



GENERAL TERMS AND CONDITIONS

1. Appointment. **City of Douglas, Wyoming.** (hereinafter "Owner") hereby appoints Consultant and Consultant hereby accepts the appointment, as an independent contractor and not as an agent, to perform services herein contemplated, in accordance with and subject to, the express terms, covenants, conditions and provisions of this Agreement.

2. Standard of Care. Consultant shall perform in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project.

(a) It is understood and agreed that the Consultant shall not be held responsible for any inaccuracies in any materials, data or records as provided to the NV5 by the Owner or a third-party on the Project, which have been prepared by any other person, firm or agency. Owner agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

(b) Consultant makes no warranty, either express or implied, as to its services.

3. Scope of Authority. Consultant shall act in an advisory capacity to Owner and will not have the authority to bind Owner to any contractual obligations or otherwise incur liabilities on behalf of Owner or the existing parties. As such:

(a) Consultant shall have no liability or responsibility to neither Owner nor any third party (i) by reason of the failure on the part of any design party, inspection party, contractor party, or any other party to furnish required labor, materials, supplies or services in accordance with their respective contracts, obligations or undertakings, or (ii) for any defect or omission in plans and specification for the project, or (iii) for any negligent act or omission, breach of contract, malfeasance or malpractice of any existing party or contractor on the project. No action, statements, or communications of Consultant, or Consultant's site representative, can be construed as modifying any agreement between Owner and others. Consultant's presence on the project in no way guarantees the completion or quality of the performance of the work of any party retained by Owner to provide services. The activities of Consultant, shall not be construed to impose upon Consultant any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the job site. Owner acknowledges that its general contractor is solely responsible for job site safety.

(b) Consultant shall in no event be obligated or liable for the duties or responsibilities of the general contractor or design-build contractor, including but not limited to means, methods, sequencing, and safety.

(c) All contracts for labor, materials or services to be furnished in connection with the project shall be made in the name of the Owner (and, subject to compliance with the provisions hereof, shall be executed by Owner), and Owner shall be responsible for all payments required to be made hereunder.

4. Representatives. Consultant shall be entitled to rely upon any consents or approvals given by Owner or Owner's representative.

A handwritten signature in blue ink, appearing to be 'J.A.S.', located in the bottom right corner of the page.

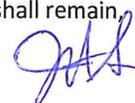
5. Billing and Payment. Owner shall pay Consultant in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Owner is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Owner invoices for the balance due, which shall be due and payable immediately upon submission. If Owner objects to all or any portion of any invoice, Owner will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due. In such event, Owner shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Consultant reserves the right to withhold all reports or deliverables and suspend any and all services, including but not limited to expert witness services such as testifying at deposition or trial, unless and until payment is made by Owner in accordance with this Agreement. Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued.

6. Disputes. The Owner shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Owner has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed where the project is located. This certification shall: (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy and venue for the same shall be where the project is located. Upon written request by either party to this Agreement for mediation of any dispute, Owner and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Owner and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. ~~Any cause of action brought against Consultant shall be brought within one year of the work or services performed under this Agreement.~~

7. Documents. Processes used and documents prepared or provided by Consultant while working for the Owner are solely provided as instruments of service to the Owner for use on the project. ~~They are and shall remain the property of Consultant, who reserves all rights thereto.~~

8. Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant. ~~, for Services provided under this Agreement or \$50,000 whichever is less.~~

9. Intellectual Property and Work Product. (i) All processes, procedures, work product, materials, methodologies or services used or provided by CONSULTANT in connection with this Project was, shall remain,



or will always be, the intellectual property of CONSULTANT. Nothing in this Agreement shall operate as a waiver of ownership or a sale of ownership of any CONSULTANT intellectual property. (ii) Owner represents and warrants that Owner owns and/or has the right to use the intellectual property that is contained in any instrument, report, media, drawing, design, submittal, or document that Owner provides to CONSULTANT in connection with the Project, and that said Owner-provided document does not and shall not infringe, misappropriate, or violate the intellectual property rights of any third-parties (iii) ~~All documents including reports, electronic media, and drawings, prepared or furnished by CONSULTANT and its subconsultants pursuant to this Agreement are instruments of service in respect of this Project and CONSULTANT will retain an ownership and property interest therein whether or not the Project is completed.~~ The Owner may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by the Owner, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than the Owner. Accordingly, the Owner will, to its fullest extent permitted by law, defend, indemnify and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from any unauthorized reuse of the documents or disbursement by Owner to third parties. If it is necessary to distribute any documents to an unrelated third party, both the third party and Owner agree: (a) the third party is bound by all of the conditions and limitations of this Agreement and related documents; and (b) the third party is bound by all limitations of liability or indemnity provisions.

10. Default; Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, Consultant will be paid for services performed through the date of termination, reimbursable expenses incurred plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

11. Notices. Except as otherwise herein expressly provided, every notice, demand, consent, request, approval or other documents or instruments required or permitted to be served upon any of the parties hereto shall be in writing and shall be deemed to have been given when delivered by messenger, by electronic facsimile transmission or by the U.S. mails (and if mailed, shall be deemed received two (2) business days after the postmarked date thereof), with the cost thereof borne by the delivering party, and addressed to the parties as follows:

To Owner: City of Douglas, WY.
J.D. Cox – City Manager
P.O. Box 1030, 101 N 4th St.
Douglas, WY 82633

To Consultant: NV5, Inc.
John Sattler, Sr. Vice President
3459 Ringsby Court, Suite 205
Denver, CO 80216

Either party may change its address for notices by delivering notice to that effect in the manner above provided.

12. Relationship between the Parties; No Restrictions. This Agreement is not intended to result in any agency, partnership, employment or joint venture between the parties hereto or limit or restrict Consultant from performing services for any other building or projects at any time and wherever located and whether the same as or similar to the services to be performed by Consultant.



13. Successors and Assigns. Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement.

14. No Third Party Beneficiaries. The rights and obligations of the parties hereto are intended for the sole benefit for the parties hereto, and except as otherwise expressly herein provided, are not intended for the benefit of, and may not be enforced by, any third party.

15. Non-Solicitation. Owner agrees that during the term of this Agreement and for a period of one (1) year following the last day Consultant performs any service for the Owner, that neither Owner nor any of its officers, employees, agents or any firm owned or controlled by Owner will directly or indirectly, without Consultant's written consent, solicit or hire any person who is a current employee of Consultant or who has been Consultant's employee within one (1) year of the last day of Consultant's time of the project. Owner shall also be proscribed from encouraging any employee to resign or otherwise leave Consultant's employ. Owner acknowledges that the damages that will result to Consultant upon a breach of Owner's obligations under the clause will be difficult to quantify, and will be substantial, with damages including but not limited to lost profits, cost of replacement, cost of training and the like. Accordingly, if Owner violates the terms of this Agreement, Owner shall pay Consultant damages in the amount of two times (2x) the annual compensation of said employee.

16. Entire Agreement; Modifications. This Agreement and associated Proposal, constitutes the entire agreement between the parties hereto regarding the subject matter hereof, and supersedes all prior agreements, whether written or oral, with regard thereto. No representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No change, modification or amendment shall be made to this Agreement unless set forth in writing and signed by the parties hereto.

17. Severability. The provisions of this Agreement are severable, and should any provision be found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provisions hereunder.

18. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State where the project is located. In the event of a lawsuit, the proper venue shall be in the county where the project is located.

19. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provisions thereof.

PROPOSAL ACCEPTED BY: **CITY OF DOUGLAS, WY**

AUTHORIZED SIGNATURE: _____

NAME & TITLE: _____

DATE ACCEPTED: _____



CITY OF DOUGLAS, WYOMING STANDARD ADDENDUM

SOVEREIGN IMMUNITY/ GOVERNMENTAL CLAIMS

The City does not waive its sovereign immunity or its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. Any actions or claims against the City under this Agreement must be in accordance with and are controlled by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq. (1977) as amended.

INTERPRETATION

The Parties hereto agree that (i) the laws of Wyoming shall govern this Agreement; (ii) any questions arising hereunder shall be construed according to such laws; and (iii) this Agreement has been negotiated and executed in the State of Wyoming and is enforceable only in the courts of Wyoming and the Eighth Judicial District.

INCORPORATION OF ADDENDUM INTO ORIGINAL CONTRACTUAL ARRANGEMENT

The signing of this Standard Addendum shall incorporate the Addendum into the original contractual arrangement between the parties. It is further intended that in the event of any inconsistency between the Agreement and its other attachments and the Standard Addendum, that the terms of the Standard Addendum be construed as final and binding.

INDEMNIFICATION

Contractor agrees to defend, indemnify and hold harmless the City and its public employees from any and all claims arising from the services performed by Contractor under this Agreement or related to this Agreement.

AVAILABILITY OF FUNDS

Payment by 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, the Agreement may be terminated by the City at the end of the period for which the funds are available. The City shall notify the other party 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 Agreement to acquire similar services from another party.

INSURANCE

Contractor shall carry liability insurance including property damage and bodily injury with minimum limits of not less than \$1,000,000 occurrence and \$2,000,000 aggregate. If Contractor will use automobiles in performance of the Agreement, Contractor must carry automobile liability insurance covering all owned, non-owned and hired autos with minimum limits of \$500,000 combined single limit. Contractor must carry any workers' compensation coverage and employer's stop gap liability coverage required by law. Insurance shall be placed with insurers licensed to do business in Wyoming. Policies other than workers' compensation and employer's liability must name the City, its trustees, officers, and employees as additional insureds. Certificates must be on file with City Risk Management prior to any work and must be kept current throughout the term of the Agreement.

City of Douglas, Wyoming

Signature Date

Name/Title

Contractor

 7/29/2024

Signature Date

John H. Sattler, Sr. Vice President NV5, Inc.
Name/Title