

# BROADWATER COUNTY COMMISSIONERS

**515 Broadway, Townsend**

**Meetings are held at the Flynn Building (old Opportunity Bank) 416 Broadway**

Agenda, documents, Official Meetings Minutes and videos of Commission meetings are available and at

<https://www.broadwatercountymt.com>

**OFFICIAL** agendas are posted in the Courthouse (1<sup>st</sup> Floor Bulletin Board), [Broadwatercountymt.com](http://Broadwatercountymt.com), and in the window of the Flynn Building on the Thursday before the Commission Meetings. Working Meetings are not live streamed

## July 18<sup>th</sup> Monday

- |          |   |
|----------|---|
| 10:00 AM | Discussion and Decision Shawn Rowland Contract for County Sanitarian  |
| 10:05 AM | Discussion and Decision Montana Stockgrowers Association Predator Control Fund \$8981   |
| 10:05 AM | Discussion and Decision Montana Wool Growers Association Predator Control Fund \$1207   |
| 10:10 AM | Discussion and Decision Agreement with Robert Peccia and Associates to Furnish Engineering and Planning Services to Broadwater County and City of Townsend for the Improvements to the Townsend City County Airport |

*Public comment period (on items not on the agenda) will be at the beginning of each meeting. Mail & Items for Discussion and/or signature may occur as time allows during the meeting. Issues and times are subject to change.*

Items for Discussion / Action / Review / Signature – Consent Agenda

- ✓ Certificate of Survey review
- ✓ Management – on-going advisory board appointments
- ✓ Claims/Payroll/minutes
- ✓ County Audit / Budget
- ✓ Mail – ongoing grants
- ✓ Correspondence – support letters

Darrel Folkvord	Chairperson	406-266-9272 and 406-980-1213
Debi Randolph		406-266-9270 and 406-980-2050
Mike Delger		406-266-9271 and 406-521-0834
E-mail	<a href="mailto:commissioners@co.broadwater.mt.us">commissioners@co.broadwater.mt.us</a>	

January 18, 2022

Broadwater County Commissioners  
515 Broadway  
Townsend, MT 59644

**RE: Proposal to Provide Environmental Health Services to Broadwater County**

Dear Commissioners,

As per our conversation at the beginning of 2022, Rowland Environmental Consulting, LLC (REC) would like to update its contract to provide Environmental Health Services to Broadwater County. Specifically, REC finds it necessary to propose a change of its hourly rate from a maximum of \$90.00/hour to a maximum hourly rate of \$105.00. Mileage would continue to be charged at the going allowed federal rate. The increase in hourly rate is due to increases in health care costs, an increase professional liability insurance and an overall increase in the cost of living in Montana.

Since March of 2019, REC has provided general sanitarian duties for Broadwater County including the following services:

- Inspection of Licensed Establishments such as Restaurants, Hotels/Motels, trailer courts,
- Site Evaluations and Permitting for Onsite Sewage Treatment and Disposal Systems (drainfields),

During the COVID-19 Pandemic, REC has worked with the Public Health Department to provide guidance to the Broadwater County Board of County Commissioners and the Broadwater County Board of Health.

Finally, in 2021 REC began the review of subdivision submittals to the Montana Department of Environmental Quality (DEQ).

REC proposes to continue to provide the same level of Environmental Health Services as it has for the past three years.

If you have any questions or would like to meet in person to discuss the change in hourly rate, please let me know.

Sincerely,

**ROWLAND ENVIRONMENTAL CONSULTING, LLC**

A handwritten signature in blue ink that reads "Shawn D. Rowland".

Shawn D. Rowland, MS RS  
[shawn@rec406.com](mailto:shawn@rec406.com)

Enclosures: Professional Services Agreement



123 HARWOOD DRIVE  
HELENA, MT 59601  
(406) 270-5501

PROFESSIONAL SERVICES AGREEMENT

Project Name: Broadwater County Environmental Health Services

Project Location: Broadwater County, Montana

Rowland Environmental Consulting LLC. Project Number: 2019-041

THIS AGREEMENT made and entered into by and between ROWLAND ENVIRONMENTAL CONSULTING, LLC. and the Client identified herein provides for the Professional Services described under Item 1 of this Agreement.

CLIENT: Broadwater County

ADDRESS: 515 Broadway, Townsend, MT 59644

CONTACT PERSON: Broadwater County Commissioners (Darrel Folkvord, Commissioner)

PHONE NO: 406-980-1213 E-MAIL: dfolkvord@co.broadwater.mt.us

1. DESCRIPTION OF PROFESSIONAL SERVICES TO BE PROVIDED BY ROWLAND ENVIRONMENTAL CONSULTING, LLC.

See attached letter from Rowland Environmental Consulting, LLC (REC) dated January 18, 2022.

2. THE COMPENSATION TO BE PAID ROWLAND ENVIRONMENTAL CONSULTING, LLC. for providing the services described in Item 1 above or Attached Proposal and/or Fee Schedule:

Retainer Fee of \$ (to be remitted prior to service)
Lump-Sum\* charge of \$
X Unit Cost/Time Charges identified in Attached Proposal and/or Fee Schedule, plus reimbursable costs.

IN WITNESS WHEREOF, this agreement is accepted as of the date written above, subject to the terms and conditions above stated and the provisions set forth on the reverse side.

CLIENT ROWLAND ENVIRONMENTAL CONSULTING, LLC
SIGNED: (Authorized Agent of Client) SIGNED: Shawn D Rowland (Authorized Agent Rowland Environmental Consulting, LLC.)
TYPED NAME: TYPED NAME: Shawn D. Rowland
TITLE: TITLE: Owner
DATE: DATE: January 18, 2022

3. **COMPENSATION:** Direct personnel expense includes: the cost of salaries and fringe benefit costs related to vacation, holiday, and sick leave pay; contributions for Social Security, Workers' Compensation Insurance, retirement benefits, and medical and insurance benefits; unemployment and payroll taxes; and other allowed benefits of those employees directly engaged in the performance of the requested service. Reimbursable costs include: fees of Subcontractors (whose expertise is required to complete the project) and out-of-pocket expenses, the cost of which shall be charged at actual costs plus an administrative charge as described in attached fee schedule. Typical out-of-pocket expenses shall include, but not be limited to, travel expenses (lodging, meals, etc.), job-related mileage at the prevailing company rate, long distance telephone calls, courier, printing and reproduction costs, and equipment and materials.

4. **INVOICE PROCEDURES AND PAYMENT:** Rowland Environmental Consulting, LLC. shall submit periodic invoices to the Client for work accomplished during a 28-day period. Invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for Subcontractors and reimbursable costs. Such invoices shall be submitted by Rowland Environmental Consulting, LLC. as soon as possible after the end of the period in which the work was accomplished and shall be due and payable by the Client upon receipt.

For services provided on a Lump-Sum basis, the amount of each invoice shall be determined on the "percentage of completion method" whereby Rowland Environmental Consulting, LLC. will estimate the percentage of the total work (provided on a Lump-Sum basis) accomplished during the invoicing period.

The Client, as owner or authorized agent for the owner, hereby agrees that payment as provided herein will be made for said work within 30 days from the date the invoice for same is mailed to the client at the address set out herein or is otherwise delivered, and in default of such payment, hereby agrees to pay all costs of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. The Client hereby acknowledges that unpaid invoices shall accrue interest at 1% per invoicing period after they have been outstanding for over 28 days. Rowland Environmental Consulting, LLC. reserves the right to suspend all services on the Client's project without notice if any invoice remains unpaid in whole or in part, 45 days after date of invoice. This suspension shall remain in effect until all unpaid invoices are paid in full. If payment is not received within 60 days of the invoice date, Rowland Environmental Consulting, LLC. may treat the non-payment as a material breach and terminate the contract.

5. **COST ESTIMATES:** Client hereby acknowledges that Rowland Environmental Consulting, LLC. cannot warrant that any cost estimates provided by Rowland Environmental Consulting, LLC. will not vary from actual costs incurred by the Client. Cost estimates are assumed to be within 10% of actual budget and are considered reasonable and payable by Client. Actual costs greater than 10% over cost estimates will be agreed upon by Rowland Environmental Consulting, LLC. and Client in a new Professional Services Agreement.

6. **LIMIT OF LIABILITY:** The limit of liability of Rowland Environmental Consulting, LLC. to the Client for any cause or combination of causes shall be, in total amount, limited to the fees paid under this Agreement. This limit applies to all services on this project. No action relating to the services performed under this Agreement may be brought by either party more than two years after the services are performed.

7. **ASSIGNMENT:** Neither the Client nor Rowland Environmental Consulting, LLC. may assign or transfer its interest in this Agreement without the written consent of the other.

8. **ENTIRETY OF AGREEMENT:** This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto,

9. **PERMITTING:** In cases where the scope of services requires Rowland Environmental Consulting, LLC. to submit, on behalf of the Client, a permit application and/or approval by a third party to this contract, Rowland Environmental Consulting, LLC. does not make any warranties, guarantees or representations as to the success of our effort on behalf of the Client. Payment for services rendered by Rowland Environmental Consulting, LLC. is not contingent upon the successful acquisition of these permits.

10. **STANDARD OF CARE:** Professional services performed by Rowland Environmental Consulting, LLC. under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of Rowland Environmental Consulting, LLC.'s profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any of Rowland Environmental Consulting, LLC.'s proposals or reports.

11. **SAMPLES AND WASTE DISPOSITION:** Client shall be solely responsible for proper disposal of all contaminated and/or waste materials, including, but not limited to, contaminated personal protective equipment, samples, waste materials and produced soils or fluids at or submitted from the project site. Client is responsible for all hazardous or potentially hazardous materials, substances or wastes that are present on the project site and/or submitted to Rowland Environmental Consulting, LLC. Samples determined to contain or suspected of containing any hazardous or potentially hazardous materials, substances, or wastes will remain the property of Client, who will be solely and completely responsible for their proper disposal.

12. **CONFIDENTIALITY.** All data developed pursuant to the performance of services under this Agreement, or supplied to or obtained by Rowland Environmental Consulting, LLC. from Client or any of their subcontractors or agents, will be treated as confidential, and will only be released to individuals identified by Client as appropriate recipients of such information.

13. **SUSPENSION, TERMINATION, CANCELLATION OR ABANDONMENT:** In the event the project described in Item 1, or the services of Rowland Environmental Consulting, LLC. called for under this Agreement, is/are suspended, canceled, terminated or abandoned by the Client, Rowland Environmental Consulting, LLC. shall be given seven (7) days prior written notice of such action and shall be compensated for the professional services provided up to the date of suspension, termination, cancellation or abandonment in accordance with the provisions of this Agreement for all work performed up to the date of suspension, termination, cancellation or abandonment, including reimbursable expenses.

14. **DELAY OF SERVICES:** If Rowland Environmental Consulting, LLC.'s services under this agreement are delayed for reasons beyond Rowland Environmental Consulting, LLC.'s control, the client will be contacted and the time of performance shall be adjusted appropriately. If the services under this Agreement are delayed for a period of more than ninety (90) days the fees shall be subject to renegotiations and will apply only to the unfinished services as of the effective date of such change, except where the services provided are under a continuous service contract for more than one year.

15. **WAIVER:** Any failure by Rowland Environmental Consulting, LLC. to require strict compliance with any provision of this contract shall not be construed as a waiver of such provision, and Rowland Environmental Consulting, LLC. may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

16. **GENERAL INDEMNITY:** Client agrees to defend, indemnify and hold harmless Rowland Environmental Consulting, LLC. against any claims, obligations and liabilities arising from or related to the performance of project services under this Agreement, or occurring or resulting from Client's utilization of Rowland Environmental Consulting, LLC. reports, unless such losses are caused by the sole negligence or willful misconduct of Rowland Environmental Consulting, LLC..

17. **GOVERNING LAW:** The parties agree that venue and jurisdiction for any action arising under this contract is in Polson, Montana, and that the contract shall be interpreted according to the laws of the state of Montana.

MONTANA WOOL GROWERS ASSOCIATION  
PREDATOR CONTROL FUND  
P.O. Box 1938  
Billings, MT 59103

(406) 657-6464

MEMORANDUM OF UNDERSTANDING

For the period: **JULY 1, 2021 TO JUNE 30, 2022**

In accordance with the terms of a Cooperative Service Agreement between the USDA APHIS Wildlife Services program and the Montana Wool Growers Association, **BROADWATER COUNTY** agrees to allocate \$ 1,207 for the protection of sheep from destructive animals.

Funds under this agreement will be expended to carry out a mutually-agreed-upon program to minimize economic depredations. The county will be billed semiannually on **DECEMBER 1** and **JUNE 1**. Funds will be made payable to and deposited in the Predator Control Fund, Montana Wool Growers Association.

Predatory animal pelts of value salvaged by the Wildlife Services program will be sold and the proceeds deposited in the Predator Control Fund, to be expended in cooperation with Wildlife Services to further the program.

The program is agreed upon as follows:

**(1) Wildlife Services Specialist will conduct Wildlife Services in Broadwater and Gallatin Counties, and Meagher County west of Highway 89. Airplane will be used where feasible and funds available.**

\_\_\_\_\_  
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
For the MONTANA WOOL GROWERS ASSOCIATION

\_\_\_\_\_  
DATE

**Stock Sheep On Tax Rolls :** 2414

(A signed copy  
will be returned  
for your files.)

**Sheep License Fee/Head :** .50

MONTANA STOCKGROWERS ASSOCIATION  
PREDATOR CONTROL FUND  
P.O. Box 1938  
Billings, MT 59103

(406) 657-6464

MEMORANDUM OF UNDERSTANDING

For the period: **JULY 1, 2021 TO JUNE 30, 2022**

In accordance with the terms of a Cooperative Service Agreement between the USDA APHIS Wildlife Services program and the Montana Department of Livestock, **BROADWATER COUNTY** agrees to allocate \$ 8,981 for the protection of cattle from destructive animals.

Funds under this agreement will be expended to carry out a mutually-agreed-upon program to minimize economic depredations. The county will be billed semiannually on **DECEMBER 1** and **JUNE 1**. Funds will be made payable to and deposited in the Predator Control Fund, Montana Stock Growers Association.

Predatory animal pelts of value salvaged by the Wildlife Services program will be sold and the proceeds deposited in the Predator Control Fund, to be expended in cooperation with Wildlife Services to further the program.

The program is agreed upon as follows:

- (1) **Wildlife Services Specialist (WSS) will conduct Wildlife Services in Broadwater and Gallatin Counties, and the portion of Meagher County west of Highway 89.**
- (2) **Funds generated under this agreement will be expended within Broadwater County for costs associated with the WSS (vehicle, partial salary) and contract fixed wing and/or helicopter flying.**

\_\_\_\_\_  
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
For the MONTANA STOCKGROWERS ASSOCIATION

\_\_\_\_\_  
DATE

**Stock Cattle On Tax Rolls:** 17962

(A signed copy  
will be returned  
for your files.)

**Cattle License Fee/Head:** .50

**AGREEMENT TO FURNISH ENGINEERING AND PLANNING SERVICES**  
**to**  
**BROADWATER COUNTY AND THE CITY OF TOWNSEND**  
**for**  
**IMPROVEMENTS TO THE TOWNSEND CITY-COUNTY AIRPORT**

For the consideration hereinafter set forth, ROBERT PECCIA & ASSOCIATES, INC. (hereinafter referred to as the Engineer) agrees to provide engineering and related services as described herein to BROADWATER COUNTY and the CITY OF TOWNSEND (hereinafter referred to as the Owner) for a project generally described as follows (hereinafter the Project):

The Airport Engineering and Planning Services for the Townsend City-County Airport are anticipated to generally consist of, but are not limited to, the following work items:

1. Pavement Construction, Rehabilitation, and Maintenance
2. Land Acquisition
3. Revenue Generating Facilities (Hangars, Fuel System)
4. Environmental Documentation
5. Complete Aeronautics & Field Surveys
6. Completing, Submitting, and Maintaining Records of Federal, State, etc. Grants and Funding
7. Automated Weather Observation System
8. Weather Camera System Installation and Maintenance
9. Airport Layout Plan (ALP) Revisions
10. Capital Improvement Planning (CIP)
11. Access Roads
12. Fencing, Gates, and Drainage Improvements
13. Lighting, Signing, Navaid, and Electrical Improvements
14. Snow Removal Equipment Acquisition
15. Equipment Storage Buildings
16. Terminal Building Improvements
17. Other Engineering Projects as Necessary

The engineering and administration work for the above listed improvements are anticipated to generally consist of, but are not limited to, the following work items:

- Project planning and coordination;
- Project and contract administration / accounting;
- Field surveys;
- Geotechnical Investigations;
- Engineering design, plans and technical specifications;
- Coordination with Federal Aviation Administration (FAA), Montana Department of Transportation (MDT) – Aeronautics Division, and others;
- Construction Management Services;
- Services During Construction; and
- Final Project Closeout Report.

**ARTICLE 1. SCOPE OF SERVICES**

The Engineer agrees to provide engineering and related services for the Owner's Project. The services to be provided, and the compensation for such services, shall be as mutually agreed to in separate Task Orders to this Agreement executed by both parties. Unless otherwise indicated in a Task Order, execution of a Task Order by the Owner shall constitute notice to and authorization for the Engineer to proceed with the services enumerated in the Task Order. The Engineer shall have no other obligations or responsibilities for the Project except as agreed to in writing.

**ARTICLE 2. BASIS OF COMPENSATION**

A. COMPENSATION

As a consideration for providing the services covered under this Agreement, the Owner shall pay the Engineer a lump sum fee or the Engineer's current salary cost, overhead, and direct costs, plus a fixed fee, whichever is appropriate, as described in each Task Order.

B. BUDGET

The budget for the Scope of Services as established in each Task Order shall be negotiated by the parties at the time each service is authorized.

C. CHANGE OF SCOPE

The Scope of Services and its related budget for each Task Order shall be limited to the scope and budget expressly set forth in the Task Order. Changes in the indicated Scope of Services shall be subject to renegotiation and shall be implemented by a formal amendment to the appropriate Task Order.

D. BASIS OF COSTS

The budgets listed in the Task Orders are based on salaries and expenses estimated for completing the work in the time frames indicated in each Task Order. Should the services scheduled be delayed because of circumstances beyond the reasonable control of the Engineer, the parties will renegotiate the Engineer's compensation to provide for additional costs of service.

The Owner recognizes that in the course of completing the services under this Agreement, the Engineer may encounter conditions which are beyond the control of the Engineer and thus creating potential for claims and additional costs to the Engineer which are not covered in fees charged and earned for services provided. This category includes, but is not limited to the following:

1. Professional services relating to the disposal of hazardous wastes, or the encountering of hazardous wastes during the performance of design and construction of the project.
2. Unknown underground utilities or other man-made underground objects not properly located.
3. Unavoidable contamination of subsurface areas, aquifers, etc. or the disturbance of natural underground resources during the design and construction of the project.
4. Changes in statutes, codes, regulations or standards that occur during the course of design or the work.
5. Information provided by others which is not accurate or complete.
6. Physical or environmental conditions that may arise and differ materially from those existing at the beginning of the Project



Should any such condition occur during the performance of this contract, the Owner hereby waives any claim against the Engineer and agrees to defend, indemnify and hold the Engineer harmless from any claim or liability for injury or loss allegedly arising from the Engineer encountering of said conditions other than claims or liability arising from the sole negligence or willful misconduct of the Engineer. The Owner agrees to compensate the Engineer for any time spent and expenses incurred by the Engineer in defense of any such claim with such compensation based upon the Engineer's prevailing fee schedule and expense reimbursement policy.

E. ADDITIONAL SERVICES

Additional services not specified in Article 1, but subsequently requested by the Owner, shall be included in the appropriate Task Order or a separate Task Order shall be written for the additional services.

F. ALTERNATIVE DESIGNS

If the Owner directs that competitive bids be taken for construction of alternative designs where this involves the preparation of designs, drawings, and specifications for alternative facilities not previously agreed to, the compensation to the Engineer shall be on the basis of an additional payment to be mutually negotiated at the time the Owner directs that alternative designs, drawings, and specifications be prepared.

G. LITIGATION ASSISTANCE

Engineer will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event Engineer is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Owner shall reimburse Engineer for its costs and compensate Engineer at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and other similar or related tasks.

**ARTICLE 3. PAYMENT FOR SERVICES**

Payment to the Engineer, as prescribed in Article 2, shall be made as follows:

A. PAYMENT FOR SERVICES

Payment is due within 30 days after receipt of billing of the amount due for each service rendered. Engineer may suspend performance of services upon ten (10) calendar days' notice to the Owner for failure of payments when due, or for any other breach of this Agreement. Engineer shall not have any liability whatsoever to the Owner for any costs or damages as a result of such suspension. If Engineer resumes services after payment by Owner, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Engineer to resume performance. If an invoice remains unpaid for more than 90 days, Engineer shall have the right, but not the obligation, to initiate collection procedures.

B. NO OFFSET

The Owner shall not withhold amounts from the Engineer's compensation to impose a penalty or liquidated damages on the Engineer, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Engineer agrees in writing, or has been found liable for the amounts in a binding dispute resolution proceeding.

C. INTEREST

If payment of the amounts due or any portion thereof is not made as prescribed above, interest on the unpaid balance will accrue at the rate of one percent (1%) per month and become due and payable at the time said overdue payments are made, unless delay in payment is due to improper, contested, or inadequate billing procedures followed by the Engineer. If the Engineer has to retain an attorney to assist in recovering amounts due under this Agreement, Engineer also shall be entitled to recover reasonable attorney's fees and costs.

**ARTICLE 4. OBLIGATIONS OF THE ENGINEER**

A. AUTHORIZATION TO PROCEED

The Engineer will not begin work on any of the services listed in Article 1 until the Owner directs him to proceed. Authorization to proceed on work elements under this Agreement as to scope, cost, and time for completion shall be in the form of a Task Order as previously described.

B. SUBSURFACE INVESTIGATIONS

The Owner may retain a geotechnical engineer to provide detailed recommendations based on the characteristics of the soils at the location of the Project. The Engineer does not have the knowledge, or training regarding soils issues that a geotechnical engineer will have, and as a result the Engineer may not identify all potential soils issues, or risks associated with soils issues. The Engineer cannot and does not make any guarantees, representations, promises, or expressions of opinion regarding the soils at the Project site or the possible impacts those soils will have on the Project.

C. PERIODIC SITE VISITS

Visits to the construction site and observations made by the Engineer as part of services during construction are made for the purpose of determining whether, in general, work appears to be proceeding in a manner that indicates that the Project, when completed, will conform to the design intent. Engineer will not make detailed or exhaustive investigations of Contractor's work. Engineering visits and observations shall not relieve the Construction Contractor(s) of an obligation to conduct comprehensive inspections of the work sufficient to ensure conformance with the intent of the Contract Documents and shall not relieve the Construction Contractor(s) of total responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the Construction Contract(s) in conformance with the intent of those Contract(s) and for all safety precautions incidental thereto. Such visits by the Engineer are not to be construed as part of the observation duties of the on-site representative personnel defined herein, nor is the Engineer in any way responsible for inspecting, noting, commenting on, or reporting safety deficiencies. The Engineer shall not be responsible for the acts or omissions of any Contractor(s)' or subcontractor(s)' agents or employees or any persons at the site except Engineer's own employees and agents.

D. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES

Engineer shall be responsible only for those construction phase services expressly required of Engineer in a subsequent Task Order. With the exception of such expressly required services, Engineer shall have no obligation to provide design, shop drawing or submittal 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 insurance and surety bonding interpretation and enforcement, construction observation and review, review of payment applications, and all other necessary construction

phase engineering and professional services. The Engineer will not be able to sign any certifications required by state or federal agencies, or funding agencies, unless the Engineer is closely involved in those aspects during construction. Owner waives all claims against the Engineer that may be connected in any way to construction phase engineering and professional services except for those services that are expressly required of Engineer in a subsequent Task Order.

E. SELECTION OF ON-SITE REPRESENTATIVE

The Owner reserves the right to review and approve the qualifications of the Engineer's on-site representative personnel (if an on-site representative is included in the Scope of Services set forth in a subsequent Task Order). The Owner may request to interview the Engineer's on-site representative personnel prior to giving final approval.

F. ON-SITE REPRESENTATIVE

If on-site representation is included in the Scope of Services set forth in a subsequent Task Order, the Engineer's on-site representative personnel will make reasonable efforts to assist in determining whether the work of the Contractor(s) fulfills the provisions of the Contract Documents. Their day-to-day presence and observations will not, however, cause the Engineer to be responsible for those duties and responsibilities that belong to the Owner and/or Construction Contractor(s) or other parties and which include, but are not limited to, full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work and for all safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents. Such on-site observations shall not, in any way, make the Engineer responsible for inspecting, noting, observing, or reporting on safety deficiencies of the Contractor nor for the acts or omissions of said Contractor(s)' or subcontractor(s)' agents or employees or any other persons at the site except Engineer's own employees and agents.

G. ON-SITE RESPONSIBILITIES

If on-site representation is included in the Scope of Services set forth in a subsequent Task Order, the Engineer shall act as the Owner's representative for all matters incidental to coordination of the project during construction; but the Engineer has not been retained or compensated to direct or supervise the Contractor's personnel; operate or have direct use of equipment; be responsible for construction means, methods, techniques, and procedures; be responsible for safety precautions on the project, or in any way infringe on the duties of the Contractor(s). The Contractor alone is responsible for the adequate performance in conformance with the intent of the Construction Contract involving all aspects of the project and for the acts or omissions of the Contractor's agents or employees.

H. OPINIONS OF PROBABLE CONSTRUCTION COSTS

Engineer's opinion of probable construction cost provided for herein 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 engineer 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 the Contractor's 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 wishes greater assurance as to probable construction cost, Owner shall employ an independent cost estimator.

I. CONSTRUCTION PROGRESS PAYMENTS

Recommendations by the Engineer to the Owner for periodic construction progress payments to the Contractor are based on the Engineer's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated and that the quality of work represented by the recommendation is generally in accordance with the intent of the Contract Documents. Such recommendations, however, shall not be deemed to represent that continuous, exhaustive, or detailed examinations or reviews of the work have been made by the Engineer to ascertain that the Contractor has completed the work in exact accordance with the Contract Documents nor that the final work will be acceptable in all respects. Recommendation of such payment does not infer that the Engineer has made an examination to ascertain how or for what purpose any construction Contractor has used the moneys paid on account of the Contract Price or that title to any of the work, materials, or equipment has passed to Owner free and clear of 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.

J. STANDARD OF CARE

The standard of care ("Standard of Care") for all services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality on the same or similar projects. ENGINEER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ENGINEER'S SERVICES.

K. RECORD DRAWINGS

Record drawings will be prepared, in part, on the basis of information compiled and furnished by others and are not intended to represent in detail the exact location or type of various components nor the exact manner in which the project was finally constructed. The Engineer will not be responsible for any errors or omissions that have been incorporated into the record drawings through the negligence or faulty information of others.

L. NO AUTHORITY OVER WORKSITE ACTIVITIES OR OTHER CONTRACTORS

Engineer shall not have any duty or authority to direct, supervise, oversee or control (i) any activities at the worksite, or (ii) any contractors of Owner or their work. Engineer is not responsible for the means, methods, techniques, procedures or sequences of the Contractor or any subcontractor. The Contractor and subcontractors are solely and exclusively responsible for performing their work in accordance with the plans and specifications. Engineer's services and/or presence at a site shall not relieve others of their responsibility to Owner or to others. Engineer shall not be liable for the failure of Owner's contractors or others to fulfill their responsibilities, and Owner agrees to indemnify, hold harmless and defend Engineer against any claims arising out of such failures. Neither the professional activities of Engineer, nor the presence of Engineer at the construction/project site, shall relieve the general Contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the Contract Documents and to comply with any health or safety precautions required by any regulatory agencies. Engineer does not have authority to control any Contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees that the Contractor and subcontractors are solely responsible for job site safety. Accordingly, the Owner shall require the Contractor and all subcontractors to defend, indemnify, and hold harmless the Engineer from any and all claims, losses, suits, damages, and liabilities, including attorneys' fees and costs, arising in any way from such contractors' or subcontractors' services or work product, except to the extent caused by the sole negligence of the Engineer.

M. CONFIDENTIAL INFORMATION

Although Engineer generally will not disclose without Owner's consent information provided by Owner or developed by Engineer in the course of its services that is designated by Owner in writing as confidential, Engineer shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public; if such disclosure is ordered by a court of competent jurisdiction, or if the information designated as confidential becomes publicly known through no fault of the Engineer. Engineer shall notify Owner of any such disclosure.

N. CONTRACTOR'S PAYROLLS AND BASIC RECORDS

During construction the Contractor will be required to submit copies of their payroll and basic records to both the Engineer and Owner for archive purposes only. In addition, the Contractor will be required to submit a certification signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Montana Department of Labor and Industry, and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. Because the Engineer has no formal training in contractor labor laws or in the interpretation of payroll reports, the Engineer will rely on the Contractor's certification that the employees are being classified and paid appropriately. If the Owner wishes to monitor the Contractor's payroll records they shall do so on their own or shall employ an independent consultant trained in these matters.

O. CONTRACTOR'S INSURANCE AND BONDS

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.

P. SIGNING DOCUMENTS

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 personally 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 such documents.

Q. SUBMITTAL REVIEW

If the Scope of Services in a subsequent Task Order includes review of submittals, the Engineer shall review and accept or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Engineer's review shall be conducted with reasonable promptness while allowing sufficient time in the Engineer's judgment to permit adequate review. Review of a specific item shall not indicate that the Engineer has reviewed the entire assembly of which the item is a component. The Engineer shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Engineer in writing by the Contractor. The Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

R. ACCESSIBILITY ACTS

The Americans with Disabilities Act, the Fair Housing Amendments Act, and related federal and state “accessibility” laws and regulations (collectively “Acts”) are not detailed building codes. The requirements of the Acts are general in nature and open to differing interpretations. The Engineer will provide services in a manner consistent with the intent of the Acts and shall comply with the Standard of Care in responding to the requirements of the Acts but does not warrant or guarantee that the project will satisfy all possible interpretations or applications of the Acts.

**ARTICLE 5. OBLIGATIONS OF THE OWNER**

A. AUTHORIZATION TO PROCEED

Authorize the Engineer to proceed prior to the Engineer starting work on any of the services listed in Article 1 by executing a Task Order for each phase of the work.

B. OWNER'S REPRESENTATIVE

Designate a person to act as Owner's representative with respect to the services to be performed or furnished by Engineer under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to Engineer's services for this Project.

C. PROJECT REQUIREMENTS

Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications.

D. OWNER-FURNISHED DATA

Provide to the Engineer all technical data in the Owner's possession, including previous reports, maps, surveys, borings, and all other information required by the Engineer and relating to the Engineer's work on the project. Such information shall include, but not be limited to, the Owner's requirements for the project, any design criteria or constraints, and copies of design and construction details or standards that Owner requires to be included. Engineer may rely upon the accuracy, timeliness, and completeness of the information provided by the Owner in performing Engineer's services to the Owner.

E. ACCESS TO FACILITIES AND PROPERTY

Make its system facilities and properties available and accessible for inspection by the Engineer and provide labor and safety equipment as required by the Engineer and as authorized by Owner.

F. ADVERTISEMENTS, PERMITS, AND ACCESS

Pay all costs and be responsible for publishing advertisements for bids and for obtaining permits and licenses that may be required by local, state, or federal authorities and shall secure the necessary land, easements, and rights-of-way, and shall provide access as necessary for the Engineer to perform his services on public or private property as required, unless as otherwise specified herein.

G. TIMELY REVIEW

The Owner shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the Engineer, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as to not delay the services of Engineer.

H. PROMPT NOTICE

The Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services or any defect in the work of the Engineer or Contractors.

**ARTICLE 6. GENERAL LEGAL PROVISIONS**

A. FORCE MAJEURE

Engineer shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Owner or its contractors, failure of Owner or any government authority to timely review or to approve the services or to grant permits or approvals, or any other cause beyond Engineer's reasonable control, and Engineer's compensation shall be equitably adjusted to compensate it for any additional costs it incurs due to any such delay.

B. INDEMNIFICATION

*Indemnification by Engineer:*

The Engineer shall indemnify and hold harmless the Owner and its officers, directors and employees against and from any and all liability, loss, damage, claims, demands, costs and expenses, including court costs and reasonable counsel fees, arising out of personal injury or death of any person, or loss or damage to property, but only to the extent such personal injury, death, loss or damage is caused by the negligence, knowingly wrongful acts, errors or omissions of the Engineer, its agents and/or employees.

*Indemnification by Owner:*

The Owner shall indemnify and hold harmless the Engineer and its employees and agents, against and from any and all liability, loss, damage, claims, demands, costs and expenses, including court costs and reasonable counsel fees, arising out of personal injury or death of a person or loss or damage to property but only to the extent such personal injury, death, loss, destruction or damage is caused by the negligence, knowingly wrongful acts, errors or omissions of the Owner, its agents and/or employees.

C. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Owner and the Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Owner, and anyone claiming by or through the Owner, for any and all claims, losses, costs, damages of any nature whatsoever, and claims expenses from any cause or causes (including attorneys' fees and costs and expert witness fees and costs), including those resulting from negligence, breach of contract,

breach of statutory duty or otherwise (collectively “Claims”) so that the total aggregate liability for and in connection with the entire Project, regardless of how limited in scope the services under this Agreement may be, shall not exceed an amount equal to the Engineer’s total compensation under this Agreement. The Owner further agrees that the officers, principals, directors and employees of the Engineer and its agents will not be individually liable in respect of any Claims, holds such individuals harmless from all Claims and covenants not to bring any Claims against such individuals. Claims by, through or under the Owner shall specifically include any claims by purchasers of the Project (both first purchasers and subsequent purchasers), subsequent purchasers of the entire Project (during or after completion), lenders of the Owner and their assignees, any assignee of the Owner, and any invitee of the Owner. The parties agree that specific consideration has been given by the Engineer for this limitation and that it is deemed adequate. The Owner acknowledges that it could obtain a higher liability limit from the Engineer in return for increasing the Engineer’s fee but has elected not to do so.

**D. LEVEL OF ENGINEERING EFFORT**

The Owner and Engineer recognize that established compensation schedules and cost guidelines, plus previous experience and estimates of work efforts, were used in negotiating the basis of compensation in this Agreement. The Owner and Engineer further recognize that it is cost-prohibitive to the Owner to expect or require an absence of construction Contract Change Orders because of Contract Document ambiguities, inconsistencies, and/or discrepancies on a project of this type. Said guidelines and estimates and resulting basis of compensation, therefore, reflect a generally recognized level of engineering effort and professional competence that represent a balance between additional project costs directly attributable to said Change Orders and the necessary additional engineering changes to minimize or eliminate said Change Orders. The Contractor may require additional information from the Engineer to clarify, correct, supplement, and coordinate the design intent shown in the Construction Documents that result in increases in the construction cost, and that an increase in the construction cost does not automatically mean that the Engineer has breached the Standard of Care.

**E. TERMINATION**

This Agreement may be terminated by the Owner for its convenience by giving 30-days written notice to the Engineer.

This Agreement may be terminated by either party upon 30-days written notice should the other party fail substantially to perform in accordance with this Agreement through no fault of the other or if the project is stopped by conditions beyond the control of the Owner. Failure to perform includes failure of the Owner to promptly pay the Engineer in conformance with Article 3.

In the event of termination, the Engineer shall be paid in full for all work previously authorized and performed up to the termination date, plus termination expenses if termination is not caused by failure of the Engineer to perform in accordance with this Agreement.

If no termination is implemented, relationships and obligations created by this Agreement shall terminate upon completion of all applicable requirements of this Agreement.

**F. SUSPENSION, DELAY, OR INTERRUPTION OF WORK**

The Owner may suspend, delay, or interrupt the work of the Engineer on the project for the convenience of the Owner or for reasons beyond the control of the Owner or Engineer.



In the event of such suspension, delay, or interruption, an adjustment in compensation due the Engineer shall be made for all increases in cost of the Engineer's performance under this Agreement, including personnel relocation and/or replacement costs, and all other identifiable labor and expense costs.

G. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who 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.

H. VENUE

In the event of litigation or arbitration concerning this Agreement, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana, and this Agreement shall be governed by the laws of the State of Montana both as to interpretation and performance.

I. WAIVER OF CONSEQUENTIAL DAMAGES

Owner agrees to waive all claims against Engineer or Engineer's officers, directors, employees, agents, subcontractors and consultants for special, indirect, incidental or consequential losses or damages of any kind or nature whatsoever, including but not limited to commercial loss, loss of use, or lost, delayed or diminished profits, revenues or opportunities, even if Engineer has been advised of the possibility of such damages. This waiver shall apply to any such damages based upon any cause of action whatsoever, including but not limited to breach of warranty, guaranty or contract, product liability, negligence, breach of contract, strict liability or indemnity.

J. HAZARDOUS ENVIRONMENTAL CONDITION

Owner represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist. Owner has disclosed to the best of its knowledge to Engineer the existence of all asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location.

If a Hazardous Environmental Condition is encountered or alleged, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the work, the Engineer shall have the obligation to notify Owner and, to the extent of applicable laws and regulations, appropriate government officials.

It is acknowledged by both parties that the Engineer's scope of services does not include any services related to a Hazardous Environmental Condition. In the event the Engineer or any other party encounters a Hazardous Environmental Condition, the 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: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

K. NO THIRD-PARTY BENEFICIARY

Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third-party against the Engineer or the Owner. The Engineer's services under this Agreement are being performed solely for the benefit of the owner, and no other party or entity shall have any claim against the Engineer because of this Agreement or the performance or non-performance of any services under this Agreement. No other party or entity is intended to benefit from this Agreement.

L. EMPLOYMENT PRACTICES – EQUAL EMPLOYMENT OPPORTUNITY

To provide equal employment and advancement opportunities for all individuals, the Engineer will base employment decisions on merit, qualifications, and abilities. The Engineer is an equal opportunity employer and will not discriminate in employment opportunities or practices on the basis of sex, age, religion, creed, race, color, marital status, physical or mental disability, national origin, pregnancy, veteran or military status, sexual orientation, or any other characteristics protected by law, unless the reasonable demands of the job require a distinction to be made. This applies to all areas of employment including hiring, training, salary administration, promotion, job assignment, discipline, layoffs, and termination.

M. WAIVER OF SUBROGATION

To the extent damages are covered by property insurance or other insurance applicable to the work at the Project site, the Owner and Engineer waive all rights against each other and employees of the other for damages, except such rights as they may have to the proceeds of such insurance.

N. NO ASSIGNMENT

During the term of this Agreement and following its expiration or termination for any reason, neither Owner nor the Engineer shall transfer, assign, convey or sublet any right, claims (including any causes of action or claims alleging breach, negligence, loss or damages arising out of this Agreement), duty or obligation under it, nor any other interest therein, without the prior written consent of the other party. The sole exception to this provision is that the Owner may assign this Agreement to a lender providing financing for the Project so long as the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Engineer by the Owner prior to the assignment.

**ARTICLE 7. GENERAL PROVISIONS**

A. ACCESS TO DOCUMENTS

It is expressly understood that the Engineer's records relating to this Agreement will be available during normal business hours for inspection by the Owner, or authorized representative of the above.

B. REUSE OF DOCUMENTS

All documents including Drawings and Specifications provided or furnished by Engineer (or Engineer's Consultants) pursuant to this Agreement are Instruments of Service in respect of the Project, and Engineer and Engineer's Consultants, as appropriate, shall retain all ownership and property interest, including all copyrights and intellectual property rights, in the Instruments of Service (including the right of reuse by and at the discretion of Engineer and Engineer's Consultants, as appropriate) whether or not the Project is completed. Provided the Owner fully performs its obligations under this Agreement, including timely payment of all sums due, the Engineer grants to the Owner a non-exclusive license to use the Instruments of Service solely and

exclusively for the purpose of constructing and maintaining the Project. The Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others; however, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by Engineer and Engineer's Consultants, as appropriate, for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer, or to Engineer's Consultants, and Owner shall defend, indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

#### C. ELECTRONIC TRANSFER OF DOCUMENTS

The Engineer may furnish to the Owner, upon request, drawings in electronic media (disk) format. Owner is aware that differences may exist between the electronic files delivered and any printed hard-copy documents signed and sealed by the Engineer. In the event of a conflict between any signed hard-copy documents by Engineer and electronic files, the signed or sealed hard-copy documents shall govern. Plot files in electronic media format of text, data, graphics, or of other types that are furnished by the Engineer to the Owner, are only for the convenience of the Owner and others. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

Because data stored in electronic media format can deteriorate or be modified 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 30-days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by the Owner.

Engineer makes no representation as to the compatibility of electronic files with any hardware, software or system used by the Owner or any other party. The Owner assumes all risk and cost associated with the use of these files on the Owner's system. Owner assumes sole and exclusive responsibility for determining if any conflict exists. Nothing in the electronic files alters the requirements of the Contract Documents, including, and without limitation, the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions and coordinate the recipient's work with that of other contractors or subcontractors for the various projects

Delivery of the electronic files shall not be deemed a sale by the Engineer, and the Engineer makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

#### D. DISPUTE RESOLUTION

Owner and Engineer agree that they shall first attempt to resolve the dispute through direct discussion by principals or representatives with full authority to reach a compromise. If the dispute is not resolved through direct discussion the parties will then submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by an independent party agreed to by the Owner and Engineer. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days of the event causing the dispute. If such mediation is unsuccessful in resolving the dispute, then (i) the parties may mutually agree to a dispute resolution of their choice, such as arbitration, or (ii) either party may seek to have the dispute resolved by a court of competent jurisdiction.

**ARTICLE 8. DESCRIPTION AND SIGNATURES**

A. AGREEMENT DESCRIPTION

This Agreement (consisting of pages 1 to 14, inclusive) constitutes the entire Agreement between the Owner and the Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written Contract Amendment executed by both parties.

DATED this \_\_\_\_\_ day of **May 2022**.

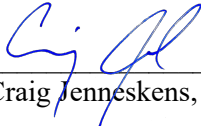
BROADWATER COUNTY

By: \_\_\_\_\_  
Darrel Folkvord, Chairman

CITY OF TOWNSEND

By: \_\_\_\_\_  
Mike Evans, Mayor

ROBERT PECCIA & ASSOCIATES, INC.

By:  \_\_\_\_\_  
Craig Jenneskens, P.E., President

## **Exhibit A**

This exhibit constitutes the mandatory federal contract provisions for professional services contracts under the Airport Improvement Program. They are detailed in FAA Advisory Circular *AC 150/5100-14E, Change 1 – Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects– Section 3.4.2* which refers to <http://www.faa.gov/airports/aip/procurement/>.

These provisions are a federal requirement for professional services and as such are incorporated into the Agreement. The provisions have been included verbatim, in accordance with *Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, dated June 19, 2018*. Wherever these provisions conflict with or revise the language of the Agreement, the provisions below will govern.

### **ACCESS TO RECORDS AND REPORTS**

The Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### **GENERAL CIVIL RIGHTS PROVISIONS**

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

## TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

### Title VI Solicitation Notice:

The Sponsor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

### Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

1. **Compliance with Regulations:** The Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Consultant’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Consultant under the contract until the Consultant complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the sponsor to enter into any litigation

to protect the interests of the sponsor. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Consultant”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

## CLEAN AIR AND WATER POLLUTION CONTROL

The Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Consultant agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. The Consultant must include this requirement in all subcontracts that exceeds \$150,000.

## CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

### 1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

### 2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

### 4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the Consultant certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.



### **CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

The Consultant, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The Consultant will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer/Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

### **DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§26.13)** –The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than **seven** days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within **seven** days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

### **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Consultant must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

## ENERGY CONSERVATION REQUIREMENTS

Consultant and sub-consultant agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq*).

## EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
  - d. "Minority" includes:
    - (2) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (3) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
    - (4) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices

may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with

all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every

effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **FEDERAL FAIR LABOR STANDARDS ACT**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

### **TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous

certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

### **CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **PROCUREMENT OF RECOVERED MATERIALS**

The Consultant agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Consultant and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:



- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year;  
or
- 2) The Consultant has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Consultant can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Consultant must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

### **SEISMIC SAFETY**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

### **CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (☐) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

- 1) The applicant represents that it is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- 2) The applicant represents that it is  is not  a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Note**

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

**Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**TERMINATION FOR CONVENIENCE (PROFESSIONAL SERVICES)**

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

**TERMINATION FOR DEFAULT (PROFESSIONAL SERVICES)**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party 7 days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

#### **VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.