

BARTLETT & WEST, INC.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

This is a Master Agreement (hereafter referred to as the “Agreement”) by and between the City of Dickinson (“Client”), located at 38 1st Street W, Dickinson, ND 58601 and Bartlett & West, Inc. (“Consultant”), located at 3456 E Century Avenue, Bismarck, ND 58503.

WHEREAS, Client intends to engage Consultant in a variety of projects, performing certain professional services. Details of the projects will be included in individual Task Orders to be attached to and made a part of this Master Agreement.

Client and Consultant therefore agree as follows:

ARTICLE I – DEFINITIONS AND RULES OF INTERPRETATION

- A. The agreement between Client and Consultant consists of this Master Agreement for Professional Services, the Standard Provisions of Agreement for Professional Services attached as Exhibit A, and any subsequent executed Task Orders. All such items together shall be referenced herein as the “Agreement.”
- B. Task Orders will describe the specific services requested by Client, the budget, and the time. Each Task Order will be sequentially numbered and will be considered as an exhibit to this Agreement. The Task Order shall be executed by both Client and Consultant before any work proceeds. A sample Task Order is attached as Exhibit B.
- C. In the event of any conflict in the language of this Agreement with the Standard Provisions of Agreement attached hereto, the language of the Standard Provisions of Agreement shall control unless this Agreement specifically provides to the contrary. In the event of any conflict in the language of any Task Order attached hereto with said Standard Provisions of Agreement, the language of the Task Order shall control.
- D. This Agreement, including any Task Orders, represents the entire and integrated agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Client and Consultant.
- E. This Agreement shall be governed by the laws of the state of North Dakota.

ARTICLE II – SCOPE OF WORK

- A. Consultant’s services will be detailed in a duly executed Task Order for each Specific Project. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided.
- B. Consultant shall not be obligated to perform any prospective Task Order unless and until Client and Consultant agree to the particulars of the Specific Project, Consultant’s services, Consultant’s compensation, and all other appropriate matters.

ARTICLE III – CLIENT’S RESPONSIBILITIES

In addition to other responsibilities which may be set forth in this Agreement or Task Order, Client shall:

- A. Provide Consultant with all criteria and full information as to Client’s requirements for the Project, including design objectives, capacity, performance requirements, and budgetary limitations upon which Consultant may rely. Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client’s consultants and contractors, and information from public records, without the need for independent verification.
- B. Furnish available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the site.
- C. Arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required to perform services under this Agreement.
- D. Examine alternative solutions, reports, drawings, specifications, and other documents presented by Consultant and render timely decisions pertaining to the documents.
- E. Provide timely reviews, approvals, and permits from all governmental authorities having jurisdiction over components or phases of the Project.
- F. Participate in conferences, meetings, bid openings, and other similar aspects of the Project as requested by Consultant.

ARTICLE IV – TIME OF PERFORMANCE FOR SERVICES

- A. The services under each Task Order have been agreed to in anticipation of the orderly progress of that Project through completion. Unless a specific time of performance for services is specified in a Task Order, Consultant’s obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. If a specific time of performance is provided in a Task Order, and if Client has requested changes in the scope or character of the project, the time of performance shall be adjusted equitably.

ARTICLE V – PAYMENT PROVISIONS

- A. Client shall pay Consultant for services as described in each individual Task Order.
- B. Fees will be billed monthly based upon the form of compensation selected and described under each individual Task Order.

ARTICLE VI – INSURANCE

- A. Consultant shall purchase and maintain insurance as set forth below:
 - 1. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate.
 - 2. Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.

3. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$1,000,000 for each accident.
4. Professional Liability insurance on a claims-made basis in the amount of \$3,000,000 per claim and \$3,000,000 annual aggregate.
5. Commercial Umbrella, with a limit of \$2,000,000 each occurrence and aggregate.

ARTICLE VII – DISPUTE RESOLUTION

- A. The parties shall endeavor to resolve disputes in accordance with paragraph 10 of the Standard Provisions of Agreement. Should that not be successful, any claim, dispute or other matter in question arising out of or related to this Agreement shall move to litigation and be brought only in the district court of Burleigh County, North Dakota. The parties agree to this venue and to jurisdiction by this court.

ARTICLE VIII – INDEMNITY

- A. Indemnity by Consultant. Consultant agrees to indemnify and hold harmless Client from and against damages, losses, costs or expenses (including reasonable attorney's fees) actually incurred by Client but only to the extent caused by the negligent performance of Consultant. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations. If Client and Consultant are both at fault for certain damages, then each party shall bear liability for its own respective percentage of fault.
- B. Consultant will not be required to indemnify Client for claims caused or alleged to be caused in whole or in part by the acts or omissions of Client or other third parties for whom Consultant is not responsible.
- C. Consultant's obligation to indemnify Client is limited by Article IX – Design Contingency and Limitation of Liability provisions.
- D. Under no circumstances shall Consultant be required to pay the defense costs of Client, unless Consultant is adjudged to be negligent by a court of law, and such defense costs are included as damages in the award. Consultant's obligation to pay defense costs, if awarded by a court, is limited by Article IX – Design Contingency and Limitation of Liability provisions, if any such provisions are part of this Agreement.

ARTICLE IX – DESIGN CONTINGENCY AND LIMITATION OF LIABILITY

- A. DESIGN CONTINGENCY. Consultant makes no warranty, expressed or implied, that its design is free of errors. Client and Consultant agree that certain increased costs and changes may be required and are anticipated due to omissions, errors or inconsistencies in drawings and specifications prepared by Consultant. Therefore, Client agrees to set aside a reserve in the amount of 10% of the estimated total Specific Project cost as a contingency to be used, as needed, to pay for any such increased costs and changes. The percentage is intended to be for the whole project cost and not applied as a percentage to individual segments or quantities of a construction project. Client agrees to make no claim against Consultant with respect to any increased cost within this contingency amount. If costs due to changes resulting from design errors, omissions or inconsistencies exceed the contingency, then Consultant shall be responsible for damages incurred by Client above that sum but only to the extent caused by Consultant's negligent performance. Cost increases as a result of Client requests made after construction documents are issued for permit, changes in governmental agency requirements after

previous approval, or unforeseen conditions are not costs due to errors, omissions or inconsistencies. In no event shall Consultant be responsible for direct costs that Client would have incurred in the construction contract, including actual installed quantities during construction, but for Consultant's error or omission.

B. **LIMITATION OF LIABILITY.** To the extent that claims against Consultant exceed the contingency set forth above, then to the fullest extent permitted by law, Client agrees to limit the total liability, in the aggregate, of Consultant's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to Client, anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Consultant's services, the Project or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract of Consultant's officers, directors, employees, agents or independent professional associates or consultants, or any of them. Such liability shall be limited to the fee established by each individual Task Order under this Agreement.

C. Client and Consultant agree that specific and adequate consideration has been given for this limitation of liability.

ARTICLE X – TERM OF AGREEMENT

A. This Agreement shall become effective upon signatures by both Parties. There is no term for this Agreement as the Parties intend on establishing a multi-year Agreement as services are required.

B. Either Party may establish a term, upon written Amendment to this Agreement signed by both Parties.

C. The Parties agree and understand that hourly rates may be increased on an annual basis without written amendment to this Agreement.

CLIENT:

CITY OF DICKINSON, NORTH DAKOTA

CONSULTANT:

BARTLETT & WEST, INC.

By: _____

Print Name: _____

Title: _____

Date Signed: _____

By: _____

Print Name: _____

Title: _____

Date Signed: _____

EXHIBIT A

STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

Client and Bartlett & West, Inc. (referred to as Consultant), agree that the following provisions shall be part of this Agreement.

1. Payment. Unless stated otherwise in this Agreement, fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing. If Client does not pay invoices within thirty (30) days of the billing date, Consultant may, upon written notice to Client, suspend further work until payment is current. Client agrees to indemnify and hold Consultant harmless from any claim or liability resulting from such suspension. Interest not exceeding the maximum rate allowable by law will be payable on any amounts not paid within thirty (30) days of the billing date, payment thereafter applied first to accrued interest and then to the principal unpaid amount. If Client fails to pay Consultant pursuant to this section, Client shall be liable for and shall reimburse Consultant for expenses incurred by Consultant in connection with or in any way relating to Client's failure to pay. Such expenses shall include, without limitation, reasonable attorneys' fees, legal expenses, and court costs. In the event Client fails to pay Consultant within ninety (90) days after the billing date, then Client agrees that Consultant shall have the right to consider such failure as a substantial breach of this Agreement and the duties of Consultant under this Agreement may be terminated at the election of Consultant upon five (5) days written notice.

2. Taxes. Compensation payable to Consultant pursuant to this Agreement shall be in addition to taxes that may be assessed against Consultant by any state or political subdivision directly on services performed or payments for services performed by Consultant. Such taxes that Consultant may be required to collect or pay shall be added by Consultant to invoices submitted to Client pursuant to this Agreement.

3. Suspension. In the event all or any portion of the work prepared or partially prepared by Consultant is suspended, abandoned, or terminated, Client shall pay Consultant for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.

4. Termination. This Agreement may be terminated by Client or Consultant upon thirty (30) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this Agreement. Client expressly agrees to hold Consultant harmless from any liability arising out of Consultant's termination of its services hereunder due to Client's failure to perform and/or pay in accordance with the provisions of this Agreement. In the event of termination of this Agreement, Client shall promptly pay Consultant for all fees, charges, and services performed by Consultant in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis.

If Consultant files suit for breach of contract, all attorney fees, court costs, and other related costs will be paid by Client if a Court finds Client has breached its contract with Consultant.

5. Delay. All agreements on Consultant's part are contingent upon, and Consultant shall not be responsible for damages or be in default, or be deemed to be in default, by reason of delays in performance of others by reason of strikes, lock-outs, accidents, acts of God, widespread infectious disease outbreaks (including, but not limited to, epidemics and pandemics), and other delays unavoidable or beyond Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of Client or Client's agents to furnish information or to approve or disapprove Consultant's work promptly, or due to late or slow, or faulty performance by Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

6. Client Changes. In the event any changes are made in the work to be performed hereunder, by Client or persons other than Consultant, and which affect Consultant's work, any and all liability arising out of such changes is waived as against Consultant and Client assumes full responsibility for such changes unless Client has given Consultant prior notice and has received from Consultant written consent for such changes.

7. Third Party Information. Consultant is not responsible, and liability is waived by Client as against the Consultant, for use by Client or any other person of any data, reports, plans or drawings not prepared by Consultant.

8. Waiver of Consequential Damages. Neither Client nor Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

9. Completion. In no event shall any statute of limitations commence to run any later than the date when Consultant's services are substantially completed, and any cause of action against Consultant arising from or pertaining to this Agreement must be initiated no later than two (2) years after the date when Consultant's services are substantially completed.

10. Disputes. If a claim, dispute or other matter in question arises out of or related to this Agreement, the parties shall first try to resolve the issue through prompt negotiations conducted by an officer authorized to make decisions on behalf of each party. If the dispute is not resolved within sixty (60) calendar days of the commencement of negotiations, the parties shall appoint a qualified, neutral, third-party mediator, as a condition precedent to the institution of litigation. If the parties are unable to agree upon a mediator, Consultant shall present a list of three prospective mediators to Client, who shall choose the mediator. In the event of failure on the part of Client to do so within ten (10) days of receipt of the list, Consultant shall choose the mediator. The mediator's fees shall be shared equally and shall be held at the offices of Client or Consultant as selected by the mediator.

11. Waiver of Subrogation. To the extent any damage or claim is covered by property insurance, Client and Consultant waive all rights against each other and against the contractors, consultants, and employees of the other for damages, except such rights as they may have to the proceeds of such property insurance. Client or Consultant, as applicable, shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

12. Standard of Care. Consultant's services shall be performed in a manner consistent with that degree of skill and care exercised by practicing professionals performing similar services at the same time, at the same locality, and under the same or similar circumstances and conditions. Consultant makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder.

13. Consultant Data. All reports, plans, specifications, computer files, data resulting from laser scanning, survey notes, and other original documents are instruments of service and shall remain the property of Consultant. Consultant may sell said instruments of service to third-party sources.

14. Software Ownership. Consultant has and will retain all ownership rights in its software and in any software developed under this Agreement, including all patent rights, copyrights, trade secrets, trademarks, and service marks.

15. Work Product Ownership. Work Products shall be defined as any deliverable provided to Client as a result of services provided under this Agreement, including but not limited to software applications, drawings, databases, specifications, and any and all deliverables provided by Consultant per this Agreement. Work Product is owned exclusively by Consultant and are protected by United States copyright laws, trademark laws, and applicable international treaties and/or conventions. In consideration of the rights granted herein, Client agrees to retain all Work Product delivered or provided to Client in strict confidence. Client shall not sell, transfer, lease, lend, assign, time-share, sublicense, publish, disclose, display, or otherwise make available Consultant's Work Product in any form to any other person or entity other than the parties to this Agreement without the express

written permission of Consultant. Client shall secure and protect the Work Product in the same manner and to the same degree it protects its own proprietary information, using no less than a reasonable standard of care. Client shall not decompile or reverse engineer any of Consultant's software that may be contained in Consultant's Work Product. Client shall not make any modifications or derivative works from Work Product.

16. Ownership. All error corrections, enhancements, new releases, and any other Work Product of work created by Consultant as a result of services provided under this Agreement are and shall remain the exclusive property of Consultant, regardless of whether Client, its employees, or agents may have contributed to the conception, joined in its development, or paid Consultant for the development or use of said Work Product.

17. Confidentiality. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Consultant and shall not be disclosed or used by Consultant except to the extent that such disclosure or use is reasonably necessary to the performance of Consultant's services. All information relating to Consultant that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Client. These obligations of confidentiality shall extend after the termination of this Agreement, but shall not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

18. Fees. When applicable to the project, Client shall pay the costs of inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial photography fees, and all other fees, permits, bond premiums, title company charges, and reproductions, and all other charges not specifically covered by the terms of this Agreement.

19. Construction Costs. If any opinion is prepared by Consultant as to anticipated construction costs, such opinion represents a judgment as a professional and is supplied for the general guidance of Client. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinion as compared to contractor bids or actual cost to Client.

20. Job Site. If the work involves construction services, Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required by Client to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours. Consultant does not assume responsibility for the safety of persons or property on or about the project site.

20.1 Job Site - Confined Space and/or Permit Required Entry. If confined space and/or permit required entry is required for the services to be provided, Owner/general contractor shall provide subcontractor and Consultant with a completed Confined Space Pre-Entry checklist that complies with 29 CFR 1910.146 and 29 CFR 1926.1200 AA standards for construction as amended and applicable state laws and regulations. Owner/general contractor, at its expense, shall obtain any and all required permits and equipment for such entry. Owner/general contractor shall determine if the job requires anyone to enter manholes, vaults, lift station, piping, tanks or other confined spaces. Before work at a worksite, Owner/general contractor must ensure that a competent person identifies all confined spaces in which one or more of the persons it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary. If the workplace contains one or more permit spaces, Owner/ general contractor who identifies, or who receives notice of, a permit space must:

- (1) Inform exposed persons by posting danger signs or by any other equally effective means, of the existence and location of, and the danger posed by, each permit space; and a sign reading "DANGER – PERMIT REQUIRED CONFINED SPACE, DO NOT ENTER" or using other similar language would satisfy the requirement for a sign.
- (2) Inform, in a timely manner and in a manner other than posting, its employees' authorized representatives and the controlling contractor of the existence and location of, and the danger posed by, each permit space.

If Owner/general contractor determines any person will enter a permit space, that host employer must have a written permit space program that complies with §1926.1204 implemented at the construction site. Contractor shall provide appropriate air monitoring equipment, employee training, permit forms, rescue procedures, personnel, and other means necessary to safely and independently enter confined spaces. The written program and permit must be made available prior to and during entry operations for inspection by person(s) who need to enter the space for work or inspection.

20.2. Job Site - Fall Protection and Rescue Plans. In the event personal fall arrest systems are used, the following rescue considerations shall apply. Owner/general contractor must assure that persons can be promptly rescued or can rescue themselves should a fall occur. The availability of rescue personnel, ladders, or other rescue equipment should be evaluated. In some situations, equipment that allows employees to rescue themselves after the fall has been arrested may be desirable, such as devices that have descent capability. All new persons on site shall be given instructions on the proper use of fall protection devices before they begin work, as well as rescue procedures. The written fall protection plan will be reviewed before work begins on the job site. Fall protection equipment use will be reviewed regularly at the weekly safety meetings.

21. Construction Site Visits. If applicable, Consultant shall make periodic visits to the project site to observe the progress and

quality of the executed work and to generally review whether the work is proceeding in accordance with plans and specifications. Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work and does not assume responsibility for construction techniques, procedures, sequences and schedules or for the conduct, action, errors or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees.

22. Resident Project Representation. When applicable, and by separate attachment executed by Client and Consultant, Consultant may provide resident project representation under Consultant's supervision that will be paid for by Client as indicated in such separate agreement and that will be intended to give Client further assurance with regard to the finished work, but will not involve Consultant in the construction means, methods, techniques, sequences or procedures or safety precautions or programs nor provide to Client any guarantee by Consultant of the accuracy, quality or timeliness of performance by any contractor, subcontractor, or material supplier.

23. Hazardous Materials. In the event that Consultant or any other party encounters asbestos or hazardous or toxic materials at the job site, or should become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of Consultant's services, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

24. Assignment / Third Party Reliance / Certification. Neither Client nor Consultant shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of Client, and no benefit is meant to be conferred upon any person or entity not a party to this Agreement, and no such person or entity should rely upon Consultant's performance of those services to Client; and no claim against Consultant shall accrue to any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, homeowner's association or any other third-party as a result of this Agreement or the performance or non-performance of services on the project. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain.

25. Client Representative. Client shall designate an individual with authority to act on behalf of Client as to all aspects of the project, shall examine and respond promptly to submissions from Consultant, shall give prompt written notice to Consultant if Client becomes aware of any defect in the project, and shall otherwise fully cooperate as may be required or appropriate in connection with the project.

26. Equal Opportunity. Consultant 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, 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, national origin, protected veteran status or disability.

27. Severability. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end, the provisions of this Agreement are declared to be severable.

