Designated Representative (Paragraph 8.03.A):

[Amanda Grint, P.E.]
Title: [Project Manager]
Phone Number: [402.444.6222]
E-Mail Address: [agrnt@papionrd.org]

Designated Representative (Paragraph 8.03.A):

[Michael K. Sotak, P.E.]
Title: [Owner/Principal Engineer]
Phone Number: 402.502.7131]
E-Mail Address: [msotak@fyraengineering.com]

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This is **EXHIBIT A**, consisting of [17] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [June 9, 2016].

Engineer's Services

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

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

See Attachment 1 to Exhibit A

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the 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 Project requirements, then proceed with the study and evaluation of such potential solutions: [N/A]
 - 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 [N/A] 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 Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential 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 Project-related data and information, for Engineer's use in the study

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Exhibit A – Engineer's Services

and evaluation of potential solution(s) to Owner's 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 Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the 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. If requested to do so by Owner, 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 "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Perform or provide the following other Study and Report Phase tasks or deliverables: [Prepare Technical Memorandum including any FEMA-compliant hydrologic model and supporting materials to summarize results of study]
15. Furnish 2 review copies of the Report and any other Study and Report Phase deliverables to Owner within [120] calendar days of the Effective Date and review it with Owner.

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Exhibit A – Engineer's Services

Within [14] calendar days of Engineer's review with Owner, Owner shall submit to Engineer any comments regarding the furnished items.

16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish 2 copies of the revised Report and any other Study and Report Phase deliverables to the Owner within 14 calendar days of receipt of Owner's comments.
- 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 and Owner has confirmed that Owner has confirmed in writing that it has no additional comments to the Report or any other Study and Report Phase deliverable.

A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable 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 all 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 Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

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Exhibit A – Engineer's Services

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 the Owner Requirements and Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
[N/A]
 10. Furnish 2 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. Owner shall submit to Engineer any comments regarding the furnished items.
 11. 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 2 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 14 calendar days after receipt of Owner's comments.
- 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 and Owner has confirmed in writing that Owner has no additional comments to such documents and/or deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

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Exhibit A – Engineer's Services

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. If requested by Owner, 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. Perform or provide the following other Final Design Phase tasks or deliverables:
[N/A]
10. Furnish for review by Owner, its legal counsel, and other advisors, 2 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, within [7] calendar days of authorization to proceed with the Final Design Phase, and review them with Owner. Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

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Exhibit A – Engineer's Services

11. 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 **2** final copies of such documents to Owner within **7** calendar days 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, and Owner has provided Engineer with written confirmation that Owner has no additional comments to any of the foregoing items.
 - C. In the event that the Work designed or specified by Engineer 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), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
 - D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **[N/A]**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, 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.

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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 A2.02.A.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.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: [N/A]
- 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 Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in the Standard General Conditions or other construction general conditions specified in this Agreement. The duties, responsibilities, and authority of Engineer in the Construction Contract may be modified only with the Engineer's consent. 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):* DELETED

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3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
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, upon request, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary and/or as reasonably requested by Owner, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

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- 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 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 on its own behalf with respect to third parties, during such visits or as a result of such observations of the Work, be deemed to 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 unless such failure is caused in whole or in part by Engineer, its Consultants, agents or other representatives.
10. *Defective Work:* Reject Work if Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents, that such Work will not produce a completed Project that conforms generally to the Construction Contract Documents and/or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated 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 believes 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. Promptly to ensure the orderly completion of Contractor's work, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents. Such clarifications, interpretations and/or decisions must be consistent with the intent and reasonably inferable from the Construction Contract Documents.

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

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

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

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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 Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Provide assistance in connection with the adjusting of Project equipment and systems.
 4. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.
 5. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
 6. Perform or provide the following other Post-Construction Phase tasks or deliverables:
[REDACTED] ***[List any such tasks or deliverables here.]***
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

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

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- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner in writing; 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. *Intentionally deleted.*
 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if and to the extent such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
 17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
 20. Preparation of operation, maintenance, and staffing manuals.
 21. *Intentionally Deleted.*
 22. *Intentionally Deleted.*
 23. *Intentionally Deleted.*

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24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding or dispute related to 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; 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. *Intentionally Deleted.*
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

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

- A. Engineer shall advise Owner in writing that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services during construction made necessary by (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 by Contractor, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

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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, except to the extent such inadequate submissions are due to Engineer, its Consultants, agents and/or other representatives.
8. *Intentionally Deleted.*

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Attachment 1 to Exhibit A

PROJECT MANAGEMENT

Client/Stakeholder Meetings

Preparation for and attendance of up to six (6) meetings, exclusive of other meetings specified in this Attachment 1 to Exhibit A, with the Papio-Missouri River Natural Resources District (P-MRNRD) and other invited stakeholders. Project review meetings will occur at intervals arranged with and approved by the P-MRNRD. Meeting minutes and project task lists will be prepared by FYRA and distributed after each meeting for approval by the P-MRNRD.

FEMA Coordination Meeting

Preparation for and attendance of one (1) coordination meeting with FEMA to discuss study results. Meeting time/date will be coordinated with the Papio-Missouri River Natural Resources District (P-MRNRD) and other invited stakeholders. Meeting minutes and project task lists will be prepared by FYRA and distributed after each meeting for approval by the P-MRNRD.

Project Team QA/QC

Internal review of all study results pertinent to the development of the final deliverable. All reviews will be completed by a professional engineer registered in the State of Nebraska and documented for review upon request.

CALIBRATION OF STORMS AND DESIGN TEMPORAL DISTRIBUTIONS

Four Calibration Rainfall Events

AWA will analyze the rainfall associated with four events over the basin using the Storm Precipitation Analysis System (SPAS). Results of these analyses will produce gridded rainfall data which will be provided as sub basin averages required for proper model calibration. These data can be provided in temporal accumulation increments as low as 5-minutes if needed. Because each storm takes about 2 weeks to complete, AWA will provide the results of each analysis as they are completed so FRYA can work with the data in parallel. FYRA will review AWA work and incorporate findings into the overall study direction.

Create 10-, 50-, 100- and 500-Year Temporal Distributions

AWA will plot and evaluate the mass curve accumulations for several storms that are specifically relevant to the watershed. Much of the plotting and analysis has already been completed during the Statewide PMP development and similar temporal analysis as part of the Wyoming statewide PMP



work. Storms will then be grouped by storm type (local, hybrid, and general). AWA will evaluate the accumulations patterns individually and in groupings through various methods. Discussions will take place between AWA and FYRA in order to come to an acceptable, yet appropriately conservative application relevant to the watershed. The result of this task will be the recommended temporal patterns associated the storm type(s) being modeled. The temporal accumulations patterns developed for other similar locations have been significantly different from NRCS Type II curves and other data produced by similar documents. FYRA will review AWA work and incorporate findings into the overall study direction.

Develop Site Specific Areal Reduction Factors

AWA will review areal reduction factors (ARFs) associated with several storms specifically relevant to the watershed. This information will be used to derive the recommended ARF for the watershed. Based on previous similar investigations, this values is likely to be significantly different from those used previously. FYRA will review AWA work and incorporate findings into the overall study direction.

Technical Memorandum

AWA will document the storms analyzed, the data used to evaluate the mass curve accumulation, the reasoning behind grouping of storm by type and region, and how any recommendations were developed. FYRA will review AWA work and incorporate findings into the overall study direction and memorandum used for the overall study.

HYDROLOGIC MODELING

Review Existing Modeling and Approach

Review all existing materials related to the models used and draft maps prepared for review.

Verify Existing Calibration (Against New Calibration Events)

Review all existing calibration information and make comparisons to new calibration events to analyze any differences attributable to study results and statistical confidence.

Recalibrate Hydrologic Model to New Calibration Events

Based on results of comparison of existing vs. new calibration results, re-calibrate hydrologic models used for map production.

Incorporate Regional Reservoirs into HMS Model



Add Regional Dam Sites 15A, WP5, WP6 and WP7 to hydrologic models and assess changes in downstream discharge rates.

Verify Channel Routing Methods in Large Floodplains

Assess the methodology and sections used in previous studies and models to route flows through large floodplains. It is possible that channel geometry changes may alter the routing results.

Verify Storm Sizing and Centering for Subwatersheds

Review all model input related to the storm sizing and centering to ensure that proper storm sizing assignments were made to subwatersheds.

Run and Aggregate Output from HEC-HMS for Hydraulic Modeling

Use updated model outputs to assemble aggregated data for delivery to FEMA in desired format for use by FEMA in hydraulic modeling.

Produce FEMA Compliant Deliverables

Prepare all deliverables required by FEMA for potential modifications to hydrologic input into hydraulic model in FEMA-compliant format.

PRELIMINARY HYDRAULIC ROUTING

Run Existing Hydraulic models for Four Locations

Make preliminary assessments of what hydraulic routing results might be at four different locations in the watershed to be determined by the P-MRNRD (Altech, Downtown Papillion, Aksarben Village, etc.)

Modify Bridge Routines as Needed

Assess past methodologies used and propose changes if necessary to model input related to routing bridge routines.

Provide Floodplain Mapping Comparisons

Based on results of hydrologic modeling and preliminary hydraulic comparisons, assess the potential changes in floodplain mapping extents at the four locations determined by the P-MRNRD.

This is **EXHIBIT B**, consisting of [4] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [June 9, 2016].

Owner's Responsibilities

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

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than the Standard General Conditions), 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. Except to the extent Engineer makes any unauthorized Owner revisions which are not expressly acknowledged and approved by Owner in writing, Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. *Intentionally Deleted.*

MODIFIED VERSION of

Exhibit B – Owner's Responsibilities

2. *Intentionally Deleted.*
 3. *Intentionally Deleted.*
 4. *Intentionally Deleted.*
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Upon Engineer's request, arrange for appropriate access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, and, to the extent deemed necessary by Owner in Owner's sole discretion, that Contractor raises or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. 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.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews,

MODIFIED VERSION of

Exhibit B – Owner's Responsibilities

approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Following Engineer's reasonable request, inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate in its sole discretion with respect to such examination) and render in writing decisions pertaining thereto as soon as reasonably practicable.
- N. *Intentionally Deleted.*
- O. *Intentionally Deleted.*
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in, if deemed appropriate by Owner in Owner's sole discretion, the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to inspect the Work and Project to determine Substantial Completion and readiness of the completed Work for final payment.

MODIFIED VERSION of

Exhibit B – Owner's Responsibilities

- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [N/A]

MODIFIED VERSION of

Exhibit B – Owner's Responsibilities



ATTACHMENT 1 to EXHIBIT C
Papillion Creek Watershed - Hydrologic Modeling Update
 Papio-Missouri River Natural Resources District
 Nebraska
 FYRA Project No. 001-16-01

Tasks	FYRA Engineering					AWA	Expenses	Total
	Prj Manager	Sr Engineer	Prj Engineer	El	Clerical			
	Gregalunas	Sotak	Bosley	Jones/Dayton	Bosley			
	\$135	\$185	\$135	\$85	\$65			
Project Management								
Client/Stakeholder Meetings (6)	24	24		80	8			
FEMA Coordination Meeting	8	4		32				
Project Team QA/QC	16	8	8					
Project Management Task Total	\$6,480	\$6,660	\$1,080	\$9,520	\$520	\$0	\$0	\$24,260
Calibration Storms and Design Temporal Distributions								
Four Calibration Rainfall Events	12	2				\$14,908		
Create 10-, 50-, 100-, and 500-Year Distributions	12	2				\$0		
Develop Site Specific Areal Reduction Factors	8					\$0		
Technical Memorandum	32	6		8		\$7,016		
Preliminary Design Task Total	\$8,640	\$1,850	\$0	\$680	\$0	\$21,924	\$0	\$36,344
Hydrologic Modeling								
Review Existing Modeling and Approach	8		4					
Verify Existing Calibration (Against New Calibration Events)	24	4	24	24				
Recalibrate Hydrologic Model to New Calibration Events	100	4	40	80				
Incorporate Regional Reservoirs into HMS Model (15A, 5, 6, 7)	8			12				
Verify Channel Routing Methods in Large Floodplains ¹	48		8	24				
Verify Storm Sizing and Centering for Subwatersheds ²	24		8	24				
Run and Aggregate Output from HMS for Hydraulic Modeling	40		40	60				
Produce FEMA Compliant Deliverables	40	8	24	40				
Permitting Task Total	\$39,420	\$2,960	\$19,980	\$22,440	\$0	\$0	\$0	\$84,800
Preliminary Hydraulic Routing								
Run Existing Hydraulic Models for Four Locations ³	12			8				
Modify Bridge Routines as Needed	40		16	40				
Provide Floodplain Mapping Comparisons ⁴	24			60				
Final Design Task Total	\$10,260	\$0	\$2,160	\$9,180	\$0	\$0	\$0	\$21,600
Subtotal Hours	480	62	172	492	8			
Subtotal Costs	\$64,800	\$11,470	\$23,220	\$41,820	\$520	\$21,924	\$0	\$167,004

- 1) A possible issue related to the calibration is the selected channel routing methods. In larger floodplain areas, the storage volume can be accounted for directly in HMS without needing unsteady-state routing. Only the largest floodplain areas will be considered for this approach with ongoing discussions with the P-MRNRD.
 - 2) USACE eliminated and grouped several storm sizes out of the final hydrologic modeling from the original FEMA model. In some cases this has increased discharge. We will verify the storm sizes to ensure the results are not overly conservative.
 - 3) Hydraulic models will be recomputed as needed to compute WSEs for 4 comparisons locations.
 - 4) Provide floodplain mapping comparisons for 4 locations
- Highlighted tasks reduced due to preliminary \$25,000 contract.

This is **EXHIBIT C**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [June 9, 2016].

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

For the avoidance of doubt, this Exhibit C in its entirety is expressly subject to the last sentence of Paragraph 4.01.A in the Agreement. Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

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

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
 2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
 3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
 4. The total compensation for services under Paragraph C2.01 is estimated to be \$[167,004], based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$[167,004] (See Att. 1 to Exhibit C)
 - b. Preliminary Design Phase \$[]
 - c. Final Design Phase \$[]
 - d. Bidding or Negotiating Phase \$[]
 - e. Construction Phase \$[]
 - f. Post-Construction Phase \$[]

MODIFIED VERSION of

Exhibit C – Compensation Decision Guide.

5. Following notice to Owner, Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered. For the avoidance of doubt, in no event shall such amount, in combination with any other compensation, reimbursement and/or any other amount to be paid by Owner with respect to and/or pursuant to this Agreement exceed the Maximum Amount unless Owner agrees otherwise in a signed written agreement entered into pursuant to this Agreement.
6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses reasonably and actually incurred and Engineer's Consultants' charges.
8. The parties may, by mutual written agreement, adjust annually the Standard Hourly Rates and Reimbursable Expenses Schedule to reflect equitable changes in the compensation payable to Engineer.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C to the extent they are actually and reasonably incurred in furtherance of the Project.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto to the extent necessary for completion of the Project and specifically approved in advance by Owner in writing; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually and reasonably incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0. For the avoidance of doubt, in no event will the Reimbursable Expenses, in combination with any other reimbursements, compensation and/or any other amounts to be paid by Owner with respect to and/or pursuant to this Agreement exceed the Maximum Amount unless otherwise agreed by Owner in a signed written agreement entered into pursuant to this Agreement.

MODIFIED VERSION of

Exhibit C – Compensation Decision Guide.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0. For the avoidance of doubt, in no event will such compensation, together with any other compensation, reimbursements and/or any other amounts to be paid by Owner with respect to and/or pursuant to this Agreement exceed the Maximum Amount unless otherwise agreed by Owner in a signed written agreement entered into pursuant to this Agreement.
- B. Factors: The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

MODIFIED VERSION of

Exhibit C – Compensation Decision Guide.

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This is **EXHIBIT G**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [June 9, 2016].

Insurance

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

G6.05 Insurance

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

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

- 1) Bodily injury, each accident: \$500,000
- 2) Bodily injury by disease, each employee: \$500,000
- 3) Bodily injury/disease, aggregate: \$500,000

c. General Liability --

- 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
- 2) General Aggregate: \$2,000,000

d. Excess or Umbrella Liability --

- 1) Per Occurrence: \$5,000,000
- 2) General Aggregate: \$5,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Professional Liability --

- 1) Each Claim Made \$1,000,000
- 2) Annual Aggregate \$2,000,000

g. Other (specify): \$[]

B. *Additional Insureds:*

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

MODIFIED VERSION of
Exhibit G – Insurance.



CERTIFICATE OF LIABILITY INSURANCE

FYRAE-1

OP ID: AM

DATE (MM/DD/YYYY)

09/16/2015

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

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

PRODUCER Quinn Insurance, Inc. 11815 M Street, Suite #200 Omaha, NE 68137-2232 Jason J. Quinn	CONTACT NAME: Amy Mason PHONE (A/C, No, Ext): 402-891-1234 E-MAIL ADDRESS: amason@quinninsurance.com		FAX (A/C, No): 402-891-1252
	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Insurance Company		NAIC # 37478
INSURED Fyra Engineering 3925 S 147th St, Ste 117 Omaha, NE 68144-5576	INSURER B: Lloyd's of London		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		


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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			91SBABV3301	07/02/2015	07/02/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			91SBABV3301	07/02/2015	07/02/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10000			91SBABV3301	07/02/2015	07/02/2016	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	91WECBS0329	07/02/2015	07/02/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
B	Prof Liability			PGIARK0300702	07/02/2015	07/02/2016	Aggregate 2,000,000 Per Claim 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

TOWHOMI TO WHOM IT MAY CONCERN	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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This is **EXHIBIT H**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [June 9, 2016].

Dispute Resolution

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

H6.08 *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 or the breach thereof ("Disputes") to mediation by a mediator to be mutually agreed upon by Owner and Engineer. 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 of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

MODIFIED VERSION of

Exhibit H - Dispute Resolution.

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

Special Provisions

Paragraph(s) [] of the Agreement is/are supplemented to include the following agreement(s) of the parties:

MODIFIED VERSION of

Exhibit J - Special Provisions.

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner: Papio-Missouri River Natural Resources District

Engineer:

Project:

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

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

Description of Modifications:

Agreement Summary:

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

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

MODIFIED VERSION of

Exhibit K – Amendment to Owner-Engineer Agreement.

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

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

OWNER:

ENGINEER:

Papio-Missouri River Natural Resources District

By: _____

Name: John Winkler

Title: General Manager

By: _____

Name: _____

Title: _____

Date Signed:

Date Signed:

MODIFIED VERSION of

Exhibit K – Amendment to Owner-Engineer Agreement.

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