

**PROFESSIONAL SERVICES CONTRACT BETWEEN CITY OF DOUGLAS,
WYOMING AND
CIVIL ENGINEERING PROFESSIONALS INC FOR CITY
ENGINEERING SERVICES**

1. **Parties.** This Contract is made and entered into this ____ day of _____, 2022, by and between City of Douglas, Wyoming, a Wyoming municipal corporation (hereinafter referred to as "City"), whose address is 101 N. 4th Street, P.O. Box 1030, Douglas, Wyoming 82633, and Civil Engineering Professionals, Inc. (CEPI) (hereinafter referred to as "Consultant"), whose address is 6080 Enterprise Drive, Casper, WY 82609.

2. **Purpose of Contract.** The purpose of this Contract is for Consultant to provide engineering services including but not limited to review of proposals for development projects including plats, sites, and alley vacation for compliance with City code and standards. In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Contract, the parties agree as follows:

3. **Term of Contract.** The term of the Contract is from the date of execution of this Contract until June 30, 2023, unless this Contract is otherwise amended or terminated pursuant to the provisions herein. This Contract shall supersede the current executed contract with CEPI which expires on June 30, 2022. This Contract may be renewed by Agreement of both parties in writing, subject to the required approvals. There is no right or expectation of renewal, and any renewal will be determined at the discretion of Parties.

4. **Payment.** City agrees to pay the Consultant for the services described in Attachment A herein. The total payment under this Contract shall not exceed the amount budgeted by the City for activities of the City Engineer. Payment shall be made on an hourly basis for work performed by Consultant for services and expenses as outlined on Attachment A of this contract and properly invoiced to the Department. Consultant shall submit a monthly invoice of services performed under this Contract. Proper invoices shall consist of a detailed statement of the work completed and number of hours. Payment shall be payable to Consultant upon receipt of the invoice for the services herein and the completion of this Contract. The payment shall cover the cost for those services to be provided by Consultant as outlined in Paragraph 5 herein including travel, lodging expenses and incidental expenses. City shall pay any actual expenses incurred by Consultant to perform the services including any required travel for Consultant in the performance of this Contract.

5. **Responsibilities of Consultant.**

5.1. The Consultant shall provide an estimate of the total hours required to complete projects assigned to Consultant and propose a completion date for each project. If the estimate and proposed completion date is accepted by the City, the Consultant shall complete the task within the limits of this Contract which shall be adjusted, if necessary, as the project proceeds. Consultant's services shall be performed as expeditiously as is consistent with customary and reasonable professional standards and the orderly progress of the project. Consultant agrees to perform all services hereunder, using customary and reasonable professional standards. Consultant agrees to keep City thoroughly informed of its progress through periodic reports, and to maintain accurate records relating to its services in connection with this project.

5.2. Consultant may have a direct contract with a person or entity to perform a portion of services required by this Contract. Such subcontract to other consultants is at the Consultant's expense, to the extent Consultant deems it necessary. Consultant agrees that it is as fully responsible to City for negligence, negligent acts and omissions of Consultant's sub-consultants and sub-contractors and their agents, and/or persons either directly or indirectly employed by them, as it is for the negligence, negligent acts or omissions of a person that is directly employed by Consultant to the extent such acts or omissions are caused by Consultant's employees, agents, or sub-consultants. Nothing in the foregoing procedure shall create any contractual relationship between City and any sub-consultants employed by Consultant under the terms of this Contract. By written Contract, Consultant shall require each sub-consultant, to the extent of the services to be performed by sub-consultant, to be bound to Consultant by the terms of this Contract, and to assume toward Consultant all obligations and responsibilities which Consultant, by this Contract, assumes toward City.

5.3. Consultant shall consult, to the extent required by City, with authorized employees, agents and/or representatives of City relative to the completion of any assigned project.

5.4. Consultant shall designate a principal or member of Consultant's staff satisfactory to City as the Project representative who shall, so long as their performance continues to be acceptable to City remain in charge of the services provided under this Contract.

5.5. Consultant shall provide copies of all documents required by City for review and approval by City and the appropriate authorities and agencies.

6. **Responsibilities of City.** City shall be responsible for the following:

6.1. City will assign Consultant development and other projects as necessary. City shall provide general directions and background materials to the Consultant, review proposed time estimates and deadlines and, if acceptable, authorize the work to be performed and pay for the services upon receipt of invoice from Consultant. If requested by the Consultant, City may authorize revisions to time estimates or deadlines when circumstances warrant. City shall ensure that appropriate personnel are available to provide direction and information to the Consultant as needed.

6.2. City shall provide and make available to Consultant, for its use, all maps, property descriptions, surveys, previous reports, historical data and other information within its knowledge and possession relative to the services to be furnished hereunder and shall provide programming requirements. Data and materials so furnished to Consultant shall remain the property of City and shall be returned upon completion of its services.

6.3. City will designate a representative who shall be fully acquainted with the project(s) and who shall have authority to render decisions relative to Consultant's services as necessary for the orderly progress of the work. The representative shall be responsible for receiving and processing all information related to the scope pursuant to this Contract.

6.4. City shall establish and maintain procedures for receiving, reviewing, recording, and acting on all information, documentation, payments and acceptances of work and services relative to this project in an expeditious and proper manner and in accordance with Consultant's agreed scope pursuant to this Contract.

6.5. City shall provide and make provisions for Consultant to enter upon public properties as required for Consultant to perform its services hereunder.

6.6. Nothing in this Contract nor any act or failure to act on the part of City shall be construed as a waiver of a claim by City for any defects or deficiencies in review of development projects.

7. **General Provisions.**

7.1. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the Parties shall be incorporated by written instrument.

7.2. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the Laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Eight Judicial District, Converse County, Wyoming.

7.3. **Confidentiality.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Contract shall be kept confidential by the Consultant unless written permission is granted by City for its release.

7.4. **Americans with Disabilities Act.** The Consultant shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.

7.5. **No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

7.6. **Publicity.** Any publicity given to the program or services provided herein including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Consultant, shall identify City as the sponsoring agency and shall not be released without prior written approval from City. Neither Consultant nor Consultant's personnel will give out any news releases or conduct media interviews concerning the work performed under this Contract without prior approval of City.

7.7. **Immigration Reform and Control Act of 1986.** In connection with the performance of Consultant pursuant to this Contract, Consultant warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 (P.L. 99-603, November 6, 1986) which prohibits the hiring, referral or recruitment of aliens not authorized to work, and provides for employer verification that an individual is not an unauthorized alien. Consultant agrees to send notice to all sub-consultants regarding the requirements of the Immigration Reform and Control Act of 1986 and notice that they are expected to comply with all of its provisions.

7.8. **Audit.** City and any of its representatives shall have access to any books, documents, papers, and records of Consultant which are pertinent to this Contract. Consultant shall maintain such records for five (5) years after termination of the Contract, or for two (2) years after the final resolution of any dispute arising from the Contract, whichever is later. Additionally,

Consultant shall abide by all regulations imposed by funding sources or governmental agencies, such as auditing requirements, payroll affidavits, and other documentation or verification. City agrees to pay any reimbursable expenses excluding labor costs associated with the audit.

7.9. Award of Related Contracts. City may undertake or award supplemental or successor contracts for work related to this Contract. Consultant shall cooperate fully with other Consultants and City in all such cases.

7.10. Indemnification.

7.10.01. The City shall be liable hereunder only for its own gross negligence, willful misconduct, or bad faith. Consultant agrees to indemnify the City and save it harmless against any and all liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted by the Consultant or its agents, subcontractors, or assigns in the execution of this Agreement.

7.10.02. Without limitation as to other remedies, which City may have, Consultant will without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, or other services.

7.11. Compliance with Laws. The Consultant shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

7.12. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract. The Consultant shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

7.13. Availability of Funds. Each payment obligation of the City is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Consultant, the Contract may be terminated by the City at the end of the period for which the funds are available. The City shall notify the Consultant at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the City to terminate this Contract to acquire similar services from another party.

7.14. Kickbacks. The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Consultant breaches or violates this warranty, the City may, at its discretion, terminate this Contract without liability to the City, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

7.15. Nondiscrimination. The Consultant shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975. The Consultant shall not discriminate against any individual on the grounds of age, sex, color, religion, national origin, or disability in connection with the performance of this Contract.

7.16. Notices. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

7.17. Entirety of Contract. This Contract represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and Contracts, whether written or oral.

7.18. Ethics. Consultant shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. §9-13-101, et seq.), and any and all ethical standards governing Consultant's profession.

7.19. Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

7.20. Accuracy of Services and Limitation of Liability. Consultant shall use customary and reasonable professional standards in connection with service hereunder. If, as a result of the authorized use of documents or advice erroneously furnished by Consultant, an error or omission is discovered, Consultant shall be responsible for correction of any work which must be removed or altered to meet the project requirements, and/or payment of any damages which are the result of such error or omission. Consultant may be given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself.

7.21. Independent Consultant. The Consultant shall function as an independent Consultant for the purposes of this Contract, and shall not be considered an employee of the City for any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant to incur any obligation of any kind on the behalf of the City or its staff. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of the Consultant or the Consultant's agents and/or employees as a result of this Contract.

7.22. Notice and Approval of Proposed Sale or Transfer of Consultant. Consultant shall provide City with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Consultant. Such notice shall be provided in accordance with the notice provision of this Contract. If City determines that the proposed merger, consolidation, sale or transfer of assets is not consistent with the continued satisfactory performance of Consultant's obligations under this Contract, then City may, at its option, terminate or renegotiate the Contract.

7.23. Liaison and Notice. City's and Consultant's designated representatives.

7.23.01. City's designated representative is the City Administrator: telephone

number: (307) 358-3462 and facsimile: (307) 358-6447. The address is 101 N. 4th Street, Douglas, WY 82633.

7.23.02. The Consultant's designated representative is Nick Larsen, telephone number: (307) 266-4346, email: Nick@cepi-casper.com. The address is 6080 Enterprise Drive, Casper, WY 82609.

7.23.03. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Services are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7.24. Insurance. The Consultant shall maintain the following insurance:

7.24.01. Comprehensive General Liability. Consultant shall have and maintain comprehensive general liability insurance coverage during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof and including underground, collapse, and explosion (XCU) and products and completed operations in an amount not less than one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) in general aggregate.

7.24.02. Workers' Compensation or Employers Liability Insurance. Consultant shall provide proof of workers' compensation coverage, for all its employees who are to work on the projects described in this Contract. Consultant's coverage shall be under the Wyoming Workers' Safety and Compensation program, if statutorily required or such other workers' compensation insurance as appropriate. Consultants insurance shall include Stop Gap coverage in the amount not less than five hundred thousand dollars (\$500,000.00) per employee for each accident and disease. Consultant shall have also supply proof of worker's compensation and employer's liability insurance on each and every subconsultant before allowing that subconsultant on the job site.

7.24.03. Professional Liability or Errors and Omissions Liability Insurance. Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance to protect City from any and all claims arising from Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties by Consultant or his sub-consultants in an amount not less than five hundred thousand dollars (\$500,000.00).

7.24.04. Business Automobile Liability. Consultant shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence.

7.24.05. Coverage. All policies required under this contract shall be in effect for the duration of this Contract and projects. All policies shall be primary and not contributory. Consultant shall pay the premiums on all insurance policies and insurance certificates must include a clause stating that the insurance may not be revoked, cancelled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the City.

7.24.06. Additional Insured. All insurance policies required by this contract, except workers' compensation, shall name the City as an additional insured, and shall contain a waiver of subrogation against the City, its agents, and employees. Consultant shall provide, upon request a copy of an endorsement providing this coverage.

7.24.07. City's Right to Reject. City reserves the right to reject a certificate of insurance if Consultant's insurance company is widely regarded in the insurance industry as financially unstable. This would include but is not limited to insurance companies with no less than AVIII rating in the A.M. Best insurance rating guide.

7.24.08. Sub-consultants. The insurance requirements set forth above apply to all sub-consultants. It is Consultant's responsibility to ensure that its sub-consultants meet these insurance requirements. City has the right to review the Certificates of any and all sub-consultants used by Consultant.

7.24.09. Cancellation. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from Consultant or their insurers to City. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to City and its division, officers and employees.

7.25. Ownership of Documents/Work Product. All drawings, specifications, reports, records, data, notes, models and other work product or products given to, or assembled or developed by, Consultant in connection with this Contract, whether complete or incomplete, are instruments of service for this entire project only and shall remain the intellectual property of City whether the work is completed or not. Consultant shall furnish one (1) original or reproducible copy of such work product to City, in addition to one (1) electronic media copy of drawings (AutoCAD R2000) and specifications (Microsoft Word or compatible, EXCEL or compatible), and in addition to one electronic media copy of the work product in .PDF format for copy center reproduction, in accordance with the services required hereunder. Consultant may make and retain copies for information and reference for its files. City reserves the right to the reuse of any of the work product of Consultant on any same, similar, different or separate project without the written permission of Consultant. City shall indemnify and hold harmless Consultant against all losses, damages and costs incurred by City out of any use or reuse of the documents, by City or its agents, on any different or separate project, when such use or reuse is not specifically authorized in writing by Consultant.

7.26. Patent or Copyright Protection. Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by Consultant or its sub-consultants will violate any such restriction. No reports, maps or other documents produced in whole or in part under this Contract shall be subject of an application for copyright by or on behalf of Consultant without prior written consent of City.

7.27. Governmental Immunity. City does not waive government immunity by entering into this Contract and specifically retains immunity and all defenses available to it pursuant to Wyo. Stat. § 1-39- 104(a) and all other state law.

7.28. Taxes. The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

7.29. Termination of Contract.

7.29.01. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice. This Contract may be terminated immediately

for cause if the Consultant fails to perform in accordance with the terms of this Contract. In the event of termination, Documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, and reports prepared by Consultant under this Contract shall then immediately be turned over to City. In the event of such termination, Consultant shall be entitled to receive just and equitable compensation, not to exceed the agreed amount for services provided before termination, for any satisfactory work completed on such documents and other materials prior to receipt of Notice of Termination including reimbursable expenses then incurred less any damages sustained by City incident to Consultant's breach.

7.29.02. City by written notice to Consultant may terminate this Contract in whole or in part for the convenience or necessity of City. If this Contract is to be terminated under this paragraph, Consultant shall be compensated for all unpaid and outstanding services through the effective date of termination or expiration of this Contract. In addition to this payment, Consultant shall be reimbursed for actual out-of-pocket expenses not otherwise reimbursed under this Contract as have been incurred by it as of the date of termination. No allowance shall be made for anticipated profit or overhead on services not performed.

7.29.03. Upon receipt by Consultant of written Notice of Termination from City, Consultant and all sub-consultants shall immediately cease all efforts under this Contract.

7.30. Conflicts of Interest. Consultant shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the City or a disclosure which would adversely affect the interests of the City. Consultant shall notify the City of any potential or actual conflicts of interest arising during the course of the Consultant's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. In the event the Contract is terminated under this provision, the Consultant shall take steps to ensure that the file, evidence, evaluation, and data are provided to the City or its designee. This does not prohibit or affect the Consultant's ability to engage in consultations, evaluations, or representation under Contract with other agencies, firms, facilities, or attorneys so long as no conflict exists.

7.31. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. Except as otherwise stated, the rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of the Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

7.32. Disputes/Remedies. In seeking to resolve any dispute relating to this Contract, City does not waive its sovereign immunity. Any dispute or claim arising out of or relating to this Contract may be assigned to non-binding mediation upon mutual Contract of the parties, in accordance with the Wyoming Supreme Court's rules for alternative dispute resolution. The parties to the dispute shall bear their respective costs for the mediation. The rights and remedies of the parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

7.33. Limitations on Lobbying Activities. In accordance with P.L. 101- 121, any

payments made from a Federal grant shall not be utilized by Consultant or its sub-consultants in connection with lobbying Congressmen, or any other Federal Department in connection with the award of a Federal grant, contract, cooperative Contract, or loan. Consultant and any sub-consultants shall submit a certification statement and disclosure form acceptable to City before commencement of the work.

7.34. Warranty. Consultant warrants the following:

7.34.01. has the power and authority to enter into Contract;

7.34.02. has the ability to perform the agreed services;

7.34.03. shall at all times during the term of this Contract be duly licensed to perform the services;

7.34.04. shall provide suitable resources to perform work in accordance with agreed services;

7.34.05. will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided;

7.34.06. shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and

7.34.07. is responsible for the professional quality, technical accuracy and coordination of all designs, drawings, specifications, and other services furnished by Consultant under this Contract.

7.35. Extension. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be requested by Consultant and following approval by City shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any Contract to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

7.36. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

7.37. Time is of the Essence. Time is of the essence in all provisions of The Contract.

7.38. Titles Not Controlling. Titles of paragraphs are for reference only and shall not be used to construe language in this Contract.

7.39. Waiver. The waiver of any breach of any term or condition in this Contract

shall not be deemed a waiver of any prior or subsequent breach.

IN WITNESS WHEREOF, the Douglas City Council has caused this Contract to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Consultant has signed and executed this Contract, the day and year first written above.

CITY OF DOUGLAS, WYOMING:

By: _____
René Kemper, Mayor

Attest: _____
Chasity Schumacher, City Clerk

CONSULTANT:

By: _____
Nick Larsen, P.E., CEPI