

CITY OF ADA COUNCIL AGENDA

Dr. Ray L. Stout City Council Chamber
City Hall - 231 S Townsend
Monday, October 16, 2023 - 5:45 PM

If special interpretive services are needed, please contact the City Manager's office no later than 9:00 a.m. on October 13, 2023.

1. Call to order.
2. Pledge of Allegiance.
3. Invocation.
4. Discussion of and action on Consent Agenda
 - a. Consideration of the Minutes (October 2, 2023, 5:45 pm meeting and October 2, 4:00 pm Special Called meeting).
Attachments: Minutes of October 2, 2023 5:45 pm | Special Call October 2, 2023 4:00 pm
 - b. Consideration of supplemental appropriations or transfer of appropriations within the General Fund budget.
 - c. Consideration of supplemental appropriations or transfer of appropriations within the Sub-Funds to the General Fund budget.
 - d. Consideration of supplemental appropriations or transfer of appropriations within the Special Revenue Funds budget.
 - e. Consideration of supplemental appropriations or transfer of appropriations within the Other Funds budget.
5. Discussion of and action on items removed from the Consent Agenda.
6. Discussion of and action on a resolution with The Oklahoma Purchasing System (TOPS), a statewide cooperative purchasing program and authorizing the Mayor and/or his designee to execute all necessary supporting documents.
Attachments: TOPS Interlocal Purchasing System | TOPS Resolution
7. Discussion of and action on Professional Services Agreement with Delta Airport Consultants, Inc. on Task Order No. 8.
Attachments: Contract with Delta Airport on Task Order #8

8. Executive Session to discuss matters pertaining to economic development because public disclosure of the matter would interfere with the development of products or services [as provided in Title 25, O.S. Section 307(C)(11)]; and, Executive Session to discuss threatened or pending litigation [as provided in Title 25, Oklahoma Statutes, Section 307 (B) (4)].
9. Reports by City Manager and/or City Staff.
10. Persons to be heard on any matter not on the agenda.
11. Adjournment.

ADA PUBLIC WORKS AUTHORITY AGENDA

Dr. Ray L. Stout City Council Chamber

City Hall - 231 S Townsend

Monday, October 16, 2023

Immediately following adjournment of Ada City Council meeting.

If special interpretive services are needed, please contact the City Manager's office no later than 9:00 a.m. on October 13, 2023.

1. Call to order.
2. Discussion of and action on Consent Agenda.
 - a. Consideration of the Minutes (October 2, 2023, 5:45 pm meeting).
Attachments: APWA Minutes of October 2, 2023
 - b. Consideration of supplemental appropriations or transfer of appropriations within the Ada Public Works Authority Fund budget.
 - c. Consideration of supplemental appropriations or transfer of appropriations within the Sub-Funds to Ada Public Works Authority Fund budget.
 - d. Consideration of supplemental appropriations or transfer of appropriations within the Special Revenue Funds budget.
3. Discussion of and action on items removed from the Consent Agenda.
4. Discussion of and action on a resolution with The Oklahoma Purchasing System (TOPS), a statewide cooperative purchasing program and authorizing the Mayor and/or his designee to execute all necessary supporting documents.

Attachments: TOPS Interlocal Purchasing System

5. Discussion of and action on Professional Services Agreement with Olsson, Inc. on Project 115, to provide water system analysis and recommendations to resolve water pressure issues identified by the Public Works Department.

Attachments: Olsson Contract for Services

6. Reports by Authority Manager and/or APWA Staff.
7. Persons to be heard on any matter not on the agenda.

Adjournment.

CITY OF ADA

REGULAR MEETING

Date: October 2, 2023, 5:45 p.m.

Location: 231 S. Townsend, Ada Ok

The Ada City Council met in the Dr. Ray L. Stout City Council Chamber.

Advanced public notice was given by posting the agenda on the City Hall bulletin board and posting on the City of Ada web site on:
Friday, September 29, 2023 at 2:20 p.m.

COUNCIL MEMBERS PRESENT

Randy McFarlin	X	Yoli Vazquez	X	Karen Hudson	X
John Hargrave	X	Don Griffith	X		

The meeting of the Ada City Council was called to order by Mayor McFarlin

The audience was led in the Pledge of Allegiance by Mayor McFarlin

The audience was asked to observe a moment of silence by Mayor McFarlin

1. Discussion of and action on Consent Agenda.

- a) Consideration of the Minutes (September 18, 2023, 5:45 pm meeting).
- b) Consideration of authorization to surplus inventory for online auction, sale, trade-in, or disposal.
- c) Consideration of authorization to surplus inventory to be placed in E-Waste for recycling.
- d) Consideration of supplemental appropriations or transfer of appropriations within the General Fund budget.
- e) Consideration of supplemental appropriations or transfer of appropriations within the Sub-Funds to the General Fund budget.
- f) Consideration of supplemental appropriations or transfer of appropriations within the Special Revenue Funds budget.
- g) Consideration of supplemental appropriations or transfer of appropriations within the Other Funds budget.

Motion made by council member Vazquez to approve the Consent Agenda with the correction of spelling to the name of the District Attorney Erik Johnson. Motion seconded by council member Griffith.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

2. Discussion of and action on items removed from the Consent Agenda.

No items removed from the Consent Agenda.

3. Discussion of and action on Memorandum of Understanding and Collective Bargaining Agreement between the City of Ada and the International Association of Fire Fighters, Local No. 2298, for Fiscal Year 2023-2024.

No action taken on this agenda item.

4. Discussion of and action on a resolution approving a payment to East Central University for partial funding of East Central University's Oka' Institute.

City Manager, Cody Holcomb addressed the council on the Oka Institute and water sustainability. Duane Smith addressed the council on reporting goal progress.

Motion made by council member Hudson to approve the resolution as presented.

Motion seconded by council member Vazquez.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

5. Discussion of and action on a Resolution Amending "Chapter 5. Salary Administration and Performance Management System" of the Employee Handbook of the City of Ada, Oklahoma, by adding Section 14, "Retention Pay".

Motion made by council member Vazquez to approve the resolution as presented. Motion seconded by council member Hudson.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

6. Discussion of and action on an Ordinance Amending the Employee Retirement System, Defined Contribution Plan for the City of Ada, Oklahoma; providing retirement benefits for eligible employees of the City of Ada, Oklahoma; pertaining to definition of compensation; pertaining to plan design; pertaining to vesting; providing for employer pickup of required contributions; providing for repealer and severability; and declaring an emergency.

Motion made by council member Hargrave to approve the ordinance as presented Amending the Employee Retirement System, Defined Contribution Plan for the City of Ada, Oklahoma; Motion seconded by council member Vazquez.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

(If passed, must consider Emergency Clause.)

Motion made by council member Hudson to approve the emergency clause. Motion seconded by council member Hargrave.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

7. Discussion of and action on an Ordinance Amending Section 2-64, titled "Salaries Generally", of the Code of Ordinances of the City of Ada, Oklahoma and declaring an emergency.

Council Member Hudson addressed the council and the public on the growth of the city and upcoming projects, and the appreciation for the city workers. The council expressed appreciation for all city workers in attendance and those were not able to be at the meeting.

Motion made by council member Hudson to approve the ordinance as presented. Motion seconded by council member Vazquez.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

(If passed, must consider Emergency Clause.)

Motion made by council member Hudson to approve the emergency clause. Motion seconded by council member Hargrave.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

8. Discussion of and action on contract for services with Ada Jobs Foundation, Inc.

Council Member Vazquez addressed the council and the Ada Jobs Foundation, CEO James Eldridge on governance committees.

Motion made by council member Hudson to approve as presented the contract with Ada Jobs Foundation, Inc. Motion seconded by council member Hargrave.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, McFarlin, Griffith, Hudson

NAY: Vazquez

Motion Carried 4-1

9. Discussion of and action on purchase agreement for a Sutphen ladder truck for the Ada Fire Department.

Motion made by council member Hargrave to approve the agreement for a Sutphen ladder truck for the Ada Fire Department. Motion seconded by council member Hudson.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

10. Discussion of and action on purchase agreement for a Sutphen pumper truck for the Ada Fire Department.

Motion made by council member Hudson to approve the agreement for a Sutphen pumper truck for the Ada Fire Department. Motion seconded by council member Vazquez.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

11. Discussion of and action on Bids for Annual Line Maintenance Materials.

Motion made by council member Vazquez to approve and award UTS Supply the bid as the lowest responsible bid. Motion seconded by council member Hudson.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

12. Discussion of and action on executing grant agreement for HUD FY23 Community Project Funding B-23-CP-OK-1215 and authorizing the Mayor and/or his designee to execute all necessary supporting documents.

Motion made by council member Hargrave to approve as presented, executing grant agreement for HUD FY23 Community Project Funding B-23-CP-OK-1215 and authorizing the Mayor and/or his designee to execute all necessary supporting documents. Motion seconded by council member Hudson.

Mayor McFarlin Called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

13. Reports by City Manager and/or City Staff.

Lisa Bratcher, Public Information Officer, addressed the council on upcoming events for the city. Tommy Eaton, Parks Director addressed the council on the receipt of an Urban Grant in the amount of \$230,000.

14. Persons to be heard on any matter not on the agenda.

Patricia Morris addressed the council on the red light, pedestrian signal at Mississippi and Main Street.

Von Royal, with Dobson Fiber addressed the council on internet and Fiber optics with Dobson.

15. Adjournment.

Mayor McFarlin adjourned the meeting of the Ada City Council at 6:37 p.m.

Attest: Heather Heard, City Clerk

Randy McFarlin, Mayor

**CITY OF ADA
SPECIAL CALL MEETING**

Date: **October 2, 2023, 4:00 p.m.**

Location: **400 S. Rennie, Ada Ok**

The Ada City Council met in the Ada Arts & Heritage Center.

**Advanced public notice was given by posting the agenda on the City Hall bulletin board and posting on the City of Ada web site on:
Friday, September 29,2023 at 2:24 p.m.**

The meeting of the Ada City Council was called to order by Mayor McFarlin
Mayor McFarlin called for the City Clerk to call roll for council members present.

COUNCIL MEMBERS PRESENT

Randy McFarlin	X	Yoli Vazquez	X	Karen Hudson	X
John Hargrave	X	Don Griffith			

1. Discussion and presentation from Freese and Nichols on the draft Housing Strategies report.

Representatives from Freese and Nichols presented to the council and audience information, statistics, and findings from the resent study on the Housing initiative for the City of Ada.

2. Adjournment.

Mayor McFarlin adjourned the meeting of the Ada City Council at 5:19 p.m.

Attest: Heather Heard, City Clerk

Randy McFarlin, Mayor



City of Ada
A Municipal Corporation

Purchasing Department
512 N. Stockton St.
Ada, OK 74820
580-436-6300 x256 Fax 580436-8044

MEMO

Date: October 10, 2023

To: Cody Holcomb, City Manager

From: Pam McKinzie, Purchasing Director
Frank Stout, City Attorney

Subject: Interlocal Cooperative Purchasing Contract with TOPS an Oklahoma Cooperative Purchasing Program which stands for The Oklahoma Purchasing System (TOPS).

This is a request to place the attached interlocal agreement with TOPS Cooperative Purchasing Program located in Atoka, OK on the Council Agenda for October 17th, 2023. Just like when we joined HGAC Cooperative, the Texas Buy Board, and TIPS for the purchase of different equipment. Joining TOPS will hopefully give us the ability to purchase construction-related materials and services at market price and increase construction quality. This cooperative was started by the Atoka Public Schools.

The State of Oklahoma has approved the use of Interlocal Contracts with governmental agencies, subject to obtaining approval of the Attorney General and certain filing requirements. The first one being that we approve this Interlocal Cooperative Purchasing Contract and the resolution approving the contract. Once we will get these documents they will be sent for signature by TOPS and then forwarded for approval by the Attorney General's Office.

I am requesting that you approve the TOPS Interlocal Agreement and Resolution, plus give Mayor Randy McFarlin the approval to sign all documents as required.

If you have any questions, please contact me.

Thank You.

THE OKLAHOMA PURCHASING SYSTEM

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (also referred to as “Agreement”) is entered into by and between Independent School District No. 15 of Atoka County a/k/a Atoka Public Schools (“APS”) and the member public agencies (“Members”) listed below, pursuant to § 139 of the Oklahoma Public Competitive Bidding Act (“PCBA”), Okla. Stat. tit. 61 § 101, *et seq.*, and the Interlocal Cooperation Act (“the Act”), Okla. Stat. tit. 74, §§ 1001, *et seq.*

MEMBER:

NAME OF AGENCY: _____

BOARD APPROVAL DATE: _____

AGENCY CONTACT: _____

CONTACT TITLE: _____

CONTACT SIGNATURE: _____

APS and Member hereby represent that:

- Both entities are “public agencies,” as that term is defined in the Interlocal Cooperation Act; and
- APS is a public school district, acting under the authority granted to it pursuant to § 139 of the PCBA; and
- Member is a public agency within the State of Oklahoma as defined by 74 O.S. § 1003(A), acting under the authority granted to it pursuant to § 139 of the PCBA;

NOW THEREFORE, APS and Member hereby agree as follows:

I. DEFINITIONS

For the purposes of this Agreement:

1. The term “public agency” shall mean any political subdivision of the State of Oklahoma or agency of the state government, or public trust, their respective boards, and public trusts of which they are beneficiaries;
2. The term “member” shall mean a public agency which has become a party to this Agreement;
3. The term “group” shall mean The Oklahoma Purchasing System;
4. The term “participating agency” shall mean a member or the group;

5. The term “construction-related materials and services” shall mean any materials or services that would or could be required to be subject to public bidding under the PCBA.

II. STATEMENT OF SERVICES OFFERED

APS, as the lead agency for The Oklahoma Purchasing System (TOPS), with Mabe Enterprises, Inc. as the buyer’s agent, has established and will administer a cooperative purchasing program for construction-related materials and services. Authority for such services is granted by Okla. Stat. tit. 61, § 139.

III. PURPOSE

The purpose of TOPS is to reduce the costs associated with construction-related materials and services at market price, budget control, and to increase construction quality.

IV. TERM

This Agreement covers the period July 1 to June 30 of each calendar year.

V. RIGHTS

APS, in cooperation with TOPS and Mabe Enterprises, Inc., is granted the right to issue a cooperative bid/proposal for construction-related materials and services reflective of the needs supplied by the Members initiating their construction bid/proposal through TOPS. APS, as the lead agency, is further granted the right to secure product award(s) for specific construction-related materials and services for a period of one year in cooperation with TOPS.

VI. DUTIES/RESPONSIBILITIES

APS, as the lead agency is responsible for the following:

- Offer appropriate and necessary support to encourage positive vendor/contractor relationships.
- Distribute this Agreement to potential and current members for adoption or update by their Board of Education.
- Present all Agreements to the APS Board of Education for approval.

TOPS, and Mabe Enterprises, Inc., as the buyer’s agent, is responsible for the following:

- Provide for the organizational and administrative structure of the program.
- Provide staff time necessary for efficient operation of the program.
- Receive quantity requests from members and prepare appropriate tally of quantities.
- Initiate and implement activities related to the bidding and vendor/contractor selection process in accordance with Oklahoma law, particularly the PCBA.

- Provide members with procedures for ordering, delivery, and billing.

Members are responsible for the following:

- Approving the Interlocal Cooperation Agreement with APS.
- Commit to participate in the program by an authorized signature in the appropriate space within this Agreement.
- Designate a contact person.
- Commit to purchase construction-related materials and services that become part of the official materials and services list when it is in the best interest of the Cooperative Member.
- Prepare purchase orders issued to the appropriate vendor/contractor from the official award list provided by TOPS.
- Accept shipments of products ordered from vendor/contractors in accordance with standard purchasing procedures.
- Pay vendor/contractors in a timely manner for all goods and services received.
- Providing notice of intent to terminate this agreement, in writing, to Jay McAdams, Director of TOPS, at least thirty (30) days in advance of the intent to terminate. Advance notice of termination is waived in the event a participating public agency is dissolved or consolidated or a participating school district is consolidated, annexed, designated as fiscally distressed, or managed by the State Department of Education.
- Providing local purchasing estimates to TOPS by the specified deadline for all items to be purchased under contract. The public agency agrees to establish estimates with the intent to purchase said quantities.
- Refraining from initiating bids/proposals for purchasing contracts that conflict with those being solicited by TOPS and for which the Member has enrolled for participation until such time as those solicitations by TOPS are closed.
- Seeking resolution of all problems regarding purchasing, delivery, receiving, and billing, with the appropriate vendor/contractor.
- Understanding and agreeing that participating in this Agreement does not relieve the Members from obligations to comply with all applicable procurement laws.

VII. DISSOLUTION AND DISPOSITION OF PROPERTY

The title to all property, real and personal, acquired by TOPS shall be vested in TOPS. In the event of termination of TOPS, such property shall belong to the then-members of TOPS in pro-rata shares. Upon partial or complete termination of this Agreement, the majority vote of APS's Board of Education, as the lead agency, shall be binding in all respects

as to the disposition of the property and dissolution of TOPS. The APS Board of Education shall serve as trustees for the disposition of property or funds, payment of obligations, dissolution, and winding up of affairs of TOPS.

VIII. FINANCING

The cooperative undertaking in this Agreement shall be financed by requiring vendors/contractors to pay a 2% commission based upon the total value of services and materials provided by such participating vendor/contractor. **No costs shall be incurred by Cooperative Members.**

IX. ACCEPTANCE

APS and the Members who have approved this Agreement enter into this Agreement for cooperative purchasing of construction-related materials and services from any or all awarded contracts in which it chooses to actively participate.

Member Contact Information:

Address: _____
City: _____
State: _____ Zip: _____
Phone: _____ Fax: _____

Primary Contact Name: _____
Primary Contact Title: _____
Primary Contact Email: _____
Primary Contact Phone: _____

Approved by APS Board of Education:

Jay McAdams, Director of TOPS

Date

Return the completed and signed Interlocal Agreement to:
info@tops-usa.org and attach as a PDF.

RESOLUTION NO. _____

BY _____

**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT FOR
COOPERATIVE PURCHASING WITH THE OKLAHOMA PURCHAS-
ING SYSTEM (TOPS)**

WHEREAS, The Oklahoma Purchasing System is a Cooperative Purchasing System (“TOPS”) under the Oklahoma Interlocal Cooperation Act, Title 74 O.S. § 1001 et seq.; and

WHEREAS, The Oklahoma Attorney General’s office approved TOPS as a valid inter-local cooperative agency on October 19, 2022 (AG# ICA-22-0024), and the Oklahoma Secretary of State duly filed the letter of approval on December 28, 2022; and

WHEREAS, the City of Ada is eligible to contract with TOPS pursuant to Title 74, Oklahoma Statutes, Section 1001 *et seq.*, for goods and services, subject to obtaining the required approval and required filings set forth in said statute; and

WHEREAS, it is in the best interests of the City of Ada and its citizens to approve the agreement with TOPS.

NOW THEREFORE, BE IT RESOLVED BY THE ADA CITY COUNCIL:

Section 1. That the Interlocal Agreement for Cooperative Purchasing with TOPS is approved, subject to obtaining the required approval and filings as required by Title 74, Oklahoma Statutes, Section 1001 *et seq.*

Section 2. That the Mayor is authorized to execute said Interlocal Agreement and any other documents required to complete the agreement.

PASSED AND APPROVED this ____ day of _____, 2023.

City of Ada

ATTEST:

By: _____
Mayor

City Clerk (Seal)



CITY OF ADA
A Municipal Corporation

To: Cindy Hunter
From: Christopher Somers, Airport Manager
Date: October 3, 2023
Re: Task Order No. Eight Professional Services Agreement

Please see attached Task Order No. 8, Professional Services Agreement with Delta Airport Consultants, Inc. This project is part of the Airport's East Side Development and has a total task order amount of \$28,500 which will be funded through ARPA and PREP funding the city has received for this development.

I need to get this on the October 16th City Council Agenda to be heard and if approved signed by the mayor.

If you have any questions, comments, and or concerns please contact me at 580-436-8190 or chris.somers@adaok.com.

Respectfully,

Christopher Somers
Airport Manager

**TASK ORDER NO. EIGHT (8)
PROFESSIONAL SERVICES AGREEMENT**



PROJECT: Construct Partial Parallel Taxiway W - Phase 1

AIRPORT: Ada Regional Airport

DELTA PROJECT NO.: 22074

DATE OF ISSUANCE: July 12, 2023

ATTACHMENTS: 1) Scope of Services

METHOD OF PAYMENT: Lump Sum

PLANNING SERVICES: \$15,500

ENVIRONMENTAL SERVICES: \$13,000

TASK ORDER AMOUNT: \$28,500

PROJECT DESCRIPTION:

- Prepare FAA Form 7480-1 and Coordinate with FAA
- Prepare and Coordinate Cat-Ex for Parallel Taxiway W

The original Agreement for Professional Services between City of Ada (OWNER) and Delta Airport Consultants, Inc. (CONSULTANT) for Professional Services at Ada Regional Airport dated June 17, 2019, shall govern all TASK ORDERS executed under this Agreement unless modified in writing and agreed to by CONSULTANT and OWNER.

ACCEPTED: Digitally signed by Douglas E Sander
by: Date: 2023.07.12 16:31:51 -04'00'

Douglas E. Sander, PE
Vice President
Delta Airport Consultants, Inc.
110 N. Robinson Avenue, Suite 250
Oklahoma City, OK 73102

APPROVED:

by: _____
Randy McFarlin
Mayor
City of Ada
231 S. Townsend Street
Ada, OK 74820

ATTACHMENT 1
SCOPE OF SERVICES



Construct Partial Parallel Taxiway W - Phase 1
Ada Regional Airport
Delta Project No. 22074

July 12, 2023

PHASE	DETAILED TASKS
PLANNING SERVICES	Preparation of FAA Form 7480-1 Owner Coordination / Meeting FAA Exhibits Submit FAA Notices - Assistance Coordinate FAA Notices Admin & Correspondence
ENVIRONMENTAL SERVICES	Scope of Services and Contract Preparation of Categorical Exclusion Form <i>Includes:</i> <i>Environmental Review Agency Coordination</i> <i>FAA/OAC Coordination</i> Cat-Ex Submittal to FAA/OAC and Comment/Responses

ITEMS NOT INCLUDED IN SCOPE:

Grant / Funding Coordination including Reimbursement Requests
Section 163 Coordination
Subconsultant Surveys (such as Air Quality, Biological Habitat, Section 106, Noise, Wetlands)
Airport Property Map or Airport Layout Plan Update
Obstruction Analysis / Removal Mitigation
FAA Form 7460-1 Coordination

ADA PUBLIC WORKS AUTHORITY

REGULAR MEETING

Date: October 2, 2023

Location: 231 S. Townsend

The Ada Public Works Authority met in the Dr. Ray L. Stout City Council Chamber, at the Ada City Hall. The Meeting of the Authority was held immediately following the adjournment of the Ada City Council. Advanced public notice was given by posting the agenda on the City Hall bulletin board and posting on the City of Ada web site on Friday, September 29, 2023, at 2:24 p.m.

TRUSTEE MEMBERS PRESENT

Randy McFarlin	X	Yoli Vazquez	X	Karen Hudson	X
John Hargrave	X	Don Griffith	X		

The meeting of the Ada Public Works Authority was called to order by Chairman Randy McFarlin

1. Discussion of and action on Consent Agenda.

- a) Consideration of the Minutes (September 18, 2023, 5:45 pm meeting).
- b) Consideration of authorization to surplus inventory for online auction, sale, trade-in, or disposal.
- c) Consideration of authorization to surplus inventory to be placed in E-Waste for recycling.
- d) Consideration of supplemental appropriations or transfer of appropriations within the Ada Public Works Authority Fund budget.
- e) Consideration of supplemental appropriations or transfer of appropriations within the Sub-Funds to Ada Public Works Authority Fund budget.
- f) Consideration of supplemental appropriations or transfer of appropriations within the Special Revenue Funds budget.

Motion made by Trustee Hudson to approve the Consent Agenda with corrections to minutes on spelling; Motion was seconded by Trustee Hargrave.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

2. Discussion of and action on items removed from the Consent Agenda.

No Items removed from the Consent Agenda.

3. Discussion of and action on adopting contents of City of Ada, Oklahoma Resolution No. 23-23A, as it pertains to the Ada Public Works Authority and its employees.

Motion made by Trustee Hudson to approve the Resolution No. 23-23A, as it pertains to the Ada Public Works Authority and its employees. Motion seconded by Trustee Vazques.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

4. Discussion of and action on adopting the contents of City of Ada, Oklahoma Ordinance No. 23-07, as it pertains to the Ada Public Works Authority and its employees.

Motion made by Trustee Vazques to approve the Ordinance No. 23-07, as it pertains to the Ada Public Works Authority and its employees. Motion seconded by Trustee Hudson.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

5. Discussion of and action on a professional services contract with Whitehawk Engineering for Stadium Drive Project #110.

Motion made by Trustee Hargrave to approve the professional services contract with Whitehawk Engineering for Stadium Drive Project #110. Motion seconded by Trustee Hudson.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

6. Discussion of and action on a resolution approving a payment to East Central University for partial funding of East Central University's Oka' Institute.

Motion made by Trustee Hudson to approve as presented. Motion seconded by Trustee Vazquez.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

7. Discussion of and action on contract for services with Ada Jobs Foundation, Inc.

Motion made by Trustee Hudson to approve a contract for services with Ada Jobs Foundation, Inc. Motion seconded by Trustee Hargrave.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, McFarlin, Griffith, Hudson

NAY: Vazquez

Motion Carried 4-1

8. Discussion of and action on a resolution authorizing the Ada Public Works Authority (the "Authority") to enter into professional services agreements in connection with the issuance of the Authority's Sales Tax Revenue Note, Series 2023 (the "Note") in the aggregate principal amount of approximately \$20,000,000.00; authorizing the financial advisor to distribute bid packages to financial institutions; and containing other provisions relating thereto.

Alan Brooks and John Wolf addressed the board on the Sales Tax Note Bid process.

Motion made by Trustee Hudson to approve the resolution as presented.
Motion seconded by Trustee Vazquez.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Vazquez, McFarlin, Griffith, Hudson

NAY: Hargrave

Motion Carried 4-1

9. Discussion of and action on Bids for Annual Line Maintenance Materials.

Motion made by Trustee Vazquez to award the bid for Annual Line Maintenance Materials to UTS Supply as the lowest and best competitive bid. Motion seconded by Trustee Hudson.

Chairman McFarlin called for a vote and the result was as follows:

AYE: Hargrave, Vazquez, McFarlin, Griffith, Hudson

NAY: None

Motion Carried 5-0

10. Reports by Authority Manager and/or APWA Staff.

City Manager, Cody Holcomb addressed the board on the upcoming next year.

11. Persons to be heard on any matter not on the agenda.

No other persons to be heard on any matter not on the agenda.

12. Adjournment.

Chairman McFarlin adjourned the APWA meeting at 7:06pm

Attest: Heather Heard, City Clerk

Randy McFarlin, Chairman



City of Ada
A Municipal Corporation

Purchasing Department
512 N. Stockton St.
Ada, OK 74820
580-436-6300 x256 Fax 580436-8044

MEMO

Date: October 10, 2023

To: Cody Holcomb, City Manager

From: Pam McKinzie, Purchasing Director
Frank Stout, City Attorney

Subject: Interlocal Cooperative Purchasing Contract with TOPS an Oklahoma Cooperative Purchasing Program which stands for The Oklahoma Purchasing System (TOPS).

This is a request to place the attached interlocal agreement with TOPS Cooperative Purchasing Program located in Atoka, OK on the Council Agenda for October 17th, 2023. Just like when we joined HGAC Cooperative, the Texas Buy Board, and TIPS for the purchase of different equipment. Joining TOPS will hopefully give us the ability to purchase construction-related materials and services at market price and increase construction quality. This cooperative was started by the Atoka Public Schools.

The State of Oklahoma has approved the use of Interlocal Contracts with governmental agencies, subject to obtaining approval of the Attorney General and certain filing requirements. The first one being that we approve this Interlocal Cooperative Purchasing Contract and the resolution approving the contract. Once we will get these documents they will be sent for signature by TOPS and then forwarded for approval by the Attorney General's Office.

I am requesting that you approve the TOPS Interlocal Agreement and Resolution, plus give Mayor Randy McFarlin the approval to sign all documents as required.

If you have any questions, please contact me.

Thank You.

THE OKLAHOMA PURCHASING SYSTEM

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (also referred to as “Agreement”) is entered into by and between Independent School District No. 15 of Atoka County a/k/a Atoka Public Schools (“APS”) and the member public agencies (“Members”) listed below, pursuant to § 139 of the Oklahoma Public Competitive Bidding Act (“PCBA”), Okla. Stat. tit. 61 § 101, *et seq.*, and the Interlocal Cooperation Act (“the Act”), Okla. Stat. tit. 74, §§ 1001, *et seq.*

MEMBER:

NAME OF AGENCY: _____

BOARD APPROVAL DATE: _____

AGENCY CONTACT: _____

CONTACT TITLE: _____

CONTACT SIGNATURE: _____

APS and Member hereby represent that:

- Both entities are “public agencies,” as that term is defined in the Interlocal Cooperation Act; and
- APS is a public school district, acting under the authority granted to it pursuant to § 139 of the PCBA; and
- Member is a public agency within the State of Oklahoma as defined by 74 O.S. § 1003(A), acting under the authority granted to it pursuant to § 139 of the PCBA;

NOW THEREFORE, APS and Member hereby agree as follows:

I. DEFINITIONS

For the purposes of this Agreement:

1. The term “public agency” shall mean any political subdivision of the State of Oklahoma or agency of the state government, or public trust, their respective boards, and public trusts of which they are beneficiaries;
2. The term “member” shall mean a public agency which has become a party to this Agreement;
3. The term “group” shall mean The Oklahoma Purchasing System;
4. The term “participating agency” shall mean a member or the group;

5. The term “construction-related materials and services” shall mean any materials or services that would or could be required to be subject to public bidding under the PCBA.

II. STATEMENT OF SERVICES OFFERED

APS, as the lead agency for The Oklahoma Purchasing System (TOPS), with Mabe Enterprises, Inc. as the buyer’s agent, has established and will administer a cooperative purchasing program for construction-related materials and services. Authority for such services is granted by Okla. Stat. tit. 61, § 139.

III. PURPOSE

The purpose of TOPS is to reduce the costs associated with construction-related materials and services at market price, budget control, and to increase construction quality.

IV. TERM

This Agreement covers the period July 1 to June 30 of each calendar year.

V. RIGHTS

APS, in cooperation with TOPS and Mabe Enterprises, Inc., is granted the right to issue a cooperative bid/proposal for construction-related materials and services reflective of the needs supplied by the Members initiating their construction bid/proposal through TOPS. APS, as the lead agency, is further granted the right to secure product award(s) for specific construction-related materials and services for a period of one year in cooperation with TOPS.

VI. DUTIES/RESPONSIBILITIES

APS, as the lead agency is responsible for the following:

- Offer appropriate and necessary support to encourage positive vendor/contractor relationships.
- Distribute this Agreement to potential and current members for adoption or update by their Board of Education.
- Present all Agreements to the APS Board of Education for approval.

TOPS, and Mabe Enterprises, Inc., as the buyer’s agent, is responsible for the following:

- Provide for the organizational and administrative structure of the program.
- Provide staff time necessary for efficient operation of the program.
- Receive quantity requests from members and prepare appropriate tally of quantities.
- Initiate and implement activities related to the bidding and vendor/contractor selection process in accordance with Oklahoma law, particularly the PCBA.

- Provide members with procedures for ordering, delivery, and billing.

Members are responsible for the following:

- Approving the Interlocal Cooperation Agreement with APS.
- Commit to participate in the program by an authorized signature in the appropriate space within this Agreement.
- Designate a contact person.
- Commit to purchase construction-related materials and services that become part of the official materials and services list when it is in the best interest of the Cooperative Member.
- Prepare purchase orders issued to the appropriate vendor/contractor from the official award list provided by TOPS.
- Accept shipments of products ordered from vendor/contractors in accordance with standard purchasing procedures.
- Pay vendor/contractors in a timely manner for all goods and services received.
- Providing notice of intent to terminate this agreement, in writing, to Jay McAdams, Director of TOPS, at least thirty (30) days in advance of the intent to terminate. Advance notice of termination is waived in the event a participating public agency is dissolved or consolidated or a participating school district is consolidated, annexed, designated as fiscally distressed, or managed by the State Department of Education.
- Providing local purchasing estimates to TOPS by the specified deadline for all items to be purchased under contract. The public agency agrees to establish estimates with the intent to purchase said quantities.
- Refraining from initiating bids/proposals for purchasing contracts that conflict with those being solicited by TOPS and for which the Member has enrolled for participation until such time as those solicitations by TOPS are closed.
- Seeking resolution of all problems regarding purchasing, delivery, receiving, and billing, with the appropriate vendor/contractor.
- Understanding and agreeing that participating in this Agreement does not relieve the Members from obligations to comply with all applicable procurement laws.

VII. DISSOLUTION AND DISPOSITION OF PROPERTY

The title to all property, real and personal, acquired by TOPS shall be vested in TOPS. In the event of termination of TOPS, such property shall belong to the then-members of TOPS in pro-rata shares. Upon partial or complete termination of this Agreement, the majority vote of APS's Board of Education, as the lead agency, shall be binding in all respects

as to the disposition of the property and dissolution of TOPS. The APS Board of Education shall serve as trustees for the disposition of property or funds, payment of obligations, dissolution, and winding up of affairs of TOPS.

VIII. FINANCING

The cooperative undertaking in this Agreement shall be financed by requiring vendors/contractors to pay a 2% commission based upon the total value of services and materials provided by such participating vendor/contractor. **No costs shall be incurred by Cooperative Members.**

IX. ACCEPTANCE

APS and the Members who have approved this Agreement enter into this Agreement for cooperative purchasing of construction-related materials and services from any or all awarded contracts in which it chooses to actively participate.

Member Contact Information:

Address: _____
City: _____
State: _____ Zip: _____
Phone: _____ Fax: _____

Primary Contact Name: _____
Primary Contact Title: _____
Primary Contact Email: _____
Primary Contact Phone: _____

Approved by APS Board of Education:

Jay McAdams, Director of TOPS

Date

Return the completed and signed Interlocal Agreement to:
info@tops-usa.org and attach as a PDF.



CITY OF ADA
A Municipal Corporation

Shelly Williams, PE
Engineering Project Manager
231 South Townsend
Ada, Oklahoma 74820-6443
580-436-6300 x 224

MEMORANDUM

TO: Cody Holcomb, P.E., City Manager

FROM: Shelly Williams, P.E., Engineering Project Manager

DATE: October 16, 2023

SUBJECT: Project 115 - Water system analysis and recommendations(formerly RWD #2)

The City is in receipt of a proposal for professional services in the amount of \$82,000 from Olsson and Associates. The proposal is to provide water system analysis and recommendations to resolve water pressure issues identified by the Public Works Department. Design is scheduled to begin October 25, 2023 pending council approval with a completion date of April 22, 2024.

Currently, additional water expansion north of County Road 1510 is limited in order for the city to provide acceptable water pressures for existing users. Once recommendations are received from Olsson, the city will request design. These improvements will provide for further development, both residential and commercial, and better meet the needs of existing waterline customers.

The preliminary design proposal is \$82,000 and is being funded with FY2024 APWA RWD#2 funds, fund #78.

Council approval is requested.



LETTER AGREEMENT FOR PROFESSIONAL SERVICES

September 25th, 2023

City of Ada, Oklahoma
Attn: Shelly Williams, PE
231 S Townsend Street
Ada, OK 74820

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**
ADA Water Study (the "Project")
Water system analysis and recommendations to resolve water pressure issues.

Dear Ms. Williams:

It is our understanding that the City of Ada ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (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 the General Provisions and any exhibits attached hereto, 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 following services ("Scope of Services") to the Client for the Project: ADA Water Study. 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 the 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: October 25th, 2023
Anticipated Completion Date: April 22^d, 2024

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 a lump sum of Eighty-Two Thousand dollars (\$82,000). Olsson's reimbursable expenses for this project are included in the lump sum. Olsson shall submit invoices on a monthly basis, and payment is due within 30 calendar days of the invoice date.

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 and signed by both parties.

Client's designated Project Representative shall be _____.

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. This proposal will be open for acceptance for a period of a maximum of 30 days from the date set forth above unless changed by us in writing.

OLSSON, INC.

By  _____
Chris Hall, Vice President

By  _____
Keith Beatty, Technical Leader

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 Ada, Oklahoma

By _____
Signature

Print Name _____

Title _____

Dated _____

Attachments

Scope of Services

General Provisions

Standard Labor Rate Schedule

Reimbursable Rate Schedule

SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated September 12, 2023, between the City of Ada ("Client") and Olsson, Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

PROJECT DESCRIPTION AND LOCATION

The Project will be located within the water system boundaries of Ada, Oklahoma, which includes the northern water distribution system location north of CR1510, previously identified as RWD #2.

Project Description: Water system analysis and recommendations to resolve water pressure issues.

SCOPE OF SERVICES

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

PHASE 100 – PROJECT & QUALITY MANAGEMENT

Olsson's Project Manager (PM) will work with the Client, and Olsson's project team to provide the timely completion of quality work products within available budgetary resources. The PM's responsibilities include:

- **Project Management**
 - Establishing and maintaining project schedule and budget.
 - Communicate with the City and other public agencies.
 - Develop the monthly invoices and project reports for the Client.
- **Communication and Coordination with Others**
 - Coordinate with the Client, the project team, agencies and/or other consultants that are involved with this Project or adjacent projects. This involves one-on-one meetings, conference calls, etc.
 - Kick-Off Meeting – The PM will schedule and attend a kickoff meeting with the full project team. The PM will draft an agenda, send out invites, and record meeting notes with action items to be followed up on.
 - PM will schedule and attend monthly progress meetings (at a minimum) with the project team and will distribute an agenda 24 hours in advance of each meeting. The PM will draft an agenda, send out invites, and record meeting notes with action items to be followed up on. It is anticipated that a maximum of nine (9) meetings (of all the types listed above) will be held for this Project.
 - Olsson will prepare and present a final presentation to the City of Ada.
- **Quality Management**
 - Quality assurance and quality control (QA/QC) reviews are essential to ensure the best quality and value for the Project and are an integral part of the Olsson project team. This process will be undertaken by senior staff members of the firm selected for their experience and expertise. The QA/QC process identifies and addresses technical issues and confirms that drawings and documents are clear, complete, and concise.

- Formal QA/QC reviews will be conducted at key intervals of the report and prior to issuance of the final report.

PHASE 200 – WATER SYSTEM ANALYSIS

Olsson will prepare a Water Study Report, including the following tasks:

1. Import and calibration of the Water System Model

- Import the Client's current water into InfoWater Pro. The software has been updated since the Client created their model.
- Review the model and make necessary updates based on the Client's current GIS data. Generally, pipes four inch and larger will be modeled.
- Evaluate the model and make corrections, including:
 - Review water model pipe connections compared to the original model.
 - Verify pipe diameters and node elevations.
- Check the delineation of pressure planes.
- Evaluation of residential, commercial, and industrial demand basis. Place major demand customers in the model.
- Compile and input into the water model existing Information on booster pumping facilities and storage reservoirs

2. Analysis of the Water System under Existing Conditions

- Analyze the water distribution system under existing conditions for the current year:
 - Average Day Demand
 - Maximum Day Demand
 - Maximum Hourly Demand
 - Fire Flow Conditions for the general system. Olsson will not provide fire flow for individual users.
 - Identification of major low-pressure areas within the distribution system and
 - Recommendations on mitigating low pressure (less than 40 pounds per square inch (psi)) at projected demands.
 - Identify improvements required to serve the Client's water service territory.
 - Develop recommended sizing and preliminary routing of future distribution and/or transmission lines to mitigate the current volume issues.
 - Evaluation of total system storage adequacy and developing recommendations for new storage and booster stations that may be required.

3. Recommended Water System Improvements

- Prepare planning-level scopes, schematic maps, and opinions of probable costs for recommended CIP projects for existing conditions.
- Prepare and transmit a draft report describing the analyses and recommendations for review by the Client.

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 the 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.

DELIVERABLES

- Hydraulic water model in InfoWater Pro format that has been updated for the purposes of these analyses.
- Electronic version (pdf) of the DRAFT Water Study Report for review.
- Electronic version (pdf) of the FINAL Water Study Report.
- Electronic files in accordance with the Agreement.

SCHEDULE

The following list includes milestone dates for the various project phases. The date ranges assume project startup in September of 2023.

Water Master Plan:

- | | |
|---|----------------------------------|
| ○ Kickoff and Analysis Workshop | October 25 th , 2023 |
| ○ Complete Analysis of the System under Existing and Future Conditions. | January 26 th , 2024 |
| ○ Provide Draft Recommendations for Improvements (Without Costs) | February 26 th , 2024 |
| ○ Provide Draft Report | March 22 nd , 2024 |
| ○ Provide Final Report and Presentation to Commission | April 22 nd , 2024 |

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated September 25, 2023 between The City of Ada ("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.

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 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. 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.

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.

Olsson 2023 Billing Rate Schedule

<u>Description</u>	<u>Range</u>
Principal	\$140.00 - \$463.00
Project Manager	\$129.00 - \$254.00
Project Professional	\$104.00 - \$237.00
Assistant Professional	\$71.00 - \$173.00
Designer	\$90.00 - \$210.00
CAD Operator	\$59.00 - \$133.00
Survey	\$56.00 - \$181.00
Construction Services	\$49.00 - \$254.00
Administrative/Clerical	\$47.00 - \$159.00

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)	\$0.655/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$95.00/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).