

Agenda Item: 6.

## Memorandum

**To:** Multi Hazard Mitigation Plan Update Ad-Hoc Consultant Selection Subcommittee  
**From:** Lori Ann Laster, Stormwater Management Engineer  
**Date:** December 3, 2014  
**Re:** Contract for Professional Services with JEO Consulting Group Inc.

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On November 6, 2014, the Subcommittee interviewed and selected JEO Consulting Group Inc. (JEO) with which to negotiate a professional services contract to update the District's Multi Hazard Mitigation Plan. Since that time, District staff and representatives from JEO have worked together to prepare the enclosed agreement, detailed scope, and time and cost estimate for this project.

JEO will be responsible for providing project management, public involvement coordination, data collection and risk assessment, and plan preparation. According to the schedule, the updated plan will be submitted to FEMA in January 2016. The total fee for this work was negotiated at \$150,000, and is broken down between different tasks in the attached agreement and scope.

A FEMA-approved Hazard Mitigation Plan is required by FEMA to be eligible for mitigation grant funding and must be updated every five years. District staff has submitted a grant application to cover 75% of the project costs up to \$150,000. The status of the application will be known prior to December 31, 2014.

**Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute a professional services contract with JEO Consulting Group Inc. to update the District's Multi Hazard Mitigation Plan for a maximum fee of \$150,000, 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

**Multi-Jurisdictional Multi-Hazard Mitigation Plan  
for  
Papio-Missouri River Natural Resources District**

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**



ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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AMERICAN SOCIETY OF CIVIL ENGINEERS

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This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 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 User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
[www.agc.org](http://www.agc.org)

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ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

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

THIS IS AN AGREEMENT effective as of Decem 2014 ("Effective Date") between  
ber 3

Papio-Missouri River Natural Resources District ("Owner") and

JEO Consulting Group, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as

Multi-Jurisdictional Multi-Hazard Mitigation Plan for Papio-Missouri River Natural Resources District ("the Project").

Engineer's services under this Agreement are generally identified as follows:

The primary objective of this project is to update the current multi-jurisdictional multi-hazard Hazard Mitigation Plan (HMP) for the Owner. The existing HMP was approved by Federal Emergency Management Agency (FEMA) in September 2011. FEMA requires that the HMP must be updated and approved within a five year period. The eligible participants will include: counties, cities, villages, school districts, Natural Resources District (NRD), colleges, power districts, rural water districts, etc. HMP is a community-guided document that identifies vulnerability to all natural or man-made hazards and what can be done to reduce or eliminate this vulnerability.

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 Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

### **3.01    *Commencement***

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

### **3.02    *Time for Completion***

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

## **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. Invoices are due and payable within 45 days of receipt.

#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due to Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due to 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 contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense, to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

### **ARTICLE 5 — OPINIONS OF COST**

#### ~~5.01 — *Opinions of Probable Construction Cost*~~

- ~~A. — Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.~~

#### ~~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, "Construction Cost Limit," 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 collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.~~

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and regulations.
  2. Prior to the Effective Date, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, 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 documents.

- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless, by specific reference in Exhibit J, both parties mutually agree to use other general conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

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

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

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the

discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics or other types that are furnished by one party to the other are furnished only for convenience, not for reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, they are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified either inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. 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 *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.
- 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 and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other 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 contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- 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 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- 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.

#### 6.05 *Suspension and Termination*

- A. *Suspension:*
  - 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
  - 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.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 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, and in addition to invoicing for those items identified in Paragraph 6.05.D.1, Engineer shall be entitled to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to such termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

#### 6.07 *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 6.07.B the assigns of Owner and Engineer), are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other 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 person.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 *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 under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.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 under law.

#### 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. 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.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors 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.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

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

- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) 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, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, 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. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *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 law, 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.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *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.
  2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. *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.
  5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
  6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. 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 properties; 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 pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which 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. §§1801 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.; and (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.
  8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
  9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary



conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *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.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the 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.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written

interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *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 at the Site.
30. *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 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.
31. *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 Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **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.~~
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.

### **8.02 *Total Agreement:***

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings

### **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 the Project 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:

Engineer:

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

By: Lalit Jha, PE, D.WRE, CFM

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

Title: Vice President, Water Resources

Date \_\_\_\_\_

Date \_\_\_\_\_

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

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

Engineer License or Firm's  
Certificate No.

E-9767

State of: Nebraska

Address for giving notices:

Address for giving notices:

8901 S. 154<sup>th</sup> Street

2700 Fletcher Ave

Omaha, NE 68138-3621

Lincoln, NE 68504

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

John Winkler

Jeff Henson, CFM

Title: General Manager

Title: Project Manager

Phone Number: 402.444.6222

Phone Number: 402.474.8764

Facsimile Number: 402.895.6543

Facsimile Number: 402-435-4110

E-Mail Address: jwinkler@pacionrd.org

E-Mail Address: jhenson@jeo.com

## **Engineer's Services**

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

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

### **PART 1 – BASIC SERVICES**

The scope of basic services described below is for Multi-Jurisdiction Multi-Hazard Mitigation Plan update for the Owner.

#### *A.1.01 Study and Report Phase*

The following tasks will be performed:

#### **Task 1: Project Management, Kick-off Meeting, and QC**

The ENGINEER will coordinate with the OWNER and other involved jurisdictions/parties to complete a kick-off meeting to initiate the project. This task also includes general project oversight, management and quality control (QC), coordination, and routine project meetings.

##### **1.1 Kick-off Meeting:**

A kick-off meeting will be held with the OWNER to discuss the scope and nature of the project, and to refine the goals and objectives. The OWNER, with help from the ENGINEER, will identify interested public and private agencies or persons who will need to be consulted about various aspects of the project. The ENGINEER will provide the agenda and minutes from the meeting. At the project kick-off meeting, the ENGINEER will provide a preliminary project schedule and Project Overview.

##### **1.2 Project Management:**

This task includes all project duties related to project and schedule management. A Project Management Plan and monthly progress reports will be produced. Also, routine project management and coordination tasks will be performed during the anticipated time frame for the project per the proposed schedule.

- Develop a Project Management Plan.
- Establish and maintain project schedule and budget.
- Detailed monthly project invoices and progress reports will be prepared and submitted to the OWNER.
- Perform routine project management tasks and general project coordination (not including meetings) with the OWNER and relevant stakeholders.

##### **1.3 Key Meetings:**

This task includes the estimated number of project progress/coordination meetings required. These meetings will be held over the telephone or in conjunction with public meetings. The ENGINEER will provide agendas and minutes for the meetings.

- Coordination and progress meetings will be held on quarterly basis (4 meetings).
- If necessary, coordinate and conduct a total of up to two (2) meetings with stakeholders (DNR, NEMA, FEMA, public officials, emergency managers, etc.).

#### 1.4 Perform project deliverable QC task

### **Task 2: Public Involvement and Stakeholder Participation**

This task includes public involvement and stakeholder participation programs to involve eligible jurisdictions in the HMP.

#### 2.1 Project information and project announcement:

Coordinate with OWNER to identify the communities and key stakeholders to be targeted for the HMP update. Develop project information sheet outlining the goals, mitigation planning process and schedule for the project. Assist the OWNER with distributing the project information sheets to participating communities and stakeholders. Prepare a news release for the newspaper and general public.

#### 2.2 Advisory group (Planning team) meeting:

Coordinate with OWNER to identify an advisory group (local officials, citizens, emergency managers, etc.) that will provide guidance and input to the planning process throughout the duration of the project. Three advisory group meetings will be held during the development of the plan. One meeting will be held during “hazard identification” phase, second meeting will be held during “identification of mitigation alternative” phase and third meeting will be held during the document review phase to discuss the draft plan and necessary revisions. The ENGINEER will prepare necessary handouts, presentations and follow-up material for these meetings.

#### 2.3 Public meetings:

Coordinate and conduct a total of 10 traditional meetings to involve the public and surrounding communities in the planning effort. Three (3) public meetings will be held during “hazard identification” phase at a location determined by Owner, three (3) public meetings will be held during the “mitigation strategies” phase of the project, two (2) meetings will be scheduled with the Educational Service Units (ESUs) serving the planning area, and two (2) public meeting will be scheduled during the draft review phase of the project. In addition six (6) webinars (two (2) during the “hazard identification” phase, two (2) for project updates, and two (2) during the “mitigation strategies” phase of the project) will be used to include communities that are unable to attend the traditional public meetings.

#### 2.4 Project website:

Develop and maintain a project website that can be used for sharing project related information with the OWNER, participating jurisdictions, and other stakeholders.

### **Task 3: Background information, Data Collection and Risk Assessment:**

As part of this task, the ENGINEER will complete a detailed review of recently available data or revised background information. Also, the ENGINEER will perform a risk assessment for the identified hazards.

#### **3.1 Gather and review background information:**

- Review and evaluate the existing plan in accordance with the current FEMA mitigation plan crosswalk to determine data gaps.
- Coordinate with NEMA, NDNR, and other agencies to gather and review all available information such as: history of flooding and other hazards; flood insurance studies (FIS); relevant previous studies and reports; community needs assessments; existing strategic plans; aerial maps; LiDAR data; and other pertinent records since the development of current plan.

#### **3.2 Field data collection:**

- Coordinate with the OWNER and participating communities to gather information on structural inventories and critical facilities built since the development of current plan. The ENGINEER anticipate that the latest aerial maps and other data sources to provide information to complete the risk assessment.

#### **3.3 Risk assessment:**

- Analyze field data and identify problem areas.
- FEMA's software HAZUS may be used for data analysis as necessary for some communities.
- Conduct scenario based risk assessments for hazards without defined boundaries (such as tornado and chemical transportation incidents)
- Estimate potential losses due to various hazards (e.g. flood, tornado, wild fire, snow storm, earthquake, etc.).
- Assess the hazard areas including the description of the existing hazard, the extent of damage potential, and the OWNER's hazard mitigation goals.
- Assess the vulnerability of each participating community to various hazards.

#### **3.4 Project Screening**

- ENGINEER will work with participating communities to complete project screening for up to ten projects. ENGINEER will develop a tool to evaluate potential projects for funding under the Hazard Mitigation Assistance Program (HMA). Evaluation criteria will focus on items outlined in the Unified Hazard Mitigation Assistance Program (UHMA).

### **Task 4: Develop Mitigation Plan**

As part of this task, the ENGINEER will prepare an HMP update as per applicable FEMA guidelines and requirements. The ENGINEER will submit the HMP to the OWNER, participating jurisdictions, and key stakeholders for review.

#### **4.1 Develop mitigation plan:**

- Develop preliminary hazard mitigation goals and objectives based on data analysis and public meeting input.
- Identify and analyze mitigation options.



- Identifying and gathering preliminary data on mitigation projects that can open the door to a wide range of public and private funding sources, as well as other sources of funding and technical assistance.
- Review and evaluate current list of projects that has been implemented and identify new potential projects.
- Prepare a draft Multi-Hazard Mitigation Plan as per the all-hazard planning requirements of the NEMA and the FEMA.

#### 4.2 Review and revise the draft plan:

- Based on input and comments received from the planning team, and stakeholders review; revise the draft mitigation plan.

### **Task 5: CRS Credits for Participating Communities (3 – 4 communities)**

#### 5.1 Track efforts for CRS credit:

- Assist communities in evaluating what is currently in place that would qualify for credits under the CRS program

#### 5.2 Conduct additional public meetings for CRS communities:

- For the three communities currently participating in the CRS program ENGINEER will assist in conducting up to a total of six (6) public meetings for the CRS program (two (2) meetings per jurisdiction).

#### 5.3 Develop public engagement and educational materials to be utilized by communities:

- Materials might include (but are not limited to) posters, flyers, notification letters, social media materials.

#### 5.4 Conduct a comprehensive review of community planning documents and studies to be incorporated into the HMP.

#### 5.5 Perform Enhanced flood risk assessment process:

- Areas to be identified include: designated floodplain, areas impacted by localized flooding, and areas potentially vulnerable to floods in the future.

#### 5.6 Assist in identification of potential economic impacts resulting from flood events.

#### 5.7 Identify natural floodplain functions.

#### 5.8 Assist in identification of potential actions and strategies.

- Assist in prioritizing and ranking of actions and developing an implementation plan for actions and strategies.

### **Task 6: NEMA and FEMA Review and Approval**

#### Task 6.1 Submit Mitigation Plan to NEMA/FEMA for Review and Comment

#### Task 6.2 Revise Mitigation Plan as needed

#### Task 6.3 Re-Submittal of Mitigation Plan to NEMA/FEMA

#### Task 6.4 Mitigation Plan Adoption

- A sample resolution for adopting the plan will be provided to the OWNER, to distribute to participating communities. The participating communities will adopt plan and provide supporting documentation of the adoption

#### Task 6.5 Distribution of the Mitigation Plan

- Upon State and FEMA approval, the ENGINEER will provide OWNER color copies of the Hazard Mitigation Plan for each participating Jurisdiction. The OWNER and NEMA will each

receive one (1) CD containing the electronic file of the approved plan in Microsoft Word and a PDF format.

### **PROJECT SCHEDULE**

Notice to Proceed:	Jan 2015
Establish Planning Team:	Jan 2015
Project Kick off /Planning Team Meeting:	Feb 2015
One day HMP Training:	March 2015
Round 1 Meetings:	April/May 2015
Data Collection, Analysis and Review:	May - Jun 2015
Round 2 Meetings:	July/Aug 2015
Plan Development:	Aug – Nov 2015
Plan Review by Planning Team:	Dec 2015
Plan Completion and Submittal to NEMA:	Jan 2016
NEMA/FEMA Plan Review/Approval:	April 2016
Plan Adoption:	May – June 2016

*Note: Project schedule is dependent upon timely reviews by regulatory agencies and stakeholders, as well as timely project direction from the OWNER.*

#### ~~A1.01 Study and Report Phase~~

##### ~~A. Engineer shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.~~
- ~~2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate [insert specific number or list here] alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.~~

5. ~~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 those alternate solutions available to Owner which Engineer recommends. 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 summary of allowances for other items and services included within the definition of Total Project Costs.~~
  6. ~~Perform or provide the following additional Study and Report Phase tasks or deliverables: [here list any such tasks or deliverables]~~
  7. ~~Furnish \_\_\_\_ review copies of the Report and any other deliverables to Owner within \_\_\_\_ calendar days of the Effective Date and review it with Owner. Within \_\_\_\_ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~
  8. ~~Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish \_\_\_\_ copies of the revised Report and any other deliverables to the Owner within \_\_\_\_ 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 the revised Report and any other deliverables have been delivered to Owner.~~

#### ~~A1.02 Preliminary Design Phase~~

- ~~A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication 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. ~~Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.~~
  3. ~~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.~~
  4. ~~Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.~~
  5. ~~Perform or provide the following additional Preliminary Design Phase tasks or deliverables: [here list any such tasks or deliverables]~~
  6. ~~Furnish \_\_\_\_ review copies of the Preliminary Design Phase documents and any other deliverables to Owner within \_\_\_\_ calendar days of authorization to proceed with this phase, and review them~~

with Owner. Within \_\_\_\_ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.

7. ~~Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner \_\_\_\_ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within \_\_\_\_ 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 the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.~~

#### *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 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.~~
  2. ~~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 of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.~~
  3. ~~Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.~~
  4. ~~Perform or provide the following additional Final Design Phase tasks or deliverables: [here list any such tasks or deliverables]~~
  5. ~~Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within \_\_\_\_ days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.~~
  6. ~~Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit \_\_\_\_ final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within \_\_\_\_ 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 the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.~~
- 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 \_\_\_\_\_. 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 bidding 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 and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.~~
- ~~2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.~~
- ~~3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.~~
- ~~4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.~~
- ~~5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~
- ~~6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.~~
- ~~7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:  
[here list any such tasks or deliverables]~~

~~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 as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.~~
- ~~2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. [If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.]~~
- ~~3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.~~
- ~~4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.~~
- ~~5. *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.~~
- ~~6. *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.~~
- ~~7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
  - ~~a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the 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 Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.~~~~

- ~~b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the 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 Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.~~
8. *Defective Work:* ~~Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.~~
9. *Clarifications and Interpretations; Field Orders:* ~~Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.~~
10. *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.~~
11. *Shop Drawings and Samples:* ~~Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the 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.~~
12. *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.~~



13. ~~*Inspections and Tests:* Require such special inspections 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 Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the 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 Contract Documents. Engineer shall be entitled to rely on the results of such tests.~~
14. ~~*Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.~~
15. ~~*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. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the 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 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 Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).~~
  - ~~b. By recommending any 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 and the Contract Documents. 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 Contractor's Work in progress 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~~



~~moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, 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.~~

~~16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.~~

~~17. *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 Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.~~

~~18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].~~

~~19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.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.~~

~~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.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.~~

~~C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.~~

#### ~~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, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.~~
  2. ~~Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.~~
  3. ~~Perform or provide the following additional Post Construction Phase tasks or deliverables: [Here list any such tasks or deliverables]~~
- ~~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 furnish or obtain from others Additional Services of the types listed below (if in addition to those furnished under Basic Services).
  1. Preparation of applications and supporting documents 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.
  2. Services to make measured drawings of or to investigate 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 its 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 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 identified in Paragraph A1.01.A.4.
  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.
  7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project;

evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Additional public meetings
26. Additional plan revision needed to obtain FEMA approval due to factors that are not included in this scope of services, or are not standard procedures (according DMA 2000 Bluebook and FEMA Region VII) to as of the contract date.
27. Jurisdictions interested in completing a Benefit Cost Analysis (BCA) related to a specific project identified during the planning process can add these services at their own cost. BCAs for projects can range from \$5,000 to \$10,000 depending on the size and scope of the project.
28. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

## **Owner's Responsibilities**

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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.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is available and reasonably required to enable Engineer to complete its Basic and Additional Services. :
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer Provide reviews, approvals, and permits from all governmental authorities that have the jurisdiction to approve phases of the Project designed or specified by Engineer, and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- H. 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.
- I. 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.

- J. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- K. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- L. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- M. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- N. Gather record of communities/jurisdictions within the planning target area interested in participating in the hazard mitigation planning effort.
- O. Coordinate the public meeting efforts and assist conducting each meeting. Also assist coordinating progress meetings with planning team.
- P. Distribute letters and news releases to participating communities informing them of the planning effort and inviting to public meetings.
- Q. Coordinate with project to assist in background data collection in timely manner.
- R. The Owner will be responsible for coordinating and assisting Engineer with the each structural inventory for all participating communities if necessary.
- S. Timely review and coordination throughout the project duration.
- ~~T. Perform or provide the following additional services: *[Here list any such additional services]*.~~

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 3, 2014.

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

**COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates**

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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 compensation for Basic Services set forth in Exhibit A, 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. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$ 150,000.00 based on the following estimated distribution of compensation:

a. Study and Report Phase \$150,000.00 (See Attachment 1 to Exhibit C)

b. Preliminary Design Phase \$ \_\_\_\_\_

c. Final Design Phase \$ \_\_\_\_\_

d. Bidding or Negotiating Phase \$ \_\_\_\_\_

e. Construction Phase \$ \_\_\_\_\_

f. Post-Construction Phase \$ \_\_\_\_\_

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but the total of the compensation to Engineer under this Agreement shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
5. 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.
6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultants' charges.

## C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, multiplied by a factor of 1.0.

## 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.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.



This is Appendix 1 to EXHIBIT C, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated December 3, 2014.

Attachment 1 to Exhibit C								
Detail Fee Schedule								
Task	Hours							Total Task
	PM	PE	Planner/EIT	GIS/CAD	Mitigation Specialist	Clerical	Fee/Task	Fee
Hourly Rate	\$130.00	\$115.00	\$100.00	\$75.00	\$100.00	\$70.00		
Kick-off Meeting, Project Management, Meetings, Agency Coordination, and								
Task 1 QC								
1.1 Kick-off Meeting	6	4	20				\$3,240.00	
1.2 Project Management	80						\$10,400.00	
1.3 Key Meetings	20	6	32	6	20	3	\$9,150.00	
1.4 Quality Control	30		12	6			\$5,700.00	
Subtotal Task 1							\$28,490.00	\$28,490.00
Task 2 Public Involvement and Stakeholder Participation								
2.1 Project Information and Project Announcement	12		20	4		1	\$3,930.00	
2.2 Advisory Group Meeting	16		36	4			\$5,980.00	
2.3 Public Meetings	48	16	72	4			\$15,580.00	
2.4 Project Website	6		40				\$4,780.00	
Subtotal Task 2							\$30,270.00	\$30,270.00
Task 3 Background Information, Data Collection and Risk Assessment								
3.1 Gather and Review Background Information	8		60	20			\$8,540.00	
3.2 Field Data Collection	8	8	40	12			\$6,860.00	
3.3 Risk Assessment	20	12	60	40			\$12,980.00	
3.4 Project Screening		4	20	8			\$3,060.00	
Subtotal Task 3							\$31,440.00	\$31,440.00
Task 4 Develop Mitigation Plan								
4.1 Develop Mitigation Plan	30	16	168	30	20	4	\$27,070.00	
4.2 Review and Revise Draft Plan	18	16	20	12		2	\$7,220.00	
Subtotal Task 4							\$34,290.00	\$34,290.00
Task 5 CRS Credits for Participating Communities								
Task 5.1 Tracking efforts for CRS credit	4		4				\$920.00	
Task 5.2 Conducting additional public meetings for CRS communities	10		20				\$3,300.00	
Task 5.3 Develop public engagement and educational materials to be utilized by communities	4		30			4	\$3,800.00	
Task 5.4 Conduct a comprehensive review of community planning documents and studies to be incorporated into the HMP	4		12				\$1,720.00	
Task 5.5 Enhanced flood risk assessment process	4	12	8	24			\$4,500.00	
Task 5.6 Identifying potential economic impacts resulting from flood events	2				18		\$2,060.00	
Task 5.7 Identification of natural floodplain functions	2				18		\$2,060.00	
Task 5.8 Identification of potential actions and strategies	2		5				\$760.00	
Subtotal Task 5							\$19,120.00	\$19,120.00
Task 6 Submit Mitigation Plan to NEMA for Review and Comment								
Task 6.1 Submit Mitigation Plan to NEMA/FEMA for Review and Comment	1		6				\$730.00	
Task 6.2 Revise Mitigation Plan as needed	3	2	24	2		4	\$3,450.00	
Task 6.3 Re-Submission of Mitigation Plan to NEMA/FEMA	1		6			2	\$870.00	
Task 6.4 Mitigation Plan Adoption	1		6			2	\$870.00	
Task 6.5 Distribution of the Mitigation Plan	1		2			2	\$470.00	
Subtotal Task 6							\$6,390.00	\$6,390.00
Total Hours	341	96	723	174	76	24	\$150,000.00	\$150,000.00

## **Reimbursable Expenses Schedule**

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

8"x11" Copies/B&W	<u>\$0.07/page</u>
8"x11" Copies/Color	<u>\$0.46/page</u>
11"x17" Copies/B&W	<u>\$0.24/page</u>
11"x17" Copies/Color	<u>\$1.02/page</u>
CD Copy	<u>\$3.00/each</u>
3-Ring Binder (1/2")	<u>\$4.60/each</u>
3-Ring Binder (1")	<u>\$5.10/each</u>
3-Ring Binder (2")	<u>\$6.04/each</u>
3-Ring Binder (2")	<u>\$7.62/each</u>
Comb Binding	<u>\$4.00/each</u>
Wire Binding	<u>\$4.50/each</u>
Tabs	<u>\$0.20/each</u>
Report Covers	<u>\$0.15/each</u>
Mailing/Processing	UPS/USPS Rates
Mileage (auto)	<u>\$0.56/mile</u>
Meals and Lodging	at cost

***[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]***

This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 3, 2014.

## **Standard Hourly Rates Schedule**

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### *A. Standard Hourly Rates:*

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

### *B. Schedule:*

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

Project Managers:	\$120.00	-	\$190.00
Project Engineers/Architects:	\$100.00	-	\$158.00
Project Engineers (E.I.):	\$75.00	-	\$110.00
Engineering/Surveying/ Architectural/Planning/GIS Technicians:	\$75.00	-	\$120.00
Office/Administrative:	\$76.00	-	\$100.00
Principals:	\$175.00	-	\$205.00

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

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

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

**D1.01 Resident Project Representative**

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

- a. ~~Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.~~
- b. ~~Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.~~
- c. ~~Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.~~
- 5. ~~*Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.~~
- 6. ~~*Shop Drawings and Samples:*~~
  - a. ~~Record date of receipt of Samples and approved Shop Drawings.~~
  - b. ~~Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.~~
  - c. ~~Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.~~
- 7. ~~*Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.~~
- 8. ~~*Review of Work and Rejection of Defective Work:*~~
  - a. ~~Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.~~
  - b. ~~Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.~~
- 9. ~~*Inspections, Tests, and System Start-ups:*~~
  - a. ~~Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.~~

- ~~b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.~~
- ~~c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.~~
- ~~d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.~~

10. *Records:*

- ~~a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.~~
- ~~b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.~~
- ~~c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.~~
- ~~d. Maintain records for use in preparing Project documentation.~~
- ~~e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.~~

11. *Reports:*

- ~~a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.~~
- ~~b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.~~
- ~~c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.~~
- ~~d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.~~

- ~~12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~
- ~~13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.~~
- ~~14. *Completion:*~~
  - ~~a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.~~
  - ~~b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.~~
  - ~~c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).~~

~~F. Resident Project Representative shall not:~~

- ~~1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or equal" items).~~
- ~~2. Exceed limitations of Engineer's authority as set forth in this Agreement.~~
- ~~3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.~~
- ~~4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.~~
- ~~5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.~~
- ~~6. Participate in specialized field or laboratory tests or inspections conducted off site by others except as specifically authorized by Engineer.~~
- ~~7. Accept shop drawing or sample submittals from anyone other than Contractor.~~

8. ~~Authorize Owner to occupy the Project in whole or in part.~~



This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 3, 2014.

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NOTICE OF ACCEPTABILITY OF WORK

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PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

---

To:

\_\_\_\_\_  
Owner

And To:

\_\_\_\_\_  
Contractor

From:

\_\_\_\_\_  
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_, and the terms and conditions set forth in this Notice.

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

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

Dated: \_\_\_\_\_

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

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

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

## **Construction Cost Limit**

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Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

### **F5.02 — *Designing to Construction Cost Limit***

- G. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$\_\_\_\_\_.
- H. A bidding or negotiating contingency of \_\_\_\_\_ percent will be added to any Construction Cost limit established.
- I. ~~The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- J. ~~Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.~~
- K. ~~If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- L. ~~If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

## **Insurance**

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Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

### **G6.04 Insurance**

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- |  |             |
|--|-------------|
| a. Workers' Compensation:  | Statutory   |
| b. Employer's Liability --   |             |
| 1) Each Accident:  | \$500,000   |
| 2) Disease, Policy Limit:  | \$500,000   |
| 3) Disease, Each Employee:   | \$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) Each Occurrence:  | \$1,000,000 |
| 2) General Aggregate:  | \$1,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): |             |
| <del>Each Accident</del> Combined Single   | \$1,000,000 |
| f. Professional Liability --   |             |
| 1) Each Claim Made   |             |
| 2) Annual Aggregate  | \$2,000,000 |
| g. Other (specify):  | \$1,000,000 |

2. ~~By Owner:~~

- |                                      |                      |
|--------------------------------------|----------------------|
| a. <del>Workers' Compensation:</del> | <del>Statutory</del> |
|--------------------------------------|----------------------|

~~b. Employer's Liability—~~

- 1) Each Accident \_\_\_\_\_ \$ \_\_\_\_\_
- 2) Disease, Policy Limit \_\_\_\_\_ \$ \_\_\_\_\_
- 3) Disease, Each Employee \_\_\_\_\_ \$ \_\_\_\_\_

~~c. General Liability—~~

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

~~d. Excess Umbrella Liability—~~

- 1) Each Occurrence: \_\_\_\_\_ \$ \_\_\_\_\_
- 2) General Aggregate: \_\_\_\_\_ \$ \_\_\_\_\_

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

Each Accident:  
\$ \_\_\_\_\_

~~f. Other (specify): \_\_\_\_\_ \$ \_\_\_\_\_~~

~~B. Additional Insureds:~~

1. ~~The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:~~

a. \_\_\_\_\_  
Engineer

b. \_\_\_\_\_  
Engineer's Consultant

c. \_\_\_\_\_  
Engineer's Consultant

2. ~~During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.~~
3. ~~The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.~~

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

**[NOTE TO USER: Select one of the two alternatives provided]**

### **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. 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.

[or]

~~A. *Arbitration*: All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [here insert the name of a specified arbitration service or organization] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$\_\_\_\_\_ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$\_\_\_\_\_ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$\_\_\_\_\_ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

3. ~~The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
4. ~~The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
5. ~~If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

This is **EXHIBIT I**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 3, 2014.

## **Limitations of Liability**

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Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

**[NOTE TO USER: Select one of the three alternatives listed below for I6.10 A.1]**

1. ~~*Engineer's Liability Limited to Amount of Engineer's Compensation:*~~ To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

[or]

1. ~~*Engineer's Liability Limited to Amount of Insurance Proceeds:*~~ Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$\_\_\_\_\_ [or]

1. ~~*Engineer's Liability Limited to the Amount of \$\_\_\_\_\_:*~~ Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all



claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total amount of \$\_\_\_\_\_.

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~~*[NOTE TO USER: If appropriate and desired, include I6.10.A.2 below as a supplement to Paragraph 6.10, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer]*~~

2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10. the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

~~*[NOTE TO USER: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the word "employees"]*~~

~~*[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph I6.10.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$\_\_\_\_\_."]*~~

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~~*[NOTE TO USER: If appropriate and desired, include I6.10.A.3 below]*~~

3. *Agreement Not to Claim for Cost of Certain Change Orders:* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed \_\_\_\_\_% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not

~~include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, members, partners, agents, employees, and Consultants.~~

~~***[NOTE TO USER: The parties may wish to consider the additional limitation contained in the following sentence.]***~~

~~Owner further agrees not to sue or to make any claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

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~~***[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.10.A, then supplement Paragraph 6.10.B by including the following indemnification of Engineer by Owner as Paragraph 6.10.B.]***~~

- ~~B. ***Indemnification by Owner:*** To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

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**

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

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 3, 2014.

**Amendment to Owner Engineer Agreement**

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Amendment No. \_\_\_\_\_

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: \_\_\_\_\_
- b. Owner: \_\_\_\_\_
- c. Engineer: \_\_\_\_\_
- d. Project: \_\_\_\_\_

2. *Description of Modifications:*

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

3. *Agreement Summary (Reference Only):*

- a. Original Agreement amount: \$ \_\_\_\_\_
- b. Net change for prior amendments: \$ \_\_\_\_\_
- c. This amendment amount: \$ \_\_\_\_\_
- d. Adjusted Agreement amount: \$ \_\_\_\_\_

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. The Effective Date of this Amendment is \_\_\_\_\_.

OWNER:

ENGINEER:

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

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

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

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

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

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