

MASTER AGREEMENT

FOR

CONSULTING SERVICES

CITY OF DOUGLAS

AND

SUNRISE ENGINEERING, INC.

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CITY OF DOUGLAS
AND
SUNRISE ENGINEERING, INC.
MASTER AGREEMENT
FOR
CONSULTING SERVICES

This Master Agreement for Consulting Services (this “Agreement”) is entered into by and between CITY OF DOUGLAS (“CLIENT”) and SUNRISE ENGINEERING, INC. (“CONSULTANT”) to be effective as of the 29th day of August 2022.

CLIENT and CONSULTANT agree as follows:

ARTICLE 1. PURPOSE AND EFFECT OF THIS AGREEMENT

1.1 Work Releases. It is the intention of CLIENT to award to CONSULTANT projects for the performance of consulting services (a “Relevant Project”) through the execution by CLIENT and CONSULTANT of Work Releases substantially in the form attached hereto as Exhibit “A” (a “Work Release”) that reference this Agreement and incorporate into the Work Release for the Relevant Project the terms, conditions, promises and obligations of this Agreement. It is understood and agreed that CLIENT shall have no legal obligation or duty created by the execution of this Agreement to award any project to CONSULTANT as a Relevant Project or to execute any Work Release with CONSULTANT. Nothing in this Agreement is to be construed as granting to CONSULTANT exclusive rights to perform any or all of CLIENT’s requirements for consulting services. It is understood and agreed that CONSULTANT shall have no legal obligation or duty created by the execution of this Agreement to accept the award of any project offered to CONSULTANT by CLIENT as a Relevant Project or to execute any Work Release with CLIENT. Nothing in this Agreement is to be construed to require CONSULTANT to perform any or all of CLIENT’s requirements for consulting services.

1.2 The Consulting Services Contract. If CLIENT and CONSULTANT execute a Work Release for a Relevant Project that incorporates by reference this Agreement, this Agreement and the Work Release and any modifications made to this Agreement and/or the Work Release made by CLIENT and CONSULTANT in writing with respect to the Relevant Project (collectively, this Agreement, the Work Release and any written modifications to this Agreement and/or the Work Release with respect to the Relevant Project are collectively referred to as the “Consulting Services Contract”) shall form the entire and integrated agreement between CLIENT and CONSULTANT for CONSULTANT’s consulting services for the Relevant Project as described in the Consulting Services Contract (the “Services”).

1.3 Conflicts Between Agreement and Work Release. In the event of any direct conflict between the terms, conditions, promises and/or obligations of this Agreement and the terms, conditions, promises and/or obligations of a Work Release for a Relevant Project that incorporates this Agreement by reference, the terms, conditions, promises and obligations of the Work Release for the Relevant Project shall supersede and replace the directly conflicting terms,

conditions, promises and obligations of this Agreement, but only with regard to the Relevant Project.

1.4 Term of Agreement. The term of this Agreement shall be for a period of one year from the effective date of this Agreement.

1.5 Effect of Termination of Work Release. The termination of a Work Release as to a Relevant Project shall not terminate this Agreement or the Consulting Services Contract in respect to any Relevant Project the subject of a Work Release that has not been terminated.

1.6 Effect of Termination of this Agreement. This Agreement and the Consulting Services Contract shall remain in effect and binding upon CLIENT and CONSULTANT after the effective date of the termination of this Agreement as to any Relevant Project for which CONSULTANT is performing Services after the effective date of the termination of this Agreement. The Consulting Services Contract for a Relevant Project shall remain in effect and binding upon CLIENT and CONSULTANT after the effective date of the termination of this Agreement and/or the Consulting Services Contract for a Relevant Project as to any and all terms, conditions, promises or obligations of this Agreement and the Consulting Services Contract for a Relevant Project that are intended by the parties to survive the completion of the Services with respect to the Relevant Project and/or are intended to survive the termination of the Consulting Services Contract for a Relevant Project.

1.7 Execution of New Agreement for Consulting Services. This Agreement shall not be binding on CLIENT or CONSULTANT as to any project for which a Work Release has been executed by CLIENT and CONSULTANT which Work Release incorporates by reference another agreement between CLIENT and CONSULTANT, even if this Agreement has not been terminated.

1.8 Prior Services. If any of the Services are performed by CONSULTANT or CONSULTANT's Subconsultants (defined in Section 2.2 of this Agreement) prior to the effective date of this Agreement and/or the Work Release for the Relevant Project, such Services shall be governed by the terms, conditions, promises and obligations of the Consulting Services Contract to the same extent as if such Services had been performed after the effective date of this Agreement and the Work Release for the Relevant Project.

ARTICLE 2. CONSULTANT'S RESPONSIBILITIES

2.1 CONSULTANT's Services CONSULTANT shall perform the Services for each Relevant Project as are described in the Work Release for that Relevant Project. This Agreement shall be incorporated by reference into each Work Release for a Relevant Project to be governed by the terms, conditions, promises and obligations of this Agreement.

2.2 Right to Retain Subconsultants. CONSULTANT may use the services of subconsultants in the performance of the Services ("CONSULTANT's Subconsultants") when, in the CONSULTANT's sole opinion, it is appropriate to do so. Such persons and entities include, but are not limited to, specialized consultants and testing laboratories. CONSULTANT's use of subconsultants in the performance of a Change in Services (defined in Section 6.1 of this Agreement) shall not be unreasonably restricted by CLIENT, provided, however, CONSULTANT shall not use subconsultants to perform Changes in Services without

prior written notice to CLIENT. CONSULTANT will engage the services of the subconsultants, if any, required to be engaged by CONSULTANT in the Work Release for the Relevant Project to perform the Services. CLIENT shall furnish the services of all other consultants reasonably required for the Relevant Project (but not required to perform CONSULTANT's Services), unless CLIENT and CONSULTANT mutually agree that CONSULTANT shall engage such additional consultants as a Change in Services. Nothing in this Section 2.2 shall be construed to require that CONSULTANT agree to engage any additional consultants as a Change in Services.

2.3 Standard of Skill and Care. The Services (whether performed by CONSULTANT or CONSULTANT's Subconsultants) shall be performed in accordance with the standard of skill and care ordinarily exercised by professionals of the same discipline in the state in which the Relevant Project is located on projects of similar size and scope and under like circumstances. CONSULTANT shall be responsible for all services provided under the Consulting Services Contract, whether such services are provided directly by CONSULTANT or by CONSULTANT's Subconsultants.

2.4 Compliance with Laws. CONSULTANT and/or CONSULTANT's Subconsultants shall review laws, codes and regulations applicable to the Services and shall exercise the standard of skill and care required by Section 2.3 of this Agreement to comply with the laws, codes and regulations applicable to the Services. CONSULTANT and/or CONSULTANT's Subconsultants shall respond in the performance of the Services to requirements communicated to CONSULTANT by government authorities having jurisdiction over the Relevant Project.

2.5 Reliance on CLIENT Furnished Information. CONSULTANT and CONSULTANT's Subconsultants shall be entitled to rely upon the accuracy and completeness of services and information furnished by CLIENT and CLIENT's consultants, agents and representatives, and CONSULTANT and CONSULTANT's Subconsultants shall have no duty to investigate the accuracy or completeness of such services or information. CONSULTANT shall provide prompt written notice to CLIENT if CONSULTANT or CONSULTANT's Subconsultants become aware of any errors, omissions or inconsistencies in the services or information furnished by CLIENT.

2.6 Non-Negligent Errors. If the Services for a Relevant Project require the preparation by CONSULTANT and/or CONSULTANT's Subconsultants of drawings, specifications, surveys, plats, maps, reports, studies, or other documents for the planning or construction of improvements to real property (collectively, "Planning or Construction Documents"), CLIENT acknowledges that there is no perfect set of Planning or Construction Documents and that inconsistencies, conflicts, errors and omissions in the Planning or Construction Documents will occur despite the exercise by CONSULTANT and CONSULTANT's Subconsultants of the standard of skill and care required by Section 2.3 of this Agreement in the performance of the Services. CLIENT acknowledges and agrees that CONSULTANT is liable to CLIENT only for those damages suffered by CLIENT caused by inconsistencies, conflicts, errors or omissions in the Planning or Construction Documents caused by the negligence or intentionally wrongful conduct of CONSULTANT or CONSULTANT's Subconsultants.

2.7 Construction Phase Services. When the Services for a Relevant Project include contract or construction administration services for the construction of improvements to real

property, the terms and conditions of any construction contract (the “Construction Contract”) between CLIENT and a contractor constructing the improvements for the Relevant Project (“Contractor”) shall be consistent with the Consulting Services Contract regarding CONSULTANT’s obligations to perform contract or construction administration services, and shall not purport to require services of CONSULTANT different than or in addition to the Services required of CONSULTANT by the Consulting Services Contract. CONSULTANT is not a party to the Construction Contract, and the Consulting Services Contract shall be the sole and exclusive description of CONSULTANT’s Services and CONSULTANT’s duties and obligations with respect to CONSULTANT’s Services.

2.8 Observations of the Work. If CONSULTANT is required by the Consulting Services Contract to make any observations or inspections of the work or services performed by a Contractor to construct any improvements for a Relevant Project (the “Work”), CONSULTANT agrees to perform such observations or inspections using the skill and care required by Section 2.3 of this Agreement solely for the purpose of endeavoring to ascertain if the Work is being constructed in accordance with CLIENT’s Construction Contract with Contractor. By performing such observations or inspections, CONSULTANT does not accept or assume any responsibility or liability for any acts or omissions of Contractor or accept or assume any duties or liabilities to Contractor with respect to the Work not performed in accordance with the Construction Contract, and Contractor is not relieved of Contractor’s obligations to perform the Work in accordance with the Construction Contract by CONSULTANT’s Services. CONSULTANT shall have no power or authority to stop the Work. The power and authority to stop the Work is possessed exclusively by CLIENT. CONSULTANT and CONSULTANT’s Subconsultants shall have no responsibility or liability for injuries to persons (including death), damage to property or economic loss caused by Contractor’s operations under the Construction Contract, whether at the site of the Relevant Project or off the site of the Relevant Project unless such injuries, damages or losses are caused in part or in whole by the negligence or willful misconduct of CONSULTANT and/or CONSULTANT’s Subconsultants. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless CONSULTANT and CONSULTANT’s Subconsultants and their past and current officers, directors, partners, members, employees, agents and consultants, and each of them, from and against all claims, liabilities, damages, costs and expenses (including reasonable attorneys’ fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon the operations of the Contractor or its subcontractors, sub-subcontractors of any tier, suppliers, representatives or agents under the Construction Contract whether at the site of the Relevant Project or off the site of the Relevant Project including, without limitation, defects or deficiencies in the Work, injuries to persons (including death), damages to property or economic loss, unless such claims, liabilities, damages, costs or expenses are adjudicated to be caused in part or in whole by the negligence or willful misconduct of the persons and entities being indemnified herein. CLIENT and CONSULTANT agree that the obligations set forth in this Section 2.8 shall survive completion of CONSULTANT’s Services for a Relevant Project, termination of this Agreement and/or a Work Release incorporating by reference this Agreement, and/or final payment for CONSULTANT’s Services for a Relevant Project.

2.9 Site Operations. If a Contractor is involved with the Relevant Project, CLIENT agrees that Contractor shall be solely and completely responsible for the conditions at all locations where the Work is performed and at all times that the Work is performed (including Work performed outside of normal business or working hours), including the safety of all

persons and property during performance of the Work, and compliance with any applicable health and safety laws or regulations, including the laws and regulations of the United States Occupational Safety and Health Administration (“OSHA”) and any similar state or local governmental agencies. It is understood and agreed that CONSULTANT shall not be responsible for jobsite safety, and that CONSULTANT shall not be responsible for the health or safety of any persons other than CONSULTANT’s own employees.

2.10 Soils Conditions. Unless the Services specifically require CONSULTANT to perform or to engage a subconsultant to perform a soils investigation, to provide or to engage a subconsultant to provide a soils report, or to perform or to engage a subconsultant to perform soils testing, CONSULTANT makes no representations concerning soils conditions and CONSULTANT shall have no responsibility or liability for the making or failure to make soils investigations or reports, or to the performance or failure to perform any soils testing.

2.11 Interpretations and Decisions. If CONSULTANT is required by the Consulting Services Contract to evaluate whether Contractor’s Work conforms to the requirements of the Construction Contract or to evaluate claims by Contractor or CLIENT to adjustments of the contract price to be paid to Contractor for the Work (the “Contract Price”) or the contract time afforded to Contractor to perform the Contractor’s Work (the “Contract Time”) or any other claims by Contractor or CLIENT for relief under the Construction Contract, or if the Construction Contract between CLIENT and Contractor requires CONSULTANT to evaluate any Work of the Contractor or any claims for relief under the Construction Contract and CONSULTANT agrees to evaluate any Work or claims upon request of CLIENT and/or Contractor, or if CONSULTANT otherwise agrees to evaluate any Work or claims, then CONSULTANT shall evaluate such Work or claims as an unbiased neutral, and such evaluations and decisions made by CONSULTANT shall be rendered in good faith and with impartiality. In making any evaluations or decisions of such Work or claims, CONSULTANT shall be held to the same standard and level of care identified in Paragraph 2.3 above.

2.12 Opinions of Probable Project or Construction Costs. If CONSULTANT’s Services include preparing or evaluating CLIENT’s budgets for project costs, construction costs or other costs or include providing CONSULTANT’s opinions of probable project costs, construction costs or other costs, CLIENT understands that CONSULTANT has no control over regional economies, the granting of governmental entitlements or approvals or the costs required to obtain governmental entitlements or approvals, the availability or cost of land, the availability or cost of materials or labor, or the competitive climate existing at the time of the procurement of labor, materials, land, or other requirements for the Relevant Project, or over the methods of pricing of labor, materials, land, or other requirements for the Relevant Project by those providing them, including any Contractors, and that the preparations or evaluations by CONSULTANT of CLIENT’s budgets for project costs, construction costs or other costs and/or the CONSULTANT’S opinions of probable project costs, construction costs or other costs are CONSULTANT’s professional judgment based on experience and training. CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions or evaluations as compared to actual project costs, construction costs or other costs, and CONSULTANT does not represent or warrant that actual project costs, construction costs or other costs will not vary from CLIENT’s budget for the Relevant Project or from opinions of probable project costs, construction costs or other costs or from evaluations of CLIENT’s budgets prepared or agreed to by CONSULTANT.

2.13 Unknown Conditions. Conditions, obstacles or occurrences may be encountered during the performance of the Services and/or the Work that require changes in the Services or impose risks to CONSULTANT and/or CONSULTANT's Subconsultants, or their employees or agents, in the performance of the Services not known to CONSULTANT when the Work Release for the Relevant Project was executed ("Unknown Conditions"). If Unknown Conditions are encountered, CONSULTANT shall promptly notify CLIENT of the Unknown Conditions and the probable impact of the Unknown Conditions on the Services and the Work, and CONSULTANT shall consult with CLIENT regarding possible actions, including: (i) suspend the Services and/or the Work until the Unknown Conditions are further studied by CLIENT, and the additional risks imposed by the Unknown Conditions are eliminated by CLIENT or are reduced by CLIENT to levels acceptable to both CONSULTANT and CLIENT; (ii) complete the Services in accordance with the scope of Services described in the Work Release, if to do so is agreed by both CONSULTANT and CLIENT to be practical; (iii) agree to a Change in Services (defined in Section 6.1 of this Agreement); or (iv) agree to a termination of the Work Release for CLIENT's convenience.

2.14 Hazardous Materials. CLIENT agrees to give a written disclosure to CONSULTANT prior to the execution of a Work Release of any hazardous materials or toxic substances existing in, on or near the Relevant Project site known to CLIENT that may present a potential for harm to human health, the environment or equipment. Unless otherwise provided in the Consulting Services Contract, CONSULTANT and CONSULTANT's Subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Relevant Project site, unless the hazardous materials or toxic substances were brought to the Relevant Project site by CONSULTANT or CONSULTANT's Subconsultants. CONSULTANT shall have the duty and responsibility to report to CLIENT the presence and location of any hazardous materials or toxic substances at the Relevant Project site which CONSULTANT or CONSULTANT's Subconsultants discover. In the event CONSULTANT or any other person or entity encounters hazardous materials or toxic substances at the Relevant Project site, or should it become known that such materials or substances are present at the Relevant Project site or its adjacent areas that may affect the performance of CONSULTANT's Services, CONSULTANT may, at its option, and without liability for consequential or other damages, suspend performance of the Services until CLIENT retains appropriate specialist consultants or contractors to identify, abate and/or remove the hazardous materials or toxic substances and such consultants represent that such hazardous materials or toxic substances have been rendered harmless. To the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless CONSULTANT and CONSULTANT's Subconsultants and their past and current officers, directors, partners, members, employees, agents and consultants, and each of them, from and against all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs and expenses of dispute resolution) arising out of or based in whole or in part upon any hazardous materials or toxic substances in any form at the Relevant Project site unless such injuries, damages or losses are caused in part or in whole by the negligence or willful misconduct of CONSULTANT and/or CONSULTANT'S Subconsultants.

2.15 Certificates. CONSULTANT shall not be required in the performance of the Services to execute certificates that would require knowledge, services or responsibilities beyond the scope of the Consulting Services Contract. Any certificate or certification provided by CONSULTANT pursuant to the Consulting Services Contract is a statement of professional

opinion based on CONSULTANT's knowledge, information and belief and is not an affirmation or warranty of any existing fact or condition.

2.16 Confidentiality. Except for disclosures reasonably necessary to perform the Services of a Relevant Project, CONSULTANT shall maintain the confidentiality of any information obtained from or through CLIENT and specifically designated as confidential by CLIENT, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. CONSULTANT shall require of CONSULTANT's Subconsultants similar agreements to maintain the confidentiality of information obtained from or through CLIENT and specifically designated as confidential by CLIENT.

2.17 Conflicts of Interest. Except with CLIENT's knowledge and consent, CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that will compromise CONSULTANT's professional judgment with respect to the Relevant Project.

2.18 Promotional Materials. CONSULTANT shall have the right to include photographic or artistic representations of the Relevant Project and of the Services among CONSULTANT's promotional and professional materials. CONSULTANT shall be given reasonable access to the completed Relevant Project to make such photographs and artistic representations. However, CONSULTANT's photographic or artistic representations shall not include CLIENT's confidential or proprietary information, if CLIENT has previously advised CONSULTANT in writing of the specific information considered by CLIENT to be confidential or proprietary.

2.19 Independent Contractor. CONSULTANT shall perform the Services as an independent contractor, and all persons employed by CONSULTANT as CONSULTANT's employees shall be employees of CONSULTANT, not employees of CLIENT in any respect. CONSULTANT may not bind CLIENT except as specifically authorized by CLIENT in the Consulting Services Contract or in another writing. Nothing in this Agreement is intended to, nor shall it be construed to, create a fiduciary relationship between CLIENT and CONSULTANT or to impose any fiduciary duties or obligations on CONSULTANT with respect to the performance of the Services.

ARTICLE 3. SCHEDULE FOR SERVICES

3.1 Work Release Schedule and Updates The schedule for the performance by CONSULTANT of the Services for a Relevant Project shall be stipulated in the Work Release for the Relevant Project. CONSULTANT shall periodically update this schedule as the Relevant Project proceeds. The updated schedule shall reflect adjustments to the Relevant Project milestone dates, including the time for performance of the Services, due to Changes in Services (defined in Section 6.1 of this Agreement) and Relevant Project delays not within the control of CONSULTANT. The updated schedule shall be submitted to the CLIENT for approval, which approval shall not be unreasonably withheld. Time limits established by this schedule approved by CLIENT shall not, except for reasonable cause, be exceeded by CONSULTANT or CLIENT. CONSULTANT shall not be responsible for delays in the schedules caused by CLIENT (including changes in the Relevant Project time parameters, Changes in Services, changes in the Work or changes in the Relevant Project budgets), CLIENT's other consultants, Contractor,

governmental authorities with jurisdiction over the Relevant Project, or others not subject to the control of CONSULTANT.

3.2 Force Majeure. If CONSULTANT is delayed at any time in the commencement or progress of the Services (1) by labor disputes, fire, unusual delay in deliveries, disputations to the supply chain, unavoidable casualties, epidemics or pandemics, or governmental orders restricting manpower or working days or hours, restricting CONSULTANT's means or methods of performing the Services, or partially or wholly shutting down Consultant's places of business or business, then the applicable schedule for the performance of CONSULTANT's Services shall be equitably extended for such time as fairly reflects the delay caused to CONSULTANT's performance of the Services by such causes.

ARTICLE 4. CONSIDERATION AND PAYMENT

4.1 Consideration. For satisfactory performance of the Services of a Relevant Project, CLIENT shall pay CONSULTANT consideration in the form of fees and expenses in the amounts and using the methods of calculation described in the Work Release for the Relevant Project. Compensation for the Services of a Relevant Project shall be made in accordance with one of three methods, as follows: (i) a negotiated lump sum; (ii) on the basis of hourly rates and reimbursable expenses as described in the Work Release for the time and expenses incurred in the performance of the Services; or (iii) some other mutually agreed upon compensation method described in the Work Release. The specific method of compensation shall be agreed in the Work Release for the Relevant Project.

4.2 Invoices. All invoices submitted to CLIENT for Services performed for a Relevant Project shall contain references to the date of this Agreement and the number of the Work Release issued for the Services. Invoices shall be submitted for the Services of a Relevant Project as required by the Work Release for that Relevant Project. If required by the Work Release, invoices shall contain copies of supporting documents and proof of expenditures on behalf of CLIENT. Unless otherwise required by the Work Release for a Relevant Project, payments on account of Services rendered and for reimbursable expenses incurred shall be made monthly within thirty (60) calendar days of the presentation of CONSULTANT's invoice for Services. No deduction shall be made from CONSULTANT's compensation on account of claims or damages other than those for which CONSULTANT has been adjudged to be liable including, without limitation, on account of claims by or against CLIENT by third parties (including Contractors), on account of project costs, construction costs or other costs exceeding CLIENT's budgets or CONSULTANT's estimates of probable project costs, construction costs, or other costs, on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work,

4.3 Interest. CLIENT agrees to pay to CONSULTANT interest at the rate of eighteen percent (18%) per annum on the unpaid balance due for Services from and after the date payment is due pursuant to the terms of the Consulting Services Contract.

ARTICLE 5. OWNERSHIP AND RIGHTS IN INSTRUMENTS OF SERVICE

5.1 Instruments of Service. CLIENT shall retain ownership of all records, documents, notes, data, work product, deliverables, and other materials created by CONSULTANT or CONSULTANT'S Subconsultants in the performance of the Services

performed under this Agreement. All records, documents, notes, data and other materials required for or resulting from the performance of the Services hereunder shall not be used by the CONSULTANT for any purpose other than the performance of the Services hereunder without the express prior written consent of the CLIENT. Any unauthorized use or modification of the Instruments of Service shall be at CLIENT's sole risk and without liability to CONSULTANT or CONSULTANT's Subconsultants.

5.2 Survival of Obligations. CLIENT and CONSULTANT agree that the obligations set forth in this Article 5 shall survive completion of CONSULTANT's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for CONSULTANT's Services for a Relevant Project.

ARTICLE 6. CHANGE IN SERVICES

6.1 Accomplishing Changes in Services. A change in CONSULTANT's Services for a Relevant Project (a "Change in Services") may be accomplished after the execution of this Agreement and the Work Release for the Relevant Project without invalidating the Consulting Services Contract if the Change in Services is mutually agreed in writing by CLIENT and CONSULTANT. If CLIENT gives CONSULTANT prompt written notice that a Change in Services is not required due to one or more of the circumstances described in Section 6.2 of this Agreement, CONSULTANT shall have no obligation to provide those services. Except for a Change in Services due to the fault of CONSULTANT, a Change in Services shall entitle CONSULTANT to: (a) an equitable adjustment in CONSULTANT's compensation described in the Work Release for the Relevant Project (including fees and reimbursable expenses), as such compensation has been modified by previous Changes in Services, if the Change in Services affects CONSULTANT's costs for performance of the Services, as modified by the Change in Services; and/or (b) an equitable adjustment in the schedule described in the Work Release for the Relevant Project, as such schedule has been modified by previous Changes in Services, if the Change in Services affects CONSULTANT's time for performance of the Services, as modified by the Change in Services.

6.2 Circumstances Justifying a Change in Services. If any of the following circumstances affect CONSULTANT's Services for the Relevant Project, CONSULTANT shall be entitled to an adjustment in CONSULTANT's schedule and compensation as provided in Section 6.1 of this Agreement.

- .1 A change in the instructions or approvals given by CLIENT that necessitate a change in the CONSULTANT's Services including, without limitation, revisions in Instruments of Service;
- .2 Enactment or revision of codes, laws or regulations or official interpretations which necessitate a change in the CONSULTANT's Services including, without limitation, changes to previously prepared Instruments of Service;
- .3 Decisions of CLIENT not rendered in a timely manner;
- .4 Significant change in the Relevant Project including, but not limited to, size, quality, complexity, CLIENT's schedule or budget, or the delivery or procurement method; and

ARTICLE 7. CLIENT'S RESPONSIBILITIES

7.1 Obligation to Make Payment CLIENT shall make timely payment of compensation, including fees and reimbursable expenses, to CONSULTANT for the Services.

7.2 Obligation to Provide Information. CLIENT shall provide to CONSULTANT full information in a timely manner regarding requirements for and limitations on the Relevant Project. CLIENT shall promptly make available to CONSULTANT all records and information within the custody or control of CLIENT identified by CONSULTANT as being necessary for the performance by CONSULTANT of the Services.

7.3 Obligation to Provide Professional Services. CLIENT shall furnish the services of the consultants, if any, reasonably required for the Relevant Project that CONSULTANT is not required to engage in the performance of the Services. CLIENT shall also furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Relevant Project to meet CLIENT's needs and interests.

7.4 Obligation to Give Notices. CLIENT shall provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or defect in the CONSULTANT's Services for the Relevant Project, including any errors, omissions or inconsistencies in CONSULTANT's Instruments of Service. CLIENT shall provide prompt written notice to CONSULTANT whenever CLIENT becomes aware of events or circumstances that affect the CONSULTANT's Services, including events or circumstances that affect the schedule for the performance of CONSULTANT's Services.

7.5 Obligation to Give Evidence of Financial Arrangements. At the written request of CONSULTANT, CLIENT shall promptly furnish to CONSULTANT reasonable evidence that financial arrangements have been made by CLIENT to fulfill CLIENT's obligations to CONSULTANT under the Consulting Services Contract.

7.6 Obligation to Provide Access. CONSULTANT shall have access to the Relevant Project site and to all areas where the Work is performed or located. CLIENT shall procure all permits, licenses, rights-of-entry and access for CONSULTANT to enter upon and to perform Services at any public or private property required for CONSULTANT to perform the Services.

7.7 Other Obligations of the Consulting Services Contract CLIENT shall perform all other obligations of CLIENT with respect to the Relevant Project described elsewhere in this Agreement or in the Work Release.

ARTICLE 8. INDEMNIFICATION

8.1 CONSULTANT's General Agreement to Indemnify. Subject to the limitations and conditions of Sections 2.8 and 2.11 of this Agreement, to the fullest extent permitted by law CONSULTANT agrees to indemnify and hold harmless CLIENT and CLIENT's consultants, and their past and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss adjudicated to have been caused by any negligent act, error or omission or

intentionally wrongful conduct of CONSULTANT or CONSULTANT's Subconsultants or their employees or agents in the performance of the Services.

8.2 CLIENT's General Agreement to Indemnify. Subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT agrees to indemnify and hold harmless CONSULTANT and CONSULTANT's Subconsultants, and their past and current officers, directors, partners, members, employees, agents and consultants, and each of them, from and against any and all claims, demands, suits, losses, costs and damages for injuries to persons (including bodily injury and death), damage to tangible property and economic loss adjudicated to have been caused by any negligent act, error or omission or intentionally wrongful conduct of CLIENT or CLIENT's consultants or their employees or agents.

8.3 CONSULTANT's Agreement to Indemnify for Infringement. Subject to the limitations and conditions of Sections 2.8 and 2.11 of this Agreement, to the fullest extent permitted by law CONSULTANT agrees to indemnify and hold harmless CLIENT and CLIENT's consultants, and their present and current officers, directors, partners, members, employees and agents, and each of them, from and against any and all claims, demands, suits, losses, costs and damages caused by infringement or violation of any patent or copyright arising from CONSULTANT's Services.

8.4 CLIENT's Agreement to Indemnify for Infringement. CLIENT represents and warrants to CONSULTANT and CONSULTANT's Subconsultants that CLIENT has ownership of, or the legal authorization or license to use any surveys, maps, studies, reports, drawings, specifications, design details or other documents delivered by CLIENT or CLIENT's agents or representatives to CONSULTANT or CONSULTANT's Subconsultants for use in connection with the Relevant Project. Notwithstanding anything in Section 8.3 of this Agreement to the contrary, CONSULTANT shall not be required to indemnify or hold harmless CLIENT or CLIENT's consultants, or their past or current officers, directors, partners, members, employees or agents, or each of them, from or against any claims, demands, suits, losses, costs or damages caused by infringement or violation of a patent or copyright (i) arising from any breach of the CLIENT's representation or warranty contained in the first sentence of this Section 8.4 of this Agreement, (ii) arising from a particular survey, map, study, report, drawing, detail, or specification or to a particular design, product, or system required by CLIENT to be included in the Relevant Project and/or the Instruments of Service; (iii) arising from modifications to the Instruments of Service by CLIENT or CLIENT's consultants, agents or employees without authorization of such modifications by CONSULTANT, or (iv) arising from modifications to the Relevant Project by CLIENT or CLIENT's consultants, agents or employees after acceptance of the Relevant Project constructed in substantial accordance with the Instruments of Service. If any suit, claim or proceeding for infringement or violation of a patent or copyright is based in whole or in part upon any of the events set forth in the preceding sentence, subject to the limitations and conditions of Article 10 of this Agreement, to the fullest extent permitted by law CLIENT shall indemnify, defend and hold harmless CONSULTANT and CONSULTANT's Subconsultants, and their past and current officers, directors, partners, members, employees, agents and consultants, and each of them, from and against any and all claims, demands, suits, losses, costs and damages caused by the alleged infringement or violation of the patent or copyright.

8.5 Survival of Obligations. CLIENT and CONSULTANT agree that the obligations set forth in this Article 8 shall survive completion of CONSULTANT's Services for a Relevant Project, termination of this Agreement or a Work Release incorporating by reference this Agreement and/or final payment for CONSULTANT's Services for a Relevant Project.

ARTICLE 9. INSURANCE

9.1 CONSULTANT's Insurance Coverages. CONSULTANT agrees to procure prior to commencing the Services of a Relevant Project insurance policies with insurance coverages as specified below and with insurance limits not less than specified below:

- | | | | |
|----|--|--|---|
| .1 | Commercial General Liability Insurance | Combined Single Limits per occurrence
(covering bodily injury liability and
property damage liability) | \$1,000,000 |
| | | Annual Aggregate | \$2,000,000 |
| | | | |
| .2 | Comprehensive Automobile Liability Insurance | Combined Single Limits per accident
(including bodily injury liability and
property damage liability) | \$1,000,000 |
| | | | |
| .3 | Worker's Compensation Insurance | Statutory limits required by law | |
| | | | |
| .4 | Employer's Liability Insurance | | \$1,000,000 |
| | | | |
| .5 | Professional Liability Insurance | | \$1,000,000 per claim;
\$2,000,000 annual
aggregate |
| | | | |
| .6 | Umbrella Liability | | \$5,000,000
occurrence/annual
aggregate |

9.2 Professional Liability Insurance. CONSULTANT's professional liability insurance is procured on a claims-made basis, expense within limits. The policy of insurance is not project specific. CONSULTANT agrees to continue its Professional Liability Insurance in place without interruption for a period of not less than two (2) years from the date final payment is due to CONSULTANT for the Services of a Relevant Project. The available insurance limits of the Professional Liability Insurance at any given time are dependent on the payment by the insurance carrier of claims and claim expenses during the applicable policy year.

9.3 CLIENT Named as Additional Insured. CONSULTANT's Commercial General Liability Insurance and CONSULTANT's Comprehensive Automobile Liability Insurance, as described in Section 9.1 of this Agreement, shall include provisions or endorsements naming CLIENT as an additional insured.

ARTICLE 10. LIABILITIES AND IMMUNITIES

10.1 Consequential Damages Waiver. CONSULTANT and CLIENT mutually waive as to one another and as to the present and current officers, directors, partners, members, employees, agents and consultants of one another, any and all consequential damages for claims, disputes or other matters in question arising out of relating to the Consulting Services Contract or the performance or non-performance of the Services. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Consulting Services Contract or suspension of Services in accordance with Article 12 of this Agreement.

10.2 Limitation of Liability. CONSULTANT shall procure and maintain the insurance coverages required by Article 9 of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, the total liability shall not exceed the total unexhausted and available insurance limits of CONSULTANT's insurance policies.

10.3 Governmental Immunity. Client does not waive governmental immunity by entering into this Contract, and specifically retains immunity and all defenses available to it pursuant to the Wyoming Governmental Claims Act, Wyoming Statute § 1-39-101 et seq. and all other applicable state law.

ARTICLE 11. DISPUTE RESOLUTION

11.1 Non-Binding Mediation Any claim, dispute or other matter in question arising out of or relating to this Agreement or the Consulting Services Contract shall be subject to non-binding mediation as a condition precedent to arbitration (if the parties mutually agree to arbitration after the dispute arises) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of CONSULTANT's Services, CONSULTANT may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation, by arbitration (if the parties mutually agree to arbitration after the dispute arises) or by litigation in courts of proper jurisdiction. CLIENT and CONSULTANT shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect. Request for non-binding mediation shall be in writing and delivered to the other party to the Consulting Services Contract. If the parties mutually agree to a mediator, the mediation shall be administered by such mediator or a dispute resolution service associated with such mediator. If the parties do not mutually agree to a mediator within fourteen (14) calendar days of delivery of the written request for mediation, the request shall be filed with the American Arbitration Association. The request may be made concurrently with the filing of a binding dispute resolution proceeding, but in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) calendar days from the date of delivery of the request for mediation to the other party, unless stayed for a longer period by agreement of the parties, court order or order of an arbitrator (if the parties mutually agree to arbitration after the dispute arises). The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the applicable Relevant Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event either party to the dispute has need of material information in the possession of the other party in order to prepare

for mediation, CLIENT and CONSULTANT shall attempt in good faith to agree on procedures for the expedited exchange of information, with the help of the mediator, if required.

11.2 Binding Dispute Resolution. Unless otherwise provided in the Work Release, all claims, counterclaims, disputes and other matters in question between CLIENT and CONSULTANT arising out of or related to this Agreement or the Consulting Services Contract, or the breach of this Agreement or the Consulting Services Contract, or the Services performed pursuant thereto, shall be decided in such binding dispute resolution proceedings as CLIENT and CONSULTANT shall mutually agree upon in writing after the dispute arises or, in the absence of mutual agreement, in a court of competent jurisdiction within the State in which the applicable Relevant Project is located. Prior to engaging in arbitration (if the parties mutually agree to arbitration after the dispute arises) or litigation, the parties shall endeavor to resolve the dispute by non-binding mediation in accordance with the provisions of Section 11.1 of this Agreement.

11.3 Continued Performance of Services. If CONSULTANT elects to continue to perform the Services of the Relevant Project pending the resolution of a dispute, CLIENT shall continue to make payments to CONSULTANT of all amounts due CONSULTANT under the Consulting Services Contract that are not in dispute.

ARTICLE 12. SUSPENSION AND TERMINATION

12.1 CONSULTANT's Termination/Suspension of Services for Non-Payment. If CLIENT fails to make payments to CONSULTANT for the Services of a Relevant Project in accordance with the Consulting Services Contract, such failure shall be considered substantial nonperformance and cause for termination of the Work Release for the Relevant Project pursuant to Section 12.4 of this Agreement or, at CONSULTANT's option, cause for suspension by CONSULTANT of performance of the Services for the Relevant Project. If CONSULTANT elects to suspend the Services for the Relevant Project, prior to suspension of the Services, CONSULTANT shall give seven (7) calendar days' prior written notice to CLIENT. If the default is not cured by CLIENT in such seven (7) day period after the receipt by CLIENT of such written notice, CONSULTANT may suspend the Services for the Relevant Project until the default is cured, or until CONSULTANT terminates the applicable Work Release for cause pursuant to Section 12.4 of this Agreement. In the event of a suspension of the Services for a Relevant Project, CONSULTANT shall have no liability to CLIENT for delays or damages caused CLIENT because of such suspension of the Services. Before resuming the Services, CONSULTANT shall be paid all sums due prior to the suspension of the Services, and any expenses incurred in the interruption and resumption of CONSULTANT's Services. CONSULTANT's fees and expenses for resuming the Services and the time schedules for the performance of the Services shall be equitably adjusted.

12.2 Suspension of Services for CLIENT's Convenience. CLIENT may, by written notice to CONSULTANT, direct CONSULTANT to suspend performance of any or all of the Services of a Relevant Project for a period of time specified in the written notice. If such suspension is not occasioned by the fault or negligence of CONSULTANT, then CONSULTANT shall be compensated for extra fees and costs incurred due to such suspension of CONSULTANT's Services of the Relevant Project. Upon receipt of a written notice from CLIENT directing CONSULTANT to suspend the performance of the Services of a Relevant Project, CONSULTANT shall (i) discontinue the Services in accordance with CLIENT's notice, (ii) unless otherwise provided in CLIENT's notice, enter into no further subcontracts, and

(iii) unless otherwise provided in CLIENT's notice, suspend all CONSULTANT's existing subcontracts. If CLIENT suspends all or any portion of the Services of a Relevant Project, whether by a single notice for a consecutive period of suspension or by multiple notices for non-consecutive periods of suspension, for a period of time exceeding in the aggregate 120 calendar days, CONSULTANT may, at CONSULTANT's sole option, terminate the Consulting Services Contract for the Relevant Project for cause pursuant to Section 12.4 of this Agreement.

12.3 Termination for Convenience. This Agreement and/or any Work Release may be terminated by CLIENT for CLIENT's convenience and without cause upon delivery to CONSULTANT of a written notice of such termination for convenience. This Agreement (but not any Work Release) may be terminated by CONSULTANT for CONSULTANT's convenience and without cause upon delivery to CLIENT of a written notice of such termination for convenience.

12.4 Termination for Cause. A Work Release for a Relevant Project may be terminated by either party for cause should the other party fail substantially to perform in accordance with the terms of the Consulting Services Contract through no fault of the party initiating the termination, if within ten (10) calendar days after the receipt of a written notice of default from the party initiating the termination, the party in default does not cure the defaults.

12.5 Compensation Due Upon Termination. In the event of the termination of this Agreement or a Work Release not due to the fault of CONSULTANT, CONSULTANT shall be compensated for the Services performed prior to termination, together with reimbursable expenses then due and all expenses directly attributable to the termination for which CONSULTANT is not otherwise compensated. In the event of a termination of this Agreement or a Work Release by CLIENT for CLIENT's convenience, and without cause, CONSULTANT waives any claim for anticipated profit on the value of the Services not performed by CONSULTANT. In the event of a termination of a Work Release by either party for cause, subject to the limitations and conditions of Article 10 of this Agreement, the terminating party shall be entitled to recover from the defaulting party all damages caused by the defaulting party's breach of the Consulting Services Contract and the termination of the Work Release, including, in the case of a termination by CONSULTANT for cause, CONSULTANT's anticipated profit on the value of the Services not performed by CONSULTANT (which shall not be considered a consequential loss or damage).

ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 Notices. All notices given pursuant to this Agreement and the Consulting Services Contract shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other national-recognized express courier providing next business day delivery ("Overnight Courier"). If notice is given by personal service, written notice must be delivered in person to the individual or to a managing agent of the corporate office of a corporation for which notice is intended. If notice is given by United States mail, it must be sent by United States certified mail, return receipt requested, postage prepaid, and it must be addressed to the person or corporate office of a corporation for which notice is intended. If notice is given by an Overnight Courier, written notice must be sent delivery charge prepaid, delivery receipt requested, and it must be addressed to the person or corporate office of a corporation for which notice is intended. All notices pursuant to this Agreement and the Consulting Services Contract shall be deemed given upon the earlier of the following: (i) the

date of personal delivery of the notice to the person or managing agent of the corporate office for which the notice is intended, as evidenced by a sworn statement of the person personally delivering the notice, stating the name of the person to whom the notice was delivered and the date of delivery; (ii) the date the notice is postmarked, if the notice is sent by United States certified mail; or (iii) the date the notice is placed with an Overnight Courier, if the notice is sent by Overnight Courier. If the last day for giving any notice or taking any action required or permitted under this Agreement or the Consulting Services Contract falls on a Saturday, Sunday or legal holiday (in the state where the Relevant Project is located), the last day for giving such notice or taking such action shall be the next legal business day. All notices given pursuant to this Agreement and the Consulting Services Contract shall be deemed received upon the earlier of: (i) the date of actual delivery, as evidenced by a writing; (ii) three (3) business days after the date the notice is postmarked, if the notice is sent by United States certified mail; or (iii) one (1) business day after the date the notice is placed with an Overnight Courier, if the notice is sent by Overnight Courier. Except as modified by a party by giving the other party written notice of a change, notices shall be given as follows:

.1 Notice to CLIENT shall be delivered or addressed to:

(a) CLIENT's Designated Representative for the Relevant Project identified in the Work Release at the address for such CLIENT's Designated Representative as set forth in the Work Release, and

(b) City Administrator, CLIENT's Senior Representative
P.O. Box 1030 Douglas, WY 82633

.2 Notice to CONSULTANT shall be delivered or addressed to:

(a) CONSULTANT's Designated Representative for the Relevant Project identified in the Work Release, at the address for such CONSULTANT's Designated Representative as set forth in the Work Release, and

(b) _____, CONSULTANT's Senior Representative

[Address of CONSULTANT's Senior Representative]

13.2 Assignments. Neither CLIENT nor CONSULTANT shall assign this Agreement or the Consulting Services Contract or any right, interest or claim for damages arising under this Agreement or the Consulting Services Contract without the written consent of the other, except that CLIENT may make a conditional collateral assignment of the Consulting Services Contract to an institutional lender providing financing for the Relevant Project, conditioned on CLIENT's default in its obligations to such lender regarding the financing for the Relevant Project. In the event the condition of such collateral assignment is satisfied, the lender shall assume CLIENT's rights and obligations under the Consulting Services Contract. If CONSULTANT's Services are affected or delayed by CLIENT's default or the assignment of the Consulting Services Contract to the lender, CONSULTANT's fees for the remaining Services of the Relevant Project and the time schedules for the performance of the remaining Services of the Relevant Project shall be equitably adjusted. The CLIENT and CONSULTANT intend the prohibition of the assignment of the Consulting Services Contract and/or any claims arising under the Consulting Services Contract without the written consent of the other party set forth in this Section 13.2 to be

applicable to such assignments whether made before or after the completion of the CONSULTANT's Services for the Relevant Project, the termination of this Agreement or a Work Release incorporating by reference this Agreement, and/or the final payment for the CONSULTANT's Services for the Relevant Project.

13.3 Persons Bound. CLIENT and CONSULTANT, respectively, bind themselves, their partners, members, successors, assigns and legal representatives to the other party to this Agreement with respect to all terms, conditions, promises and obligations of this Agreement and the Consulting Services Contract.

13.4 Third Party Beneficiaries. Nothing contained in this Agreement or the Consulting Services Contract shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or CONSULTANT. CONSULTANT's Services under this Agreement and the Consulting Services Contract are being performed solely for CLIENT's benefit, and no other person or entity shall have any claim against CONSULTANT arising under this Agreement or the Consulting Services Contract or arising from the performance or non-performance of the Services.

13.5 Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the terms, conditions, promises or obligations of this Agreement or the Consulting Services Contract or to exercise any rights under this Agreement or the Consulting Services Contract shall not be construed as a waiver or relinquishment to any extent of that party's right to assert or rely upon such terms, conditions, promises, obligations or rights on any future occasion.

13.6 Severability. Any provisions of this Agreement or the Consulting Services Contract prohibited, or rendered unenforceable, by any local, state or federal law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and the Consulting Services Contract.

13.7 Governing Law. This Agreement and the Consulting Services Contract shall be governed by the laws of the state in which the Relevant Project is located, exclusive of its conflict of laws rules.

13.8 Execution. This Agreement and each Work Release shall be executed by duly authorized representatives of the parties. Those persons executing this Agreement and the Work Releases which incorporate by reference this Agreement represent and warrant to the other party that they are duly authorized to execute this Agreement and the Work Releases and to bind the party for whom they have signed to the terms, conditions, promises and obligations of this Agreement and the Work Releases.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized representatives, this Agreement in duplicate on the respective dates indicated below.

CITY OF DOUGLAS

By: _____

ATTEST: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

SUNRISE ENGINEERING, INC.

By: _____

ATTEST: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____