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*The Board may vote to go into Closed Session on any agenda item as allowed by State Law.*

***ROUTINE BUSINESS***

1. Announcement of Open Meetings Act
2. Roll Call
3. Public Works Report

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***CONSENT AGENDA***

1. Minutes Approval for March 12, 2026
2. Agenda Approval
3. Consent Agenda

*Any item listed on the Consent Agenda may, by the request of any single BOPW Member, be considered as a separate item under the Regular Agenda Section of the Agenda.*

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***OLD BUSINESS***

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***REGULAR BUSINESS***

1. Discussion and Action – Request for approval of the CGB Master Service Agreement with Consolidated Grain and Barge Co.
2. Discussion and Action – Request for approval of the Olsson P&ID Development Agreement for the raw and jacket water systems not to exceed \$28,000.00
3. Discussion and Action– Request for approval of the Fairview Mills & Airlanco Sewer Agreement with Miller & Associates
4. Discussion and Action – Request for approval of the On-call Services Agreement with Miller & Associates
5. Discussion and Action – Credit card convenience fee for utility customers

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***ADJOURNMENT***

Trevor Campbell, Public Works Director

## REGULAR MEETING OF THE FALLS CITY BOARD OF PUBLIC WORKS

March 12<sup>th</sup>, 2026  
2307 Barada Street  
Falls City, Nebraska

A regular meeting of the Board of Public Works of the City of Falls City, Nebraska, was held at the City Hall, 2307 Barada Street in said City on the 12<sup>th</sup> day of March 2026 at 5:30 o'clock P.M. Present were: Board Members: Froeschl, Joy, and Koopman. Absent: Johansen, Rieger. Trevor Campbell recorded the minutes of the meeting. Notice of the meeting was given in advance thereof by posting in three public places, a designated method for giving notice as shown by the Certificate of Posting Notice attached to these minutes. Notice of this meeting was given to the Board Chairperson and all members of the Board and a copy of their acknowledgment of receipt of notice and the agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Chairperson and Board of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public. The Chairperson publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held.

### **PUBLIC WORKS DIRECTOR REPORT**

Trevor Campbell gave the Public Works Report. No action was required.

### **CONSENT AGENDA**

A motion was made by Joy and seconded by Froeschl to approve the consent agenda as follows: *WHEREAS*, certain business of the Board of Public Works of the City of Falls City (City) transpires on a regular and routine basis or is not of controversial nature; and *WHEREAS*, roll call votes on each individual issue greatly extend the meeting time. *NOW, THEREFORE, BE IT HEREBY RESOLVED* BY the Board of Public Works that in the interest of economizing time, yet complying with the Public Meeting Laws of the State of Nebraska, which require roll call voting, the following issues are hereby consolidated in this Consent Resolution: 1. *BE IT FURTHER RESOLVED BY* the Board of Public Works that the minutes from the February 19<sup>th</sup>, 2026, meeting is hereby approved. 2. *BE IT FURTHER RESOLVED BY* the Board of Public Works that the agenda for March 12<sup>th</sup>, 2026, is hereby approved. 3. *BE IT FURTHER RESOLVED BY* the Board of Public Works that the Consent Agenda for March 12<sup>th</sup>, 2026, is hereby approved. Roll was called on this motion and the members voted as follows: "YEA" Froeschl, Joy, Koopman. "NAY" None. "ABSENT": Johansen, Rieger. Motion carried.

### **UPDATE ON THE NEBRASKA RURAL GENERATION PROJECT**

The board received an update on the Nebraska Rural Generation Project. No action was taken.

### **CONSIDER MOVING FALLS CITY FOODS FROM LARGE POWER RATE TO GENERAL SERVICE URBAN (NO DEMAND) RATE**

A motion was made by Froeschl and seconded by Joy to approve moving Falls City Foods from large power rate to general service urban (no demand) rate. If Falls City Foods restores normal operations, FCF will continue on large power rate. Roll was called on this motion and the members voted as follows: "YEA" Froeschl, Joy, Koopman. "NAY" None. "ABSENT": Johansen, Rieger. Motion carried.

### **RECOMMENDATION TO CITY COUNCIL TO APPROVE AND SIGN THE RESOLUTION AND CONTRACT AMENDMENT FOR THE GAS SUPPLY AGREEMENT FOR THE PEFA PROGRAM WITH CLAYTON ENERGY**

A motion was made by Joy and seconded by Koopman to approve the recommendation to City Council to approve and sign the resolution and contract amendment as presented. Roll was called on this motion and

the members voted as follows: "YEA" Froeschl, Joy, Koopman. "NAY" None. "ABSENT": Johansen, Rieger. Motion carried.

**DISCUSS WAPA FIRM ELECTRIC SERVICE CONTRACT OPTIONS**

The board discussed several contract options. No motion was made.

**CONSIDER SETTING A PRICING STANDARD FOR STATE LAB TESTING**

A motion was made by Joy and seconded by Koopman to set a pricing standard for state lab testing of \$75.00 plus cost. Roll was called on this motion and the members voted as follows: "YEA" Froeschl, Joy, Koopman. "NAY" None. "ABSENT": Johansen, Rieger. Motion carried.

**REQUEST APPROVAL OF THE CLOUD-HOSTED SCADA AGREEMENT WITH HOA SOLUTIONS INC.**

A motion was made by Koopman and seconded by Joy to approve the agreement as presented. Roll was called on this motion and the members voted as follows: "YEA" Froeschl, Joy, Koopman. "NAY" None. "ABSENT": Johansen, Rieger. Motion carried.

**MEETING ADJOURNED AT 7:23 PM**

I, the undersigned, City Clerk for the City of Falls City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Chairperson and Board on March 12<sup>th</sup>, 2026, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting; and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

(SEAL)

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
CHAIRPERSON

# MASTER SERVICE AGREEMENT

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This **Master Service Agreement** (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between **Consolidated Grain and Barge Co.**, a Missouri Corporation with a principal place of business of 1127 Highway 190, East Service Road, Covington, LA 70433 (“Company”) and \_\_\_\_\_, a \_\_\_\_\_, with a principal place of business of \_\_\_\_\_ (“Contractor”).

Whereby, in consideration of the covenants and provisions hereinafter provided and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that this Agreement and all terms and conditions set forth herein shall apply to and govern all work performed by Contractor for Company pursuant to any written or oral work order issued to Contractor.

It is further agreed that this Agreement shall govern all work performed by Contractor at the request of any parent, subsidiary or affiliate of Company, in which case such parent, subsidiary, or affiliate shall be deemed the contracting party (“Company”) for such work.

## 1. ENGAGEMENT OF CONTRACTOR

1.1 This Agreement does not obligate Company to engage Contractor for the performance of any Work (defined below), nor does it obligate Contractor to perform Work for Company. However, in the event Company does engage Contractor for the performance of Work, and Contractor accepts such engagement, in each case whether verbally or in writing, this Agreement and all terms and conditions set forth herein shall apply to and govern such Work and shall be deemed to be incorporated in full in each and every subsequent oral and/or written work or purchase order or request in accordance with the attached Exhibit A (each a “Work Order” and each Work Order, together with this Master Service Agreement, the “Agreement”).

1.2 The term “Work” means the construction and services identified in a Work Order (including any incorporated Contract Documents) and required by the Agreement, whether completed or partially completed, and includes all home office and field services, engineering, labor, materials, equipment, tools, supervision, transportation and all other items and services necessary for the complete and satisfactory performance of a Work Order. Any equipment, materials or services not specifically described in the Work Order and Contract Documents, but which may be fairly implied as required thereby or necessary to complete the Work for the use intended shall be within the scope of Contractor’s Work.

1.3 The Contract Documents are attached to or incorporated by reference in a Work Order and may include specifications, plans, drawings, price lists or other documents, data, and addenda. Additional Contract Documents may be added to the Agreement via Change Order. Anything mentioned in one Contract Document, but not others, shall be of like effect as if shown and mentioned in all. The higher or greater quality shall prevail. In case of conflict or inconsistency

# **MASTER SERVICE AGREEMENT**

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between or among the Contract Documents, or in case of discrepancies, omissions and/or errors, the matter shall be submitted immediately to Company for determination. Any proposal, clarifications, or exceptions prepared by Contractor shall not be deemed a Contract Document and shall not be considered a part of the Agreement unless specifically and expressly incorporated in a Work Order, in which case any provisions of such document that conflicts with any provisions of this Agreement, a Work Order, or the Contract Documents, shall be null and void.

1.4 Subject to Section 1.1, Contractor shall commence the Work at the agreed upon time; continue such Work diligently and without delay; and complete the Work in accordance with the schedule agreed upon between Company and Contractor. Contractor shall perform the Work in a good and workmanlike manner, in strict conformity with the Contract Documents and other specifications, instructions, and requirements contained herein or as otherwise provided to Contractor by virtue of the Work Order.

1.5 Subsequent to the agreement for Work to be performed by Contractor, no changes shall be made to the Work, and there shall be no change to the compensation therefore, unless and until such change(s) are subject of a written change order issued or signed by Company (a "Change Order"). Company reserves the right to make changes to the Work, and should Company require such changes to be made, Company shall issue a written Change Order to Contractor, and the compensation payable to Contractor, as well as the schedule for the performance of Work, shall be equitably adjusted to account for such changes.

## **2. CONFIDENTIALITY**

Any and all information or documentation provided by Company to Contractor, to which Contractor is given access, or which is developed by Contractor as part of the Work, shall be considered confidential and shall not be disclosed or otherwise provided to others by Contractor except to: (a) Contractor's employees or subcontractors and its employees, in each case only to those who have a need to know such information relative to the engagement of Contractor or for the performance of the Work and who are advised by Contractor of Contractor's confidentiality obligations with respect thereto; and (b) such third parties as are necessary for the completion of the Work by Contractor in accordance with the written scope of work or other written instruction provided by Company in connection with the Work.

## **3. TERMS OF PAYMENT**

Company will pay Contractor for the Work at such rates and/or prices as set forth in the Work Order or as otherwise agreed between the parties in writing prior to commencement of the Work. Contractor shall invoice Company at the billing address provided by Company every thirty (30) days unless otherwise agreed to in writing by Contractor and Company. Payment shall be made by Company within thirty (30) days of receipt of Contractor's invoice along with any documents reasonably necessary to verify the charges by Contractor. Contractor warrants and guarantees that title and ownership of all Work and Work product, as well as all materials, goods,

## **MASTER SERVICE AGREEMENT**

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and equipment provided by Contractor as part of the Work and covered by Contractor's invoice, shall, upon payment by Company, pass to Company free and clear of all liens, claims, security interests or encumbrances of whatsoever nature or kind.

### **4. STANDARD OF PERFORMANCE**

4.1 Contractor shall, at Contractor's expense, furnish all required supervision and labor, adequately trained and sufficient in number, as well as all equipment, machinery, tools, materials and supplies, necessary for the performance of the Work in a safe, diligent and workmanlike manner.

4.2 All materials, equipment, supplies or manufactured articles furnished by Contractor as part of the Work shall be new unless otherwise specified or agreed to by Company.

4.3 Contractor warrants that its Work shall be of good quality and workmanship; shall be in conformance with the requirements of Company and the Contract Documents; and shall be free from defects. Contractor shall re-perform, replace or repair any defective Work at Contractor's sole cost and expense. Should Contractor fail to re-perform, replace or repair defective Work within a reasonable time following notification from Company, Company shall have the right to have the same re-performed, replaced or repaired either by its own employees or by others, and Contractor shall be liable for all costs and damages associated therewith.

4.4 Contractor shall assign to Company, or otherwise obtain for Company's benefit, any warranties supplied by the manufacturer of any goods or equipment supplied by Contractor to Company as part of the Work, failing which Contractor shall, at its cost and expense, honor such warranties as between Contractor and Company. Contractor shall collect all such written warranties and equipment manuals, if any, and deliver them to Company and all warranties shall accrue to Company.

4.5 To the extent required by law, Contractor shall be licensed to perform the Work, and Contractor further warrants that all Work shall be performed by individuals duly licensed and authorized by law to perform said Work. Except as otherwise agreed in writing between Company and Contractor, as part of the Work, Contractor shall, at its own cost and expense, obtain all permits necessary for the Work to be performed.

4.6 As part of the Work, and at its sole cost and expense, Contractor shall secure all necessary certificates of inspection, testing or approval that may be necessary in connection with or upon completion of the Work. All such certificates shall be delivered to Company.

4.7 Contractor acknowledges that all obligations undertaken by Contractor are based on inspections and investigations made by Contractor, and that Contractor understands the nature of the Work to be performed and the premises and equipment involved, as well as all risks

# **MASTER SERVICE AGREEMENT**

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incident thereto or inherent therein.

4.8 To the extent Work is to be performed at a site or location owned, possessed or controlled by Company (hereinafter a "Company Location"), Contractor shall, at all times, maintain the Company Location reasonably free from debris and waste materials resulting from Contractor's Work. At the completion of the work, Contractor shall remove all equipment, tools, surplus materials, waste and debris accumulated as a result of Contractor's work.

4.9 No review or acceptance of Contractor's Work shall operate to relieve Contractor of its responsibility or liability for the Work and its compliance with the terms and conditions of this Agreement. Company shall not be responsible for discovery of any defect in Contractor's Work, and no review or acceptance of Contractor's Work shall constitute a waiver of Company's rights and remedies available for any defect in the Work.

4.10 Without limiting any other obligations of the Contractor, if any of the Work is found to be defective and/or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Company to do so. If the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from Company, Company may correct it at Contractor's cost.

4.11 To the extent the Work requires Contractor to furnish drawings, data, or other submittals, Company reserves the right to review and comment on such submittals to the extent, if any, that Company deems desirable for its purposes. Submittals will not be returned to Contractor unless Company elects to make comments. Any such review and comment by Company, or any failure to review, unless expressly agreed in writing to the contrary, shall not alter any of the terms and conditions of this Agreement or relieve Contractor of any responsibility or liability for the accuracy and completeness of such submittals or be interpreted so as to imply approval of such submittals. Contractor hereby grants Company an unlimited license to use, both now and in the future, any drawings, specifications, submittals or other documents generated by Contractor and its subcontractors and suppliers associated with the Work.

## **5. INDEPENDENT CONTRACTOR**

5.1 Contractor shall be an independent contractor with respect to the performance of all Work hereunder, and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant or representative of Company in the performance of any Work or any part thereof. Company shall have no direction or control of Contractor or its employees and agents with respect to the manner or method in which the Work is performed, Company being interested only in the results thereof. The Work shall meet the approval of Company and be subject to the general right to inspection of performance. Superintendence of all Work shall be by Contractor, but Company or its representatives shall have reasonable access to the Work to determine whether the Work is being performed by Contractor in accordance with all the provisions of this Agreement. Contractor will replace, at its sole cost

## **MASTER SERVICE AGREEMENT**

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and expense, any of its employees whose presence is reasonably determined by Company to be detrimental to Company's property, employees or operations.

5.2 Contractor shall be solely responsible for the management, supervision and direction of all persons employed or engaged by Contractor in the performance of the Work. Contractor shall supply such persons with all tools, equipment, protective equipment and the like as may be necessary for the performance of Work in a safe and efficient manner.

### **6. PROTECTION FROM LIENS**

Contractor agrees to pay all just claims for labor, materials and supplies furnished to Contractor in the performance of Work hereunder, and to allow no lien or charge to become fixed upon any property of Company. Contractor shall furnish to Company at Company's request and option, proof satisfactory to Company that there are no unsatisfied claims for labor, material or supplies furnished to Contractor. At Company's request, Contractor shall, with each invoice for payment, execute and submit to Company lien waivers in the form attached hereto as Exhibit B.

Contractor shall indemnify, defend and save harmless Company from all claims, demands, causes of action, liens or suits of whatsoever nature by Contractor's employees, subcontractors, and suppliers (of any tier) seeking compensation for services, labor, equipment and materials furnished connection with this Agreement. Contractor shall immediately pay and discharge, or shall provide security sufficient and satisfactory to pay and discharge, any obligation or alleged obligation it or any of its employees, subcontractors or suppliers may have in aid of the enforcement of which a lien or right of any kind is established, or is attempted to be established, upon or against the Work or the real property upon which the Work is situated. Contractor shall immediately bond off or otherwise cause to be removed any lien filed by an employee, subcontractor, or supplier of any tier against the Work or the real property upon which the Work is situated, regardless of whether or not lien is considered proper by Contractor.

### **7. COMPLIANCE WITH LAWS - TAXES**

7.1 Contractor agrees to comply with all laws, rules and regulations, federal, state, local, or foreign (collectively "Laws"), which are now or may, in the future, become applicable to the Contractor, the Work, Contractor's business, and Contractor's equipment and personnel engaged in the performance of Work.

7.2 Contractor shall be solely responsible for the payment of any and all fines, penalties or the like that may be assessed or levied as a result of any failure of Contractor to comply with Laws, and Contractor shall defend, indemnify and hold harmless Company in connection with same.

7.3 Contractor further agrees to pay all taxes, licenses, fees and like assessments

## **MASTER SERVICE AGREEMENT**

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or payments levied or assessed by any governmental agency or entity on Contractor in connection with or incident to the performance of the Work (hereinafter "Assessments"). Contractor shall defend, indemnify and hold harmless Company from any such Assessments against Company resulting from Contractor's failure to pay or satisfy its obligations set forth herein. At its election, Company is authorized to deduct all sums so paid for such taxes or other assessments from such amounts as may be or become due to Contractor hereunder. Contractor agrees to furnish Company with the information required to enable it to make the necessary reports and pay such Assessments that may be levied or assessed against Company.

7.4 The terms of payment as stated in this Agreement shall cover and include Contractor's entire compensation for the Work inclusive of Assessments against Contractor incident to the performance of the Work by Contractor, and no additional amount will be paid to Contractor for or on account of Contractor's payments of or liability for any such Assessments.

### **8. SAFETY STANDARDS COMPLIANCE**

8.1 To the extent Work is to be performed by Contractor at a Company Location, Company reserves the right to require that Contractor, at a minimum, comply with Company's safety requirements, to include, without limitation, Company's lockout and tagout program; confined space entry program; fire prevention program; hazardous communication program including acknowledgement of the location of Material Safety Data sheets and understanding the list of hazardous substances present at the Company Locations. Notwithstanding this, however, Contractor alone shall be responsible for the safety of its Work and of all persons engaged or employed by Contractor for the performance of the Work, and Contractor shall be responsible for compliance with all laws, regulations, rules or the like applicable to its Work and those employed or engaged by Contractor for the performance of the Work. In the event of any conflict between Company's safety rules that may be imposed upon Contractor, and those of Contractor or any laws, regulations, rules or the like, the most stringent of such rules or the like shall apply.

8.2 Company shall have the right, without obligation, to suspend Contractor's performance of the Work in the event of any breach of its obligations with respect to safety or in the event such Work is reasonably determined by Company to pose a risk of injury or damage to Company's operations. Upon suspension, Contractor shall, at its cost and expense, immediately correct the circumstances giving rise to the suspension.

8.3 To the extent the Work is to be performed at a Company Location, Contractor agrees that the Work will be performed during normal work hours of Company unless written permission is granted to Contractor by Company to perform Work otherwise.

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### **9. RISK OF LOSS**

At all times prior to Company's acceptance of the Work, Contractor shall bear all risk of loss, theft, damage or destruction with respect thereto, as well as loss, theft, damage or destruction of or to Contractor's equipment, tools, facilities and materials.

### **10. INSURANCE**

10.1 Contractor shall carry, at its own expense, with insurance carriers reasonably acceptable to Company and rated "A- VII" or better by A.M. Best & Co. Financial Strength Rating guide and authorized to do business in the state or states in which Work is to be performed by Contractor, the following insurance:

(a) Commercial General Liability insurance, on a per occurrence basis, which shall include coverage for Bodily Injury, Personal Injury, Products and Completed Operations, Blanket Contractual Liability and Broad Form Property Damage coverage with minimum limits of One Million dollars (\$1,000,000.00) per occurrence;

(b) Comprehensive Automobile Liability insurance including but not limited to coverage for bodily injury and property damage liability, on owned, non-owned and hired vehicles to insure against claims for injury or death to persons or damage to property with minimum limits of One Million dollars (\$1,000,000.00) combined single limit for each occurrence.

(c) Statutory Worker's Compensation insurance for state of hire/operation (including coverage under the U. S. Longshore and Harbor Worker's Compensation Act where applicable), and Employer's Liability insurance with minimum limits of One Million dollars (\$1,000,000.00) dollars, to cover injury, illness, disease or death of Contractor and Contractor's employees who are in any way engaged in or connected with the performance of the Work.

(d) To the extent the Work includes any professional services, Professional Liability insurance with a minimum limit of Five Million dollars (\$5,000,000.00).

(e) Excess Liability insurance in an amount not less than Nine Million dollars (\$9,000,000.00). Such insurance shall be excess above the policies required by subparts (a) and (b), as well as the Employer's Liability coverage required by subpart (c).

(f) All of policies of insurance required to be procured and maintained by Contractor, with the exception only of the insurance required by subparts (c) and (d) above, shall name Company and its parent, affiliated and subsidiary companies, and each of their respective directors, officers, employees and agents, successors and assigns, and any other party for whom Company is required to name as an additional insured by contract (hereinafter for purposes of Articles 10 and 11 of this Agreement referred to collectively as "CGB") as additional insureds, including Products and Completed Operations with a separation of interests clause.

## **MASTER SERVICE AGREEMENT**

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(g) Contractor shall provide a Contractor's Equipment Floater, or other form of property or inland marine coverage, for Contractor's property, tools and equipment.

(h) All policies required by this Agreement shall contain a waiver of subrogation in favor of CGB.

10.2 Prior to commencement of any Work to be performed hereunder and at each policy anniversary date thereafter, or, in the interim, at Company's reasonable request, Contractor shall provide a certificate of insurance, satisfactory to Company, as evidence of its placement of the above listed insurance coverages, to include appropriate additional insured status and waiver of subrogation as outlined, and to provide thirty days' notice of material change or cancellation. It shall be specifically agreed between the parties that CGB reserves any and all rights to which it may have been entitled, and shall not be precluded nor denied the right to recover because CGB is named as an additional insured under any policy. In addition, the insuring policies under which CGB is named as an additional insured will be deemed primary as to any other valid and collectible insurance, and shall be extended to CGB on a noncontributory basis. All deductibles under the aforementioned insurance policies shall be satisfied by Contractor.

10.3 Contractor agrees that if any of the Work is to be performed by subcontractors, Contractor shall require that each such subcontractor procure and maintain all insurance coverages as required of Contractor herein, in equal form and at least equivalent to the terms and conditions of this Agreement. At Company's reasonable request, Contractor shall provide a certificate of insurance, satisfactory to Company, as evidence of its subcontractors' placement of the above listed insurance coverages, to include appropriate additional insured status and waiver of subrogation as outlined, and to provide thirty days' notice of material change or cancellation.

### **11. INDEMNIFICATION**

11.1 Contractor agrees to and shall defend, indemnify, and hold harmless CGB from and against any and all liability, claims, fines, settlements, damages, demands, suits or causes of action of whatsoever nature, including but not limited to reasonable attorney's fees, arising out of bodily injury to, illness or death of any person, including, without limitation, any employee of Contractor (notwithstanding any immunity otherwise afforded to Contractor), or for damage to property of any person, legal entity, or third party, in any occurrence incident to or arising out of or relating to the Work or any other activities of Contractor or its subcontractors, and their respective employees, subcontractors, agents or representatives; the performance or non-performance by Contractor of its obligations hereunder; a breach of any term, provision or warranty contained in this Agreement; or any violation by Contractor or its subcontractors of any Laws. It is the intent of the parties that the obligations of Contractor under this Article 11 shall in no way be limited by other provisions of the Agreement, including, but not limited to, any provisions concerning insurance.

## **MASTER SERVICE AGREEMENT**

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11.2 Contractor agrees that if any of the Work is to be performed by subcontractors, Contractor shall require that such subcontractors agree to defend, indemnify and hold harmless CGB at least to the extent required of Contractor in Section 11.1.

### **12. RECORDS AND AUDIT**

Contractor agrees to retain all pertinent records for labor, materials, equipment and as otherwise relates to any matter governed by this Agreement for a period of not less than twenty-four (24) months following the completion of any Work and representatives of Company shall have access at all reasonable times to said records maintained by Contractor relating to any Work performed or required to be performed, as well as amounts invoiced by Contractor and/or paid by Company hereunder, and Company shall have the right to audit said records at any reasonable time or times for compliance with the terms of this Agreement.

### **13. CONFLICT OF PROVISIONS**

13.1 In the event of any conflict between the provisions of this Master Service Agreement and any Work Order or other document made a part of the Agreement for the Work, then the terms of this Master Service Agreement shall govern and control unless the Work Order or other document expressly provides that it shall govern and control over a conflicting term set forth herein.

13.2 The acceptance by Contractor of any Work Order issued by Company shall be subject only to the terms and conditions set forth herein or in such Work Order, and no additional terms and conditions proposed by Contractor, including, without limitation, any terms and conditions set forth in any Contractor work ticket, Contractor invoice, Contractor purchase order, Contractor rate schedule or other Contractor document, shall bind the Company or apply to the Work unless in writing signed by the Company and expressly referenced as part of this Agreement or as an amendment hereto.

### **14. ASSIGNMENT/SUBCONTRACTING**

14.1 Contractor shall not have the right to assign this Agreement or any Work Order, in whole or in part, without the prior written consent of Company.

14.2 Contractor shall not subcontract the Work or any part thereof without the prior written consent of Company.

### **15. WAIVER OR MODIFICATION OF TERMS**

15.1 Either party's failure to complain of any act or omission on the part of the other party, no matter how long same may continue, shall not be deemed a waiver by such party

## **MASTER SERVICE AGREEMENT**

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of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provisions of this Agreement or a consent to any subsequent breach of the same or any other provision. No change, modification, extension, renewal, ratification, rescission, discharge or abandonment of this Agreement shall be binding unless made in writing and signed by the parties hereto.

15.2 Any inspection or approval of the Work by Company shall not be deemed a waiver of any rights herein and shall not relive Contractor of its obligations to perform the Work in accordance with the terms of this Agreement.

### **16. EVENTS OF DEFAULT AND TERMINATION**

16.1 The following occurrences constitute a default under this Agreement:

(a) Failure to comply with the terms and conditions of the Agreement, and the failure to remedy same within ten (10) business days after receipt of written notice by the non-defaulting party, provided, however, that if the default is of such a nature that it cannot be cured within such time, the time for the curing of same shall be extended if the defaulting Party reasonably commences to cure upon receipt of written notice and diligently proceeds with the cure until completion.

(b) Proceedings for bankruptcy, reorganization, arrangement, receivership, liquidation or involuntary dissolution, or other proceedings for relief under any bankruptcy laws have been instituted by or against either Party.

Upon an event of default by either party, the non-defaulting party may, at its option, terminate the Agreement(s) subject of the default, upon written notice of termination delivered to the defaulting party.

16.2 Company, at its sole discretion and without cause, may, upon written notice to Contractor at any time and without cause, terminate the Work being performed by Contractor hereunder. The termination of a Work Order pursuant to this Section 16.2 shall not terminate this Master Service Agreement which shall continue to govern any Work Order remaining in effect or subsequently issued by Company and accepted by Contractor. Upon termination of a Work Order pursuant to this Section 16.2, Contractor shall be entitled to receive compensation for the Work performed prior and up to termination. In no event shall Company be liable to Contractor for Contractor's anticipated overhead or profit for Work not performed or damages incurred by Contractor as a result of termination.

16.3 In the event of termination by Company pursuant to Section 16.1, Company shall have the right, at its option, and with full reservation of all other rights and remedies available to Company, to complete performance of the Work or to engage a third party for the completion

## **MASTER SERVICE AGREEMENT**

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of same, at Contractor's expense, and Company shall not be obligated to make any further payment to Contractor hereunder.

16.4 In the event of termination by Contractor pursuant to Section 16.1, the Contractor agrees that it may receive payment for Work properly performed, and profit on Work properly performed, but shall not receive anticipated overhead or profit for Work not performed or damages incurred by Contractor as a result of termination.

### **17. TIME IS OF THE ESSENCE**

Time is of the essence in the performance of the Work and all obligations under this Agreement. In the event that Contractor fails for any reason whatsoever, other than an event of Force Majeure as defined in Section 20 herein, to perform and complete the Work in accordance with the agreed upon schedule for the performance of same, such failure shall constitute a material breach of this Agreement.

### **18. ENFORCEMENT OF RIGHTS**

It is understood and agreed that in the event either party is compelled to institute suit against the other to enforce any of its rights hereunder or obligation of the other party arising from or incidental to this Agreement, then the prevailing party shall be entitled to full recovery of all cost including but not limited to reasonable attorney's fees, court costs and other expenses related thereto.

### **19. NOTICES**

All notices to be given with respect to this Agreement shall be in writing and shall be considered as given to Company and/or to the Contractor, respectively, upon delivery if delivered personally or sent by certified mail or commercial courier, in each instance provided evidence of delivery, to the addresses stated on the first page of this Agreement and to the attention of the representative of the Company or Contractor signing this Master Service Agreement. In the event of notice to the Company, a copy shall be provided to the attention of its General Counsel, 1127 Highway 190, East Service Road, Covington, LA. 70433 and notice shall not be effective as to Company unless such copy shall have been delivered.

### **20. FORCE MAJEURE**

Under the terms of this Agreement, "Force Majeure" shall mean any act of God, strikes, lockouts, other industrial disturbances, acts of the public enemy, governmental action, wars or war-like action (whether actual, impending or expected and whether de jure or de facto) arrests or other epidemics, landslides, lightning, earthquakes, tornados, fires, storms, floods, washouts, civil disturbances, explosions, breakage or accident to equipment or machinery, confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive

## **MASTER SERVICE AGREEMENT**

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contamination, and any other causes, whether of the kind herein enumerated or otherwise, that are not reasonably within the control of the party claiming a suspension of performance of obligations under this Agreement, and that by the exercise of due diligence, such parties shall not have been able to avoid or overcome. Except as specifically provided otherwise in this Agreement, if either party is rendered unable, wholly or in material part, by reason of Force Majeure to carry out any of its obligations hereunder, then on such party's giving notice and reasonably full particulars of such Force Majeure in writing to the other party within five (5) days after the occurrence of the cause relied on, such obligation of the party giving such notice, so far as it is effected by such Force Majeure event, shall be suspended during the continuance thereof; however the parties agree to undertake reasonable steps to mitigate the effect of such delays and such cause or delay shall, as far as practicable, be remedied with all reasonable dispatch. The affected Party shall not be entitled to payment of any additional compensation due to any increased costs in performance as a result of any Force Majeure event.

### **21. BINDING EFFECT**

This Agreement and all of its terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and each of their authorized successors and assigns.

### **22. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid, void or unenforceable by any governing body or court of law having jurisdiction, the remaining provisions shall not be affected or impaired, and shall remain in full force and effect.

### **23. ENTIRE AGREEMENT**

This Agreement shall constitute the entire Agreement between the Parties with respect to the subject matter hereof and as applicable to any Work performed by Contractor. This Agreement supersedes and all prior understandings and agreements between Company and Contractor, whether written or verbal, including, without limitation any Master Service Agreement previously executed by and between Company and Contractor, provided, however, that this Agreement shall not supersede a prior agreement with respect to any Work Order already performed or being performed at the time this Agreement is executed which shall continue to be governed by the agreement between the parties with respect thereto. Any Work Order from the date hereof forward shall be governed solely and exclusively by this Agreement.

### **23. GOVERNING LAW**

This Agreement shall be construed and enforced according to the laws of the State in which the Company Location or other premises or facility subject of the Work is located. Any legal action instituted by either Party hereto for the enforcement of this Agreement with respect to any Work performed hereunder, shall be instituted in a court of competent jurisdiction, whether

# MASTER SERVICE AGREEMENT

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state or federal, located within that same state.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement effective as of the date first hereinabove written.

\_\_\_\_\_  
(Contractor)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Signed and accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Consolidated Grain and Barge Co.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Signed and accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

# **MASTER SERVICE AGREEMENT**

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## **EXHIBIT A**

### **WORK ORDER OR SCOPE OF WORK**

(The Work Order shall, at a minimum, set forth the description of the Work to be performed by Contractor; the requirements and specifications for the Work; the rate of compensation payable to Contractor for the Work; and the schedule for the completion of the Work)

# **MASTER SERVICE AGREEMENT**

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## **EXHIBIT B**

**LIEN WAIVER FORM (attached)**



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

March 27, 2026

City of Falls City  
Attn: Trevor Campbell  
2307 Barada Street  
Falls City, NE 68355

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
Jacket Water and Raw Water P&ID Development (the "Project")  
Falls City, Nebraska

Dear Trevor:

It is our understanding that The City of Falls City ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, any exhibits attached hereto and Olsson's General Provisions (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed any exhibits attached hereto and the General Provisions, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the "Scope of Services" as described in the Scope of Services document attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

### **SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: April 6<sup>th</sup>, 2026

Anticipated Duration: 6-8 weeks from notice to proceed and receipt of PO

Phase	Duration
Project Initiation and Kick-off	1 week
Field Walkdowns	1 week
Rev A Development	2 weeks
Client Review	1 week
Rev B Development	1 week
Client Review	1 week
Final Record Documents	1 week

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

**COMPENSATION**

Client shall pay to Olsson for the performance of the Scope of Services, the actual hourly labor rates of personnel performing such services on the project times a factor of 3.25, and all actual reimbursable expenses in accordance with the Reimbursable Expense Schedule attached to this agreement. Olsson shall submit invoices on a monthly basis, and payment is due within 30 calendar days of invoice date.

Olsson’s Scope of Services will be provided on a time-and-expense basis not to exceed:

- Twenty-Eight Thousand Dollars (\$28,000).

**TERMS AND CONDITIONS OF SERVICE**


We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client’s designated Project Representative shall be Trevor Campbell.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson via email: [jnunes@olsson.com](mailto:jnunes@olsson.com). This proposal will be open for acceptance for a period of thirty days from the date set forth above, unless changed by us in writing.

**OLSSON, INC.**

By  \_\_\_\_\_  
Jon Nunes, PE

By  \_\_\_\_\_  
Dillon Gushard, PE

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**City of Falls City**

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

Attachments

- 1. Scope of Services
- 2. Standard Labor Rate Schedule
- 3. Reimbursable Expense Schedule
- 4. General Provisions

## SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated March 27, 2026 between the City of Falls City ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

### PROJECT DESCRIPTION AND LOCATION

Project will be located at: Falls City, Nebraska

Project Description: Jacket Water and Raw Water P&ID Development

### SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

#### A. Project Description and Understanding

The Client is requesting engineering services associated with the development of as-found Process and Instrumentation Diagrams (P&IDs) for the existing Raw Water and Jacket Water systems serving the RICE generator plant. This scope represents a first-pass documentation effort intended to establish system architecture, major equipment, piping configuration, and functional instrumentation concepts. Detailed instrument tagging, loop definition, and control logic are explicitly excluded from this phase and may be addressed under a future scope of services.

#### B. Applicable Standards

1. Process Industry Practices (PIP) standards for P&ID layout, piping, valves, and equipment.
2. Instrumentation represented at a functional level only; detailed ISA 5.1 tagging deferred to a future phase.

#### C. Scope of Services

##### 1. Task 101 – Project Management

- Project management, coordination, and oversight of scope, schedule, and budget.
- One project kickoff meeting (on-site, coordinated with initial site walkdown).
- Collection and review of all available existing documentation and drawings.
- Two progress review meetings. One hour each to be conducted at the completion of the Rev A and Rev B P&ID review submittals.

##### 2. Task 102 – Field Walkdowns

Engineering staff will conduct on-site field walkdowns of the Raw Water and Jacket Water systems to document physical arrangement and system configuration.

- Verify piping routing, sizes, materials, insulation, and flow direction.
- Identify and document valves, drains, vents, strainers, and specialty components.
- Record major equipment nameplate data where accessible.
- Identify functional instrumentation and control elements without detailed tagging.
- Capture field sketches and photographs for drafting reference.

3. Task 103 – P&ID Development (Rev A)

Using field walkdown information, first-pass P&IDs will be developed in accordance with PIP standards.

- Establish overall system configuration and connectivity.
- Show major equipment, piping, valves, and components.
- Include pipe sizes, services, and material classes.
- Identify functional measurement and control points at a conceptual level only.

4. Task 104 – P&ID Development (Rev B)

Rev A comments will be incorporated to produce an updated Rev B P&ID set.

- Populate agreed-upon line numbers, valve numbers, and equipment tags.
- Update associated line lists, valve lists, and equipment lists.
- Instrumentation continues to be documented only at a functional level.

5. Task 105 – Record Drawings (IFR)

Final record drawings will be issued following incorporation of Rev B comments.

- Final P&IDs issued in PDF and native CAD format.
- Final line lists, valve lists, and equipment lists provided in Excel format.

D. Instrumentation Scope Clarification (Phase 1)

Documentation of existing instrumentation included in this phase is limited to general identification of what is measured or controlled and where it occurs within the system.

1. Included items:

- Pressure, temperature, level, and flow indication points.
- Control valves identified by function only.

2. Excluded Items:

- Instrument tag numbers and loop numbers.
- Control logic, PLC/DCS architecture, alarms, and setpoints.

E. Deliverables

Description	Rev A	Rev B	IFR
P&IDs (PDF Format)	X	X	X
P&IDs (DWG Format)	-	-	X
Line List (Excel Format)	-	X	X
Valve List (Excel Format)	-	X	X
Equipment List (Excel Format)	-	X	X
Field walkdown documentation (PDF Format)	-	X	X

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.



## 2026 Olsson Billing Rate Schedule

<u>Description</u>	<u>Range</u>
Principal	\$156.00 - \$486.00
Project Manager	\$136.00 - \$294.00
Project Professional	\$101.00 - \$258.00
Assistant Professional	\$76.00 - \$187.00
Designer	\$109.00 - \$238.00
CAD Operator	\$66.00 - \$232.00
Survey	\$61.00 - \$230.00 *
Construction Services	\$56.00 - \$305.00 *
Administrative/Clerical	\$51.00 - \$266.00

**Note:**

1. Special Services not included in above categories will be provided on a Special Labor Rate Schedule
2. Rates subject to change based upon updates to Billing Rates for upcoming year.



## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.725/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$95.00/day
Automobile (Olsson EV)	\$85.00/day
Other Travel or Lodging Cost	Actual Cost**
Meals	Actual Cost**
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

\*\*Rates consistent with the U.S. General Services Administration (GSA) Per Diem for Reimbursable Lodging, Meals and Incidental Costs (Subject to Change).

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated March 27, 2026 between City of Falls City ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate

schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project, shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs, or procedures. Client, itself or through its separate contractor(s), shall be responsible for jobsite safety. Notwithstanding the foregoing, Olsson shall be responsible for the safety of Olsson's own employees.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic

observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the

quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion

and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 Except to the extent prohibited by law, the prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute. In the event of a Dispute involving a Claim (as hereinafter defined) against Olsson, Olsson shall be considered the "prevailing party" if Client is awarded materially less than the full amount of damages claimed by the Client in connection with the Dispute. In all other Disputes, "prevailing party" shall mean the party (if any) who obtains all, or substantially all, of the relief requested by that party in connection with the Dispute.

### 6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and

Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice. In any such instance, Olsson shall be entitled to an award of attorney's fees, costs, and expenses.

## SECTION 7—MISCELLANEOUS

### 7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### 7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability

or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Opinion of Probable Cost**

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples.

After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with and limited to that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

### **7.8 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin or any other protected characteristic under applicable law. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status or any other protected characteristic under applicable law. Olsson and any sub-consultant or subcontractor certify that they do not operate any programs that promote DEI in a way that violates applicable federal anti-discrimination laws.

### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If

the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

#### **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

#### **7.12 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

#### **7.13 Assignment**

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

#### **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

#### **7.15 Limitation on Damages**

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by

law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

#### **7.16 Entire Agreement/Severability**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson. If any part of this Agreement is found to conflict with applicable law, such part alone shall be null and void and considered stricken, but the remainder of this Agreement shall be given full force and effect.

## An Agreement for the Provision of Limited Professional Services

<b>Design Professional Firm:</b>	MILLER & ASSOCIATES, CONSULTING ENGINEERS, P.C. 1111 Central Avenue Kearney, NE 68847 Attn: Chris Miller, P.E. T: 308-234-6456 E: cmiller@miller-engineers.com (hereinafter called ENGINEER)	<b>Client:</b> CITY OF FALLS CITY 2307 Barada Street Falls City, NE 68355 Attn: Trevor Campbell T: 402-245-2851 E: tcampbell@fallscityne.us (hereinafter called CLIENT)
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**DATE:** March 23, 2026

**PROJECT NO.** 495-D1-009

**PROJECT NAME/LOCATION:** Fairview Mills & Airlanco pre-packaged lift stations, force main, connections and gravity sewer main abandonment in Falls City, Nebraska

**SCOPE/INTENT AND EXTENT OF SERVICES:** Whereas, the CLIENT desires to employ the ENGINEER to prepare drawings and detailed specifications for the pre-packaged lift stations, force main, connections and abandonment of existing gravity sewer main. Drawings shall include Site Plan and Details. Elevations and control points will be based off existing elevations obtained from desktop survey. The proposal fee assumes that electrical components will be provided to the proposed pump stations and are not included in the design scope. ENGINEER will provide design services as follows:

**1. Design Phase**

- a) Site visit and scope review with CLIENT
- b) Generate site and detail drawings and technical specifications for CLIENT to utilize for proposals/construction for private service connections to public sewer system
- c) Provide engineer's opinion of probable construction cost
- d) Assist CLIENT in preparation of construction contract documents (if requested)

**FEE ARRANGEMENT:** Compensation by CLIENT to ENGINEER will be as follows:

**1. Design Phase Services**

For Design Phase the Lump Sum Fee is Nine Thousand Four Hundred Dollars (\$9,400.00)

**2. Construction Phase Services**

Construction services will be invoiced on an hourly basis if requested. For the purposes of this Agreement, the hourly fees and rates are as follows:

Employee Classification	Rate
Professional Engineer	\$130.00/hour
Architectural Manager	\$100.00/hour
Project Manager	\$95.00/hour
Licensed Land Surveyor	\$95.00/hour
Senior Design Technician	\$85.00/hour
Survey Crew	\$100.00/hour
Technician/Resident Project Representative	\$75.00/hour
Funding Administrator	\$65.00/hour
CADD Draftsperson	\$75.00/hour
Clerical / Staff Assistant	\$50.00/hour
Mileage	IRS Rate
Reproduction Services & Shipping	At Cost
Per Diem	At Cost
Subconsultant Services	At Cost + 5%

**EXCLUDED SERVICES:** The following services are not included, and will be considered additional services if requested:

1. Legal Survey and Easements
2. Electrical Design
3. Permitting and Fees
4. Bidding Services
5. Construction Services

Offered by:

*Chris Miller*

signature

date

Accepted by:

signature

date

**Chris A. Miller, P.E.**

Printed name/title

Printed name/title

**Miller & Associates,**

**Consulting Engineers, P.C.**

Name of ENGINEER

**City of Falls City**

Name of CITY

**The Terms and Conditions on the following page are a part of this Agreement**

## GENERAL TERMS AND CONDITIONS

### Consultant Responsibilities

**STANDARD OF CARE:** Consultant shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

**CODE COMPLIANCE:** Consultant shall review applicable laws, codes, and regulations and, in the provision of its Services, shall respond to such requirements imposed by the governmental authorities having jurisdiction over the Project and reasonably known to Consultant at the time services are provided. Client acknowledges that the requirements of the federal, state, and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations and requirements.

**COST EVALUATION:** Evaluations of Client's budget for the Cost of the Work, the preliminary opinions of the Cost of the Work, and updated opinions of the Cost of the Work prepared by Consultant, represent Consultant's judgment as a design professional. It is recognized, however, that neither Consultant nor Client has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the Cost of the Work or from any opinion of the Cost of the Work or evaluation prepared or agreed to by Consultant.

**DELIVERABLES (PER SCOPE OF SERVICES):** Consultant shall provide deliverables, including drawings, specifications, reports, and studies, as defined in the Scope of Services section.

### Client Responsibilities

**PROJECT SCOPE AND BUDGET:** Client shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the Cost of the Work. The Project budget shall include contingencies for design development and, when required by the scope of the Project, construction of the project. Client shall not significantly increase or decrease the overall Project scope, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of Consultant to a corresponding change in the Project scope, quality, schedule, and compensation of Consultant.

**DESIGNATED CLIENT REPRESENTATIVE:** Client shall identify an individual ("Designated Representative") authorized to act on its behalf with respect to the Project. The Client or its Designated Representative shall render decisions and approve Consultant's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services and Project schedule.

**ACCESS TO SITE:** Unless otherwise stated, Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take precautions to minimize damage due to these activities, but the cost of restoration of any resulting damage has not been included in the fee.

**CLIENT PROVIDED SERVICES AND INFORMATION:** Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project. In addition, Client shall furnish the services of design professionals other than those designated as the responsibility of Consultant in this Agreement or authorize Consultant to furnish them as an Additional Service, when Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project.

Consultant shall be entitled to rely on the accuracy, completeness, and timeliness of services and information furnished by Client, its Designated Representative, and Client's Consultants. Consultants shall have no responsibility for the technical content of Client's, its Designated Representative's, and Client's Consultants' services and information but shall provide prompt written notice to Client if Consultant becomes aware of any error, omission, or inconsistency in such services or information.

**CONSTRUCTION CONTRACTS & RESPONSIBILITIES:** When applicable to the scope of the Project, Client shall retain a qualified contractor, licensed in the jurisdiction of the Project ("Contractor"), to implement the construction of the Project ("Work") utilizing a construction contract based on General Conditions of the Contract for Construction. In the construction contract, Client shall require Contractor to: (1) obtain Commercial General Liability Insurance and name Client, Consultant, and Consultant's employees and subconsultants as additional insureds of that policy; and (2) indemnify and hold harmless Client, Consultant, and Consultant's employees and subconsultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorneys' fees and economic or consequential damages, arising in whole or in part out of any negligent act or omission of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Client understands and acknowledges that (1) Consultant has no control over, charge of, or responsibility for construction activities or jobsite safety on the Project; (2) Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, jobsite safety, and security; and (3) Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

**CLIENT'S REDUCTION OF SCOPE OF SERVICES:** If Client elects to terminate, modify, or reduce any portion of Consultant's Services under this Agreement, Client shall indemnify and hold Consultant and its subconsultants harmless from and against damages, losses, and judgments arising from claims by Client or any third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, related to the services or activities Consultant did not provide or in which Consultant did not participate.

### General Provisions

**LIMITATION OF DAMAGES:** The Services covered by this Agreement are of a preliminary or limited nature; therefore, neither Consultant, Consultant's subconsultants (if any), nor their agents or employees shall be jointly, severally, or individually liable to Client in excess of compensation to be paid pursuant to the Agreement, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

**OWNERSHIP OF DOCUMENTS:** All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultants shall retain ownership and property interest therein, including all copyrights. Upon payment in full for services rendered, Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of construction, occupying, or maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, or use of documents after termination, shall be at Client's sole risk, and Client agrees to indemnify, defend, and hold Consultant harmless from all claims, damages, and expense, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

**USE OF CONSULTANT-PROVIDED INFORMATION:** The information provided by Consultant is intended for the exclusive use of Client for the Scope of Services defined herein and is not to be transmitted for the use of any other party nor used for any other project. Client agrees to defend, indemnify, and hold Consultant harmless from any claims, costs, and expenses, including attorneys' fees and costs of litigation, which result from any unauthorized or unintended use of Consultant-provided information, or transmission by Client to others of the information resulting from Consultant's Scope of Services.

**MUTUAL INDEMNIFICATION:** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages or liabilities, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages or liabilities, to the extent caused by the Client's negligent acts, errors or omissions in connection with the Project as well as the acts, errors or omissions of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties expressly agree that both the Consultant and Client has no duty to defend the other from and against any claims, causes of action, or proceedings of any kind.

**MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES:** Consultant and Client waive consequential damages (such as lost profits, lost revenue, loss of use, loss of financing, and loss of reputation) for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, or equity, or that might arise out of the parties' indemnification obligation.

**DISPUTE RESOLUTION:** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to a session as a condition precedent to mediation.

Client and Consultant shall endeavor to resolve claims, disputes, and other matters in question during the meet-and-confer session. The meet-and-confer session shall be attended by Client and Consultant or their authorized representatives who shall have the authority to bind the parties. The meet-and-confer session shall take place within thirty (30) days after unless the parties mutually agree otherwise. Prior to the meet-and-confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy.

If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to non-binding mediation as a condition precedent to binding dispute resolution. If the parties do not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

**HAZARDOUS MATERIALS:** Consultant 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 located on the Project site. If hazardous materials are present, Client shall be responsible to remove them from the Project site in the manner that will not adversely affect the health of any person and comply with applicable governmental laws and regulations. Client shall indemnify and hold Consultant harmless from any liability, loss, damage, or expense arising out of or with respect to the presence of hazardous materials on the Project site. The presence or discovery of any hazardous or toxic substance on the site shall be cause for extension of the schedule of Consultant's services and equitable adjustment of fees for Consultant as mutually agreed by the parties.

**EXISTING CONDITIONS:** Documents prepared by Consultant will be prepared based upon reasonable assumptions derived from existing information provided by Client and from observations of the existing conditions by Consultant without the benefit of field measurements and invasive investigation made undesirable by expense and inconvenience to Client. It is understood and agreed that unforeseen conditions uncovered during the progress of the Work may require changes in the Work resulting in additional cost and delay for which Client shall maintain sufficient contingency. Services required by such changes shall be provided as additional services per this Agreement.

**DISCLAIMER OF THIRD-PARTY RELIANCE:** Nothing contained in the Agreement shall create a contractual relationship or a cause of action in favor of a third party against either the Client or Consultant.

**GOVERNING LAW:** This Agreement for Professional Services shall be governed by, and performed in compliance with the laws of the state where the Project is located. Any mediation or litigation will reside in Nebraska.

**ASSIGNMENT:** Client and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the Agreement. Neither Client nor Consultant shall assign the Agreement without the written consent of the other, except that Client may assign this Agreement to a lender providing financing for the Project, provided that all monies owed Consultant are paid prior to the date of assignment.

**PROJECT SCHEDULE :** In the event Consultant is hindered, delayed, or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including but not limited to delays due to power or data system outages, acts of nature, public health emergencies including but not limited to infectious disease outbreaks and pandemics, governmental orders or direct failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely or approve or review Consultant's services or design documents, or delays caused by faulty performance by Client consultants, the time for completion of Consultant's services shall be extended by the period of resulting delay equitably adjusted. Client agrees that Consultant shall not be responsible for damages, nor shall the Consultant be deemed in violation of this Agreement due to such delays.

**BILLING/PAYMENTS:** Invoices for the Consultant's services shall be submitted, at the Consultant's option, either between completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, the Consultant may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers (if any) shall be credited on the final invoice. Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all an account remains unpaid 90 days after the billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

**SUSPENSION AND TERMINATION:** In the event of suspension of Services, as outlined above or for any other reason beyond Consultant's control, Consultant will have no liability to Client for delay or damage resulting from such suspension. Prior to resuming Services, Consultant shall be paid all fees earned prior to suspension together with all reimbursable expenses then due, along with any costs and expenses, including attorneys' fees, incurred collecting delinquent payments. In addition, Consultant's fees for remaining Services and associated time schedules will also be equitably adjusted.

The Agreement may be terminated for cause after a ten (10) day cure period by either party or for convenience with written notice by Client or Consultant. Upon termination, all invoices presented by Consultant for Services provided, including reimbursable expenses then due and any costs incurred in pursuit of delinquent payments, shall become immediately due and payable. In the event of termination for convenience, Client shall pay to Consultant a termination fee of ten percent (10%) of fees not yet earned.

#### **MISCELLANEOUS REQUESTS**

In the event Consultant is requested by Client to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which Consultant is not a party, Client shall reimburse Consultant for reasonable costs incurred in responding and compensate Consultant at its then standard rates for reasonable time incurred in gathering information and documentation and attending depositions, hearings, and trial.

## ON-CALL SERVICES AGREEMENT

THIS AGREEMENT is made on the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_ between the City of Falls City (the OWNER) and MILLER & ASSOCIATES, CONSULTING ENGINEERS, P.C., 1111 Central Avenue, Kearney, NE 68847, (the ENGINEER), for providing consulting engineering services to the City.

The OWNER and the ENGINEER agree as follows:

### ARTICLE 1. CONSULTING CHARGES

In accordance with the Terms and Conditions of this Agreement, the ENGINEER shall provide professional services for which the OWNER shall compensate the ENGINEER as follows:

#### A. Request for Services on Specific Projects

The ENGINEER shall perform normal civil engineering services and design for the OWNER upon request. The OWNER and ENGINEER shall agree on the scope of work, time frame for completion and basis for payment. Said information shall be clarified on the On-Call Project Form as attached. Work may be compensated on an hourly basis, a lump sum fee for the defined tasks or a percentage basis of the construction cost.

The ENGINEER will invoice the OWNER for each project upon execution of the scope of work as outlined in the On-Call Project Form, based upon the amount of work completed for each project.

EMPLOYEE CLASSIFICATION	RATE
Professional Engineer	\$130.00
Architectural Manager	\$100.00
Project Manager	\$95.00
Licensed Land Surveyor	\$95.00
Senior Design Technician	\$85.00
Survey Crew	\$100.00
Technician/Resident Project Representative	\$75.00
Funding Administrator	\$65.00
CADD Draftsperson	\$75.00
Clerical/Staff Assistant	\$50.00
Mileage	IRS Rate
Reproduction & Shipping Services	At Cost
Per Diem	At Cost
Subconsultant Services	At Cost + 5%

These rates are effective for projects executed through March 31, 2027. Additional classifications for staff or hourly services would be as agreed upon for each specific project. Furnishing the services of outside Consultants or Special Consultants for other than the normal, civil engineering, structural engineering and normal architectural design would be negotiated.

## ARTICLE 2. TERMS OF PAYMENT

### A. Interest

Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting 60 days after date of invoice. Payments will first be credited to interest and then to the principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. OWNER will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If OWNER fails to make payment in full to ENGINEER for services within 60 days of the date due for any uncontested billing, ENGINEER may, after giving 7 days written notice to OWNER, suspend services under this AGREEMENT until paid in full, including interest. In the event of suspension of services, ENGINEER will have no liability to OWNER for delays or damages caused by OWNER because of such suspension of services.

## ARTICLE 3. OBLIGATIONS OF ENGINEER

### A. General

ENGINEER will serve as OWNER's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary Services incidental thereto.

### B. Standard of Care

The standard of care applicable to ENGINEER's Services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar Services at the time said services are performed.

### C. Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of ENGINEER.

### D. ENGINEER's Personnel at Construction Site

The presence of duties of ENGINEER's personnel at a construction site, whether as onsite representatives or otherwise, do not make ENGINEER or ENGINEER's personnel in any way

responsible for those duties that belong to OWNER and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work. ENGINEER and ENGINEER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except ENGINEER's own personnel.

The presence of ENGINEER's personnel at a construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). ENGINEER neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the Contract Documents.

**E. Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the PROJECT, ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market condition; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, ENGINEER makes no warranty that OWNER's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from ENGINEER's opinions, analyses, projections, or estimates.

Any opinion of the construction cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and materials, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the OWNER.

If OWNER wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, OWNER will employ an independent cost estimator, contractor, or other appropriate advisor.

**F. Construction Progress Payments**

Recommendations by ENGINEER to OWNER for periodic construction progress payments to the construction contractor(s) will be based on ENGINEER's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by ENGINEER to ascertain that the construction contractor(s) have completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that ENGINEER

has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to OWNER free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between OWNER and the construction contractors that affect the amount that should be paid.

**G. Record Drawings**

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

Record drawings will consist only of the signed and sealed set of drawings in hard copy form. Any computer-generated files on diskettes or tapes furnished by ENGINEER are for OWNER and others' convenience and to be utilized at user's sole risk.

**ARTICLE 4. OBLIGATIONS OF OWNER**

**A. OWNER-Furnished Data**

OWNER will provide to ENGINEER all data in OWNER's possession relating to ENGINEER's services on the PROJECT. ENGINEER will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER.

**B. Access to Facilities and Property**

OWNER will make its facilities accessible to ENGINEER as required for ENGINEER's performance of its services and will provide labor and safety equipment as required by ENGINEER for such access. OWNER will perform, at no cost to ENGINEER, such tests of equipment, machinery, pipelines, and other components of OWNER's facilities as may be required in connection with ENGINEER's services, unless otherwise agreed to. OWNER will be responsible for all acts of OWNER's personnel when personnel are performing acts for ENGINEER.

**C. Advertisements, Permits, and Access**

Unless otherwise agreed to in the Scope of Services, OWNER will obtain, arrange, and pay for soil investigations and recommendations, advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for ENGINEER's services or PROJECT construction.

**D. Timely Review**

OWNER will examine ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant,

auditor, bond and financial advisors, and other consultants as OWNER deems appropriate; and render in writing decisions of consultants by OWNER in a timely manner.

**E. Prompt Notice**

OWNER will give prompt written notice to ENGINEER whenever OWNER observes or becomes aware of any development that affects the scope or timing of ENGINEER's Services, or of any defect in the work of ENGINEER or construction contractors.

**F. Asbestos or Hazardous Substances and Indemnification**

If asbestos or hazardous substances in any form are encountered or suspected, ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

If asbestos is suspected, ENGINEER will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

If hazardous substances other than asbestos are suspected, ENGINEER will conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, OWNER will indemnify ENGINEER and ENGINEER's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

**G. Contractor Indemnification and Claims**

OWNER agrees to include in all construction contracts the provisions of Article 3D, ENGINEER's Personnel at Construction Site, and provisions providing contractor indemnification of OWNER and ENGINEER for contractor's negligence.

**H. Exclusion of Contractor Claims**

OWNER agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers:

"Contractors, subcontractors, and equipment and material suppliers on the project, or their sureties, shall maintain no direct action against ENGINEER, ENGINEER's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with or resulting from the engineering services performed. OWNER will be the only beneficiary of any undertaking by ENGINEER."

**I. OWNER's Insurance**

a) OWNER will maintain property insurance on all pre-existing physical facilities associated in any way with the PROJECT.

- b) OWNER will provide for a waiver of subrogation as to all OWNER-carried property damage insurance, during construction and thereafter, in favor of ENGINEER, ENGINEER's officers, employees, agents, and subcontractors.
- c) OWNER will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all PROJECT work including the value of all onsite OWNER-furnished equipment and/or materials associated with ENGINEER's services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to ENGINEER and the construction contractor(s) (or OWNER), and their respective officers, employees, agents, affiliates, and subcontractors. OWNER will provide ENGINEER a copy of such policy.

**J. Litigation Assistance**

The Scope of Services does not include costs of ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by OWNER. All such Services required or requested of ENGINEER by OWNER, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed, and payment for such Services shall be in accordance with Article 1 and 2, unless and until there is a finding by a court or arbitrator that ENGINEER's sole negligence caused OWNER's damage.

**K. Changes**

OWNER may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT.

**L. Services of ENGINEER**

Unless this AGREEMENT is modified or terminated, OWNER will have Services specified in this AGREEMENT performed by ENGINEER, employing ENGINEER's standard form and content of drawings, specifications, and Contract Documents, generally conforming to the standards, recommendations, and content of the Construction Specifications Institute (CSI) and Engineers Joint Contract Documents Committee (EJCDC), and subject to OWNER's review and approval.

**ARTICLE 5. GENERAL LEGAL PROVISIONS**

**A. Authorization to Proceed**

Execution of this AGREEMENT by OWNER will be authorization for ENGINEER to proceed with the work, unless otherwise provided for in this AGREEMENT.

**B. Reuse of PROJECT Documents**

All reports, drawings, specifications, documents, and other deliverables of ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse on another project, change, or alteration by OWNER or by others acting through or on behalf of OWNER of any such instruments of service without the

written permission of ENGINEER will be at OWNER's sole risk. OWNER agrees to indemnify ENGINEER and ENGINEER's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change or alteration.

**C. Force Majeure**

ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of ENGINEER.

**D. Limitation of Damages**

To the maximum extent permitted by law, ENGINEER's liability for OWNER's damages for any cause or combination of causes will, in the aggregate, not exceed the compensation received by ENGINEER under each of the On-Call Projects associated with this AGREEMENT. This article takes precedence over any conflicting article of this AGREEMENT or any document incorporated into it or referenced by it.

**E. Termination**

This AGREEMENT may be terminated for convenience on 30 days written notice, or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter.

On termination, ENGINEER will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related close-out costs.

**F. Suspension, Delay, or Interruption of Work**

OWNER may suspend, delay, or interrupt the Services of ENGINEER for the convenience of OWNER. In the event of force majeure or said suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment, and cost of ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

**G. No Third-Party Beneficiaries**

This AGREEMENT gives no rights or benefits to anyone other than OWNER and ENGINEER and has no third-party beneficiaries.

**H. Assignment**

This is a Bilateral Personal Services AGREEMENT. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire AGREEMENT are binding on the heirs, successors, and assigns of the parties hereto.

**I. Consequential Damages**

In no event will ENGINEER, ENGINEER's affiliated corporations, officers, employees, or subcontractors be liable for special, indirect, or consequential damages, and in order to protect ENGINEER against indirect liability or third-party proceedings, OWNER will indemnify ENGINEER for any such loss or damage.

**J. Interpretation and Waivers**

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties and will apply to all the different theories of recovery, including breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action, except the limitations will not apply to willful misconduct or gross negligence for limitation of liability of sole negligence for indemnification. Parties means OWNER and ENGINEER, and their officers, employees, agents, affiliates, and subcontractors. The parties also agree that OWNER will not seek damages in excess of the limitations indirectly through suits with other parties who may join ENGINEER as a third-party defendant.

**K. Jurisdiction**

The law of the State of Nebraska shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

**L. Severability and Survival**

If any of the Provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

Limitations of liability, indemnities, and other express representations shall survive termination of this AGREEMENT for any cause.

**M. Contract Documents**

Contract Documents are limited to the sealed and signed hard copies. Computer-generated drawing files in electric form furnished by ENGINEER are for OWNER or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement in duplicate the day and year first above mentioned.

\_\_\_\_\_, NEBRASKA

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

MILLER & ASSOCIATES,  
CONSULTING ENGINEERS, P.C.

Chris Miller

ATTEST:

Isby A. Conant

EXHIBIT "A"

ON-CALL PROJECT REQUEST FORM

ON-CALL PROJECT FORM - [Project Name] - [On-Call Project #]

The On-Call Services Agreement dated \_\_\_\_\_, between the City of Falls City (OWNER) and Miller & Associates, Consulting Engineers, P.C. (ENGINEER) will govern the work on Project No. [\_\_\_\_], [Project Name] (PROJECT)

Date \_\_\_\_\_

Scope of Work:

Time Frame for Delivery: \_\_\_\_\_

Or: Design: \_\_\_\_\_  
Bid Date: \_\_\_\_\_  
Construction Period: \_\_\_\_\_

Fees will be invoiced: \_\_\_\_\_ Hourly Basis  
\_\_\_\_\_ % of Construction Cost  
\_\_\_\_\_ Lump Sum Basis - \$ \_\_\_\_\_

The Project may include additional Consultants: \_\_\_\_\_ Yes \_\_\_\_\_ No  
\_\_\_\_\_ Geotechnical Engineer \_\_\_\_\_ Outside Consultant

CITY OF FALLS CITY

MILLER & ASSOCIATES,  
CONSULTING ENGINEERS, P.C.

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