

W.O. 19-12, West End Raw Water Pipeline Project
Standard Agreement and General Conditions
Between Owner and General Contractor/Construction Manager (GC/CM)

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ARTICLE 1 AGREEMENT

This Agreement is made this [____] day of [____] in the year [____], by and between the

OWNER: City of Billings

and the

GENERAL CONTRACTOR/CONSTRUCTION MANAGER (GC/CM): COP Construction LLC

for construction and services in connection with the following

PROJECT: W.O. 22-19, West End Raw Water Pipeline Project

Engineer is HDR Engineering Company, Inc.

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 GC/CM represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither GC/CM nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.



2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Suppliers, or Others to secure preferential treatment.

2.3 ENGINEER Owner, through its Engineer, shall provide all engineering design and construction administration services necessary for the completion of the Work excluding, however, (a) design services delegated to GC/CM in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by GC/CM, its Subcontractors, and Subcontractors in connection with their construction operations.

2.4 Owner shall obtain from Engineer either a license for GC/CM and Subcontractors to use the design documents prepared by Engineer or ownership of the copyrights for such design documents, and shall indemnify and hold harmless GC/CM against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 Execution of this agreement does not guarantee work will be performed outside of the GC/GM Preconstruction Services Contract: W.O. 19-12, West End Raw Water Pipeline Project. At a minimum, the Parties must agree to a GMP for portions of or the entire project as executed through an Amendment to this Project. No work beyond the Preconstruction Services Contract shall commence without an Amendment to this Contract.

2.6 DEFINITIONS

2.6.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and GC/CM, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.6.1.1 The following exhibits and attachments are a part of this Agreement:

Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021, 74 pages.

2.6.1.2 References made within this Agreement to the following are a part of this Agreement:

Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010

City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021

2.6.2 "Business Day" means all Days, except weekends and official holidays where the Project is located.

2.6.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by GC/CM and accepted by Owner.

2.6.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.



2.6.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.6.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.6.7 The "General Contractor/Construction Manager (GC/CM) is the person or entity identified in ARTICLE 1 and includes GC/CM's Representative.

2.6.8 "Date of Commencement" is as set forth in §6.1.

2.6.9 "Day" means a calendar day.

2.6.10 "Defective Work" is any portion of the Work that that does not conform with the requirements of the Contract Documents.

2.6.11 "Engineer" means the licensed engineer, and its consultants, retained by Owner to perform design and construction administration services for the Project.

2.6.12 "Final Completion" occurs on the date when GC/CM's obligations under this Agreement are complete and accepted by the Engineer and Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.6.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.6.14 "Interim Directive" is a written order containing change to the Work directed by the Engineer and Owner pursuant to §9.2 and that is signed by the Engineer and Owner after execution of this Agreement and before Substantial Completion.

2.6.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which GC/CM must comply that are enacted as of the Agreement date.

2.6.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.6.17 "Owner" is the person or entity identified in ARTICLE 1.

2.6.18 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.6.19 The "Parties" are collectively Owner and GC/CM.

2.6.20 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which GC/CM is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.6.21 "Subcontractor" is a person or entity retained by GC/CM as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Engineer or Others.



2.6.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond GC/CM's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Engineer and Parties.

2.6.23 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.6.24 "Work" means the construction and administrative and management services necessary or incidental to fulfill GC/CM's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.6.25 "Worksite" means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

2.6.26 "Written Approval" includes hard copy letters, electronic letters submitted by email, or emails including the approval in the body of the email.

ARTICLE 3 GC/CM'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 GC/CM shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 GC/CM represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, GC/CM shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, GC/CM is not liable to Owner for damages resulting from compliance with such instructions, unless (a) GC/CM recognized and (b) failed to timely report to Engineer and Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 GC/CM shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 GC/CM shall provide competent supervision for the performance of the Work. Before commencing the Work, GC/CM shall notify Engineer and Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Engineer and Owner may



review the individual's qualifications. If, for reasonable cause, Engineer and Owner refuses to approve the individual, or withdraws its approval after once giving it, GC/CM shall name a different superintendent for Engineer's and Owner's review.

3.2.2 GC/CM shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of GC/CM or any of its Subcontractors.

3.2.3 GC/CM shall permit only fit and skilled persons to perform the Work. GC/CM shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Engineer and Owner determine that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, GC/CM shall immediately reassign the person on receipt of Engineer and Owner's written notice to do so.

3.2.4 GC/CM'S REPRESENTATIVE GC/CM's authorized representative is Jason Fenhaus for Preconstruction services and Eric Smith for Construction services. GC/CM's Representative shall possess full authority to receive instructions from Engineer and Owner and to act on those instructions. If GC/CM changes its representative or their authority, GC/CM shall immediately notify Engineer and Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in GC/CM's work and are part of this Agreement in accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021.

3.4 GUARANTEED MAXIMUM PRICE (GMP) Requirements for the GMP under this section are included in the GC/CM's work and are part of this Agreement in accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021.

3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with GC/CM and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 With regard to the work of Owner and Others, GC/CM shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work



of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate GC/CM's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, GC/CM shall give Engineer and Owner prompt, written notification of any defects GC/CM discovers in their work which will prevent the proper execution of the Work. GC/CM's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If GC/CM does not notify Engineer and Owner of defects interfering with the performance of the Work, GC/CM acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from GC/CM of defects, Engineer and Owner shall promptly issue an Interim Directive informing GC/CM what action, if any, GC/CM shall take with regard to the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before commencing the Work, GC/CM shall examine and compare the drawings and specifications with information furnished by Engineer and Owner that are considered Contract Documents, relevant field measurements made by GC/CM, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should GC/CM discover any errors, omissions, or inconsistencies in the Contract Documents, GC/CM shall promptly report them to Engineer and Owner. It is recognized, however, that GC/CM is not acting in the capacity of a licensed Engineer, and that GC/CM's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from GC/CM of defects, Engineer and Owner shall promptly inform GC/CM what action, if any, GC/CM shall take with regard to the defect.

3.7.3 GC/CM shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless GC/CM knowingly fails to report a recognized problem to Engineer and Owner.

3.7.4 GC/CM may be entitled to additional costs or time because of clarifications or instructions growing out of GC/CM's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve GC/CM of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING GC/CM shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. GC/CM shall maintain a complete set of all books and records prepared or used by GC/CM with respect to the Project. Engineer and Owner shall be afforded access to all of GC/CM's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. GC/CM shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.7.6.1 GC/CM agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of GC/CM to examine the items so provided and thereupon handle, store, and



install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of GC/CM shall be the responsibility of GC/CM and may be deducted from any amounts due or to become due GC/CM. Any defects discovered in such materials or equipment shall be reported at once to Engineer and Owner. Following receipt of written notice from GC/CM of defects, Engineer and Owner shall promptly inform GC/CM what action, if any, GC/CM shall take with regard to the defects.

3.9 TESTS AND INSPECTIONS

3.9.1 GC/CM shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. GC/CM shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Engineer, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by GC/CM and promptly delivered to Engineer and Owner.

3.9.2 If Engineer, Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, GC/CM shall arrange for the procedures and give timely notice to Engineer, Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of GC/CM, GC/CM shall be responsible for costs of correction and retesting.

3.10 WARRANTY

3.10.1 GC/CM warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Engineer's and Owner's request, GC/CM shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. GC/CM further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. GC/CM's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. GC/CM's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, GC/CM's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED**



3.10.4 GC/CM shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. GC/CM's liability for such warranties shall be limited to the two-year correction period referred to in the section immediately below. After that period GC/CM shall provide reasonable assistance to Engineer and Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.11 CORRECTION OF WORK WITHIN TWO YEARS

3.11.1 If before Substantial Completion or within two years after the date of Substantial Completion of the Work any Defective Work is found, Engineer and Owner shall promptly notify GC/CM in writing. Unless Engineer and Owner provide written acceptance of the condition, GC/CM shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the two-year correction period Engineer and Owner discovers and does not promptly notify GC/CM or give GC/CM an opportunity to test or correct Defective Work as reasonably requested by GC/CM, Owner waives GC/CM's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the two-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by GC/CM.

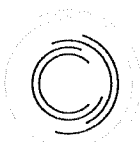
3.11.3 If GC/CM fails to correct Defective Work within a reasonable time after receipt of written notice from Engineer and Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due GC/CM. If payments then or thereafter due GC/CM are not sufficient to cover such amounts, GC/CM shall pay the difference to Owner.

3.11.4 GC/CM's obligations and liability, if any, with respect to any Defective Work discovered after the two-year correction period shall be determined by the Law. If, after the two-year correction period but before the applicable limitation period has expired, Engineer and Owner discovers any Work which Owner considers Defective Work, Engineer and Owner shall, unless the Defective Work requires emergency correction, promptly notify GC/CM and allow GC/CM an opportunity to correct the Work if GC/CM elects to do so. If GC/CM elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Engineer and Owner and shall complete the correction of Work within a mutually agreed timeframe. If GC/CM does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from GC/CM, Engineer and Owner shall promptly provide GC/CM with an accounting of the actual correction costs.

3.11.5 If GC/CM's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, GC/CM shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The two-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of GC/CM's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with GC/CM's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.



3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Engineer's and Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, GC/CM shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Engineer and Owner may issue an Interim Directive to uncover the Work for Engineer's and Owner's observation and recover the Work all at GC/CM's expense. In this circumstance the Work shall be replaced at GC/CM's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS GC/CM holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. GC/CM shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 GC/CM'S SAFETY REPRESENTATIVE GC/CM shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by GC/CM in writing to Engineer and Owner, GC/CM's project superintendent shall serve as its safety representative. GC/CM shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When GC/CM is required to file an accident report with a public authority, GC/CM shall furnish a copy of the report to Engineer and Owner.

3.13.3 GC/CM shall provide Engineer and Owner with copies of all notices required of GC/CM by the Law. GC/CM's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of GC/CM, or anyone for whose acts GC/CM may be liable, shall be promptly remedied by GC/CM.

3.13.4 If Engineer and Owner deems any part of the Work or Worksite unsafe, Engineer and Owner, without assuming responsibility for GC/CM's safety program, may require by Interim Directive GC/CM to stop performance of the Work, take corrective measures satisfactory to Engineer and Owner, or both. If GC/CM does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. GC/CM agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on GC/CM's compliance with Engineer's and Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, GC/CM shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS



3.15.1 GC/CM shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Engineer and Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, GC/CM shall be entitled to immediately stop Work in the affected area. GC/CM shall promptly report the condition to Owner, Engineer, and, if required, the governmental agency with jurisdiction.

3.15.3 GC/CM shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If GC/CM incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, GC/CM may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.7 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of GC/CM, its Subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless GC/CM, its Subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by GC/CM, Subcontractors, Owner or Others, shall be maintained at the Worksite by GC/CM and made available to Owner, Subcontractors, and Others.

3.15.7.2 GC/CM shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by GC/CM in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by GC/CM if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.7 and to the extent caused by the negligent or intentionally wrongful acts or omissions of GC/CM, its agents, officers, directors, and employees, the indemnity requirements of §11.1 shall apply in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by GC/CM



3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 GC/CM shall submit to Owner and Engineer all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form. GC/CM shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, GC/CM shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. GC/CM's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any GC/CM submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Engineer and Owner. Neither Engineer nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to GC/CM. If the Contract Documents do not contain submittal requirements pertaining to the Work, GC/CM agrees upon request to submit in a timely fashion to Engineer and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Engineer and Owner.

3.16.2 Engineer shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. GC/CM shall identify to the Engineer any submittals requiring quick turnaround to meet Schedule.

3.16.3 GC/CM shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve GC/CM from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Engineer and Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 GC/CM shall prepare and submit to Engineer and Owner

- Final marked-up as-built drawings prior to release of retainage;
- Updated electronic data, in accordance with §4.6.1;
- Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require GC/CM to specify that GC/CM is responsible for the design of a particular system or component to be incorporated into the Project, then Engineer and Owner shall specify all required performance and design criteria. GC/CM shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, GC/CM shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed Engineer. The signature and seal of GC/CM's Engineer shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by GC/CM's Engineer.



3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT GC/CM acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, GC/CM shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Engineer. Engineer and Owner shall investigate and then issue an Interim Directive specifying the extent to which Engineer and Owner agrees that a concealed or unknown condition exists and directing how GC/CM is to proceed. GC/CM shall not be required to perform any Work relating to the condition without the written mutual agreement of the Engineer and Parties. Any change in the GMP, estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 GC/CM shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. GC/CM shall provide to Engineer and Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 GC/CM shall pay applicable taxes for the Work provided by GC/CM.

3.19.3 If, in accordance with Owner's direction, GC/CM claims an exemption for taxes, the indemnity requirements of §11.1 shall apply in connection with any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by GC/CM as a result of any such claim.

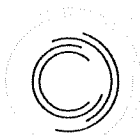
3.20 CUTTING, FITTING, AND PATCHING

3.20.1 GC/CM shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Engineer or Owner. Such approval shall not be unreasonably withheld.

3.21 CLEAN UP

3.21.1 GC/CM shall regularly remove debris and waste materials at the Worksite including sweeping pavement resulting from the Work. Before discontinuing Work in an area, GC/CM shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. GC/CM shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, GC/CM shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.



3.21.2 If GC/CM fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Engineer and Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to GC/CM in the next payment period.

3.22 ACCESS TO WORK GC/CM shall facilitate the access of Owner, its Engineer, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS GC/CM shall comply with all the Law at its own cost. GC/CM shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by GC/CM, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Engineer and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY GC/CM shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to GC/CM or which GC/CM may acquire in performing the Work. To the extent necessary to perform the Work, GC/CM's confidentiality obligations do not apply to disclosures to Subcontractors, and Suppliers. Owner and Engineer shall Treat as Confidential information all of GC/CM's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of GC/CM, Owner shall provide GC/CM with evidence of Project financing. Evidence of such financing shall be a condition precedent to GC/CM's commencing or continuing the Work. GC/CM shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide GC/CM the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and



4.3.4 any other information or services requested in writing by GC/CM which are required for GC/CM's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of GC/CM pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving GC/CM's written request, Owner shall provide GC/CM with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Engineer and Owner shall provide a reasonable number of hard copies and an electronic copy of the Contract Documents to GC/CM without cost.

4.6.1 ELECTRONIC DOCUMENTS If Engineer and Owner requires that Owner, Engineer, and GC/CM exchange documents and data in electronic or digital form, before any such exchange, Owner, Engineer, and GC/CM shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's project representative is Randy Straus. Owner's project representative shall be fully acquainted with the Project and shall receive required notices pertaining to the subject matter of this contract. This Contract shall only be amended, modified or changed in writing and executed by Authorized representatives of the Parties and with the same formality as this Contract was executed. Billings City Council or another Authorized designee are the only Authorized representatives of the Owner. If Owner changes its Authorized representative or the representative's Authority, Owner shall immediately notify GC/CM in writing. Any attempt to amend, modify or change this Contract by either an unauthorized representative or unauthorized means shall be void.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of GC/CM, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between GC/CM and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to GC/CM, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the



damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If GC/CM incurs costs or is delayed due to such loss or damage, GC/CM may seek an equitable adjustment in the GMP, estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Requirements for Subcontractors and Major Supplier Selection are included in the GC/CM's work and are part of this Agreement in accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021.

5.2 BINDING OF SUBCONTRACTORS AND SUPPLIERS GC/CM agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by GC/CM to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to ARTICLE 12; (b) Owner accepts such assignment after termination by notifying the GC/CM and Subcontractor or GC/CM and Supplier in writing; and (c) Owner assumes all rights and obligations of GC/CM pursuant to each subcontract or supply agreement.

5.3.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties and Engineer agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in an Amendment to this Agreement subject to adjustments as provided for in the Contract Documents. Owner, Engineer and GC/CM may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in an Amendment. If a GMP is not established and the Parties and Engineer desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in an Amendment. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Engineer and Owner in writing, GC/CM shall not knowingly commence the Work before the effective date of GC/CM's required insurance.

6.2 SCHEDULE OF THE WORK



6.2.1 In accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021, GC/CM shall submit to Engineer and Owner a Schedule of the Work showing the dates on which GC/CM plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Engineer and Owner. Except as otherwise directed by Engineer and Owner, GC/CM shall comply with the approved Schedule of the Work. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. GC/CM shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Engineer and Parties.

6.2.2 Engineer and Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Engineer and Owner may require GC/CM to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If GC/CM consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, GC/CM may seek equitable adjustment under ARTICLE 9.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If GC/CM is delayed at any time in the commencement or progress of the Work by any cause beyond the control of GC/CM, GC/CM shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of GC/CM include, but are not limited to, the following: (a) acts or omissions of Owner, Engineer, or Others; (b) changes in the Work or the sequencing of the Work ordered by Engineer and Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under ARTICLE 12 and ARTICLE 13; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving GC/CM; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. GC/CM shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if GC/CM incurs additional costs as a result of a delay that is caused by items (a) through (m) immediately above, GC/CM, in consideration of all other terms of this contract, shall be entitled to an equitable adjustment in the GMP subject to §6.7.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, GC/CM shall provide prompt written notice to Engineer and Owner of the cause of such delays after GC/CM first recognizes the delay. The Engineer and Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If GC/CM requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, GC/CM shall give Engineer and Owner written notice of the claim in accordance with §9.4. If GC/CM causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.7. Engineer and Owner shall process any such claim against GC/CM in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, GC/CM shall establish a process for monitoring actual costs against the GMP and actual progress against the



Schedule of Work. GC/CM will provide written reports to Engineer and Owner at intervals as agreed to by the Engineer and Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date shall apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. GC/CM shall pay Owner One Thousand Five Hundred Dollars per Day (\$1,500.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date shall apply.

6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. GC/CM shall pay Owner One Thousand Five Hundred Dollars per Day (\$1,500.00) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.6.3 Other applicable liquidated damages shall be included as Agreement exhibit.

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Engineer and Parties as liquidated damages in §6.6 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. GC/CM agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: [_____].

6.7.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate GC/CM for Work performed as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1.



7.2 The compensation to be paid shall be limited to the GMP determined as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1 and as established in an Amendment, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 FEE ADJUSTMENTS:

7.3.1 except as provided for in §6.3, delays in the Work not caused by GC/CM shall adjust GMP to compensate for increased expenses as provided for in ARTICLE 9; and

7.3.2 managing the replacement of an insured or uninsured loss shall increase GMP in the same proportion that GMP bears to the estimated Cost of the Work for the replacement.

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay GC/CM for the Cost of the Work as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 GC/CM may request or Engineer and Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Engineer and Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM GC/CM shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

9.2 INTERIM DIRECTIVES

9.2.1 Engineer and Owner may issue an Interim Directive directing a change in the Work before reaching agreement with GC/CM on the adjustment, if any, in the GMP, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, or directing GC/CM to perform Work that Engineer and Owner believes is not a change. If the Engineer and Parties disagree that the Interim Directed work is within the scope of the Work, GC/CM shall perform the disputed Work and furnish Engineer and Owner with an estimate of the costs to perform the disputed work in accordance with Engineer's and Owner's interpretations.



9.2.2 The Engineer and Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directive. As the directed Work is performed, GC/CM shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay GC/CM fifty percent (50%) of its actual (incurred or committed) cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 13. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. GC/CM's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Engineer and Parties agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Engineer and Parties have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 Cost of the Work as defined by ARTICLE 8.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Engineer and Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

9.3.3 If the Engineer and Parties disagree as to whether work required by Owner is within the scope of the Work, GC/CM shall furnish Engineer and Owner with an estimate of the costs to perform the disputed work in accordance with Engineer and Owner's interpretations.

9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, GC/CM shall give Engineer and Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after GC/CM first recognizes the condition giving rise to the claim, whichever is later. Engineer's and Owner's failure to so respond shall be deemed a denial of GC/CM's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, GC/CM shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Engineer and Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Engineer and Owner shall respond in writing denying or approving the claim. Engineer's and Owner's failure to so respond shall be deemed a denial of the claim.



Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.5 INCIDENTAL CHANGES Engineer and Owner may direct GC/CM to perform incidental changes in the Work, upon concurrence with GC/CM that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Engineer and Owner shall initiate an incidental change in the Work by issuing a written Field Order to GC/CM. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES GC/CM shall prepare and submit to Owner and Engineer a schedule of values apportioned to the various divisions or phases of the Work as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS GC/CM shall submit to Engineer and Owner a monthly application for payment for the preceding calendar month on the Owner's standard form. GC/CM's applications for payment shall be itemized and supported by GC/CM's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Engineer, no later than thirty-five (35) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by GC/CM of bills of sale and proof of required insurance, or such other documentation satisfactory to Engineer and Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Engineer and Owner, as a prerequisite for payment, GC/CM shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall GC/CM be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, GC/CM shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If GC/CM fails to take such action on a lien, Owner may cause the lien to be removed at GC/CM's expense, including bond costs and



reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain five percent (5%), of the amount otherwise due after deduction of any amounts as provided in §10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.4.1 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.2 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, GC/CM may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.3 ADJUSTMENT OF GC/CM'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that GC/CM is responsible under this Agreement:

10.3.1 GC/CM's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by GC/CM to Owner or others to whom Owner may be liable;

10.3.3 GC/CM's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to GC/CM in accordance with this Agreement;

10.3.4 rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving GC/CM or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until GC/CM furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Engineer and Owner shall give written notice to GC/CM, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by GC/CM in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.



10.5 PAYMENT DELAY If for any reason not the fault of GC/CM, GC/CM does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then GC/CM, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to GC/CM has been received, including interest for late payment. If GC/CM incurs costs or is delayed resulting from shutdown, delay, and start-up, GC/CM may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 GC/CM shall notify Engineer and Owner when it considers Substantial Completion of the Work or a designated portion to have been achieved. Engineer and Owner shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Engineer and Owner determines that the Work or designated portion has not reached Substantial Completion, Engineer and Owner shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. GC/CM shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, GC/CM shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by GC/CM to Engineer and Owner for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Engineer's and Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to GC/CM the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Engineer and Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by GC/CM in a mutually agreed upon timeframe. Owner shall pay GC/CM monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. GC/CM shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from GC/CM that the Work is complete and ready for final inspection and acceptance, Engineer and Owner shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.



10.8.2 When the Work is complete, GC/CM shall prepare for Engineer's and Owner's written acceptance a final application for payment stating that to the best of GC/CM's knowledge, and based on Engineer's and Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to GC/CM within thirty-five (35) Days after GC/CM has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on GC/CM's submission of the following to Engineer and Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by GC/CM or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of GC/CM, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, GC/CM shall submit to Engineer and Owner the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless GC/CM provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY Indemnity shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 6 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS,

Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

11.2 INSURANCE Insurance shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 5 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

11.3 BONDS Bonds shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 5 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

11.4 In Article 11.1, 11.2 and 11.3 of this Agreement (above), the MPWSS and City Standard Modifications provisions contain references to contract requirements that are beyond indemnity, insurance and bonds (e.g., correction period, defective work, partial utilization, etc.). These other referenced requirements shall be carried-out in accordance with the applicable provisions contained in this Standard Agreement and General Conditions between Owner and GC/CM.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

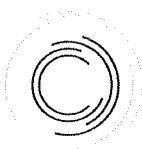
12.1 Suspension, Notice to Cure, and Termination shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 15 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

Dispute Mitigation and Resolution shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 16 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.



14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified GC/CM or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to GC/CM than this Agreement. If such assignment occurs, GC/CM shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Drawings: City of Billings W.O. 19-12: Raw Water Pipeline, West End Water Facility; Preliminary Design, HDR Project No. 10126753, June 2022
- (b) General Contractor/Construction Manager (GC/CM) Preconstruction Services Contract, City of Billings & COP Construction, W.O. 19-12: West End Raw Water Pipeline Project, August 25, 2021

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, GC/CM shall perform the Work as though fully described on both.



15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, GC/CM shall immediately submit the matter to Engineer and Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Engineer's and Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

OWNER: [____]

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCT MANAGER: [____]

BY: *J. M.* NAME: JASON FENTHAUS TITLE: ESTIMATING MANAGER

WITNESS: *Richard Morrison* NAME: Richard Morrison TITLE: CFD

END OF DOCUMENT.

