

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of March 19, 2024 (“Effective Date”) between City of Dickinson (“Owner”) and Moore Engineering, Inc. (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows: 10th Ave. East Mill & Overlay (Villard St. to Museum Dr.) (“Project”).

Engineer’s services under this Agreement are generally identified as follows: preliminary engineering and final design for mill and overlay pavement maintenance as well as accessibility ramp upgrades, more specifically described in Appendix A (“Engineer’s Services”).

Owner and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall complete its Services within the following specific time period: April 2024 - September 2024.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s Services is impaired, or Engineer’s Services are delayed or suspended, then the time for completion of Engineer’s Services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer’s invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment—Lump Sum*

- A. Owner shall pay Engineer for Services as follows:
 - 1. A Lump Sum amount of \$142,800.00
 - 2. In addition to the Lump Sum amount, reimbursement for the following expenses: None Anticipated
- B. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.i.
 - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
 - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.

- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; and
 - ~~3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and~~
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to the total amount of coverage afforded under Engineer's insurance policies as related to the Project. If no such insurance coverage is provided with respect to Owner's specific Claims, then Engineer's liability to Owner shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.

- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 Attachments:

- A. Appendix 1, Engineer's Standard Hourly Rates
- B. Exhibit A, Engineer's Services

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **City of Dickinson, ND**

Engineer: **Moore Engineering, Inc.**

By: _____

By:  _____

Print name: Scott Decker

Print name: Jim Jackson

Title: Mayor

Title: Sector Leader

Date Signed: _____

Date Signed: 3-15-2024

Engineer License or Firm's Certificate No. (if required): 011C
State of: North Dakota

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

38 1st Street West
Dickinson, ND 58601

4503 Coleman Street, Suite 105
Bismarck, ND 58503

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form Agreement between Owner and Engineer for Professional Services dated March 19, 2024.

Engineer's Standard Hourly Rates

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

B. Schedule of Hourly Rates:

MOORE ENGINEERING, INC.
2024 BILLING SCHEDULE
 Effective January 1, 2024

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2024. After December 31, 2024, Hourly Billing Rates will be escalated annually and direct expenses may be adjusted to meet market conditions.

	<u>Description</u>	<u>Billing Rate Per Hour</u>
1	Principal - SR Project Manager	\$215.00
2	Project Manager - SR PE - SR Technical Advisor	\$205 - \$210
3	Professional Engineer I, II	\$185 - \$195
4	Graduate - Project Engineer	\$155 - \$170
5	Engineering Designer I,II, SR	\$145 - \$170
6	Engineering Technician I, II, III	\$110 - \$135
7	Environmental Scientist I, II, SR	\$125 - \$200
8	Environmental Technician Intern, I, II	\$70 - \$110
9	Landscape Architect I, II, SR	\$145 - \$170
10	Project Administrator I, II, III, SR	\$125 - \$145
11	Office Administrator I, II, III, SR	\$105 - \$155
12	CADD Technician I, II, III	\$130 - \$140
13	Senior GIS Coordinator - GIS Manager	\$185 - \$190
14	GIS Analyst - GIS Developer	\$155 - \$170
15	GIS Programmer I,II,III	\$140 - \$160
16	GIS Technician I, II, III	\$130- \$140
17	GIS Specialist I, II, III	\$135 - \$155
18	Land Surveyor - Senior Land Surveyor	\$175 - \$205
19	Survey Manager	\$160
20	Survey Crew Chief I, II - Survey Data Analyst	\$140 - \$155
21	Project Coordinator - CADD Standards Coordinator	\$170 - \$190
22	Funding Specialist	\$155.00
23	Survey Technician I,II, III	\$95 - \$110
24	Construction Engineer/Specialist, I, II, SR	\$155 - \$175
25	Administrative Assistant I, II, III	\$85 - \$95

Miscellaneous

Project Expenses
Sub Consultants

At Cost
At Cost

Appendix 1, Standard Hourly Rates Schedule.

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This is **EXHIBIT A**, consisting of 4 pages, referred to in and part of the Short Form Agreement between Owner and Engineer for Professional Services dated March 19, 2024

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Summary: Engineer's services outlined below represent the scoping meeting held with Owner on February 22, 2024. In addition, Engineer's services include project management activities such as bi-weekly status reports, budget review, invoicing, attendance a one City Commission meeting, internal quality control reviews prior to milestone submittals and coordination with Engineer's team and Owner during the Project.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase—Not Included

A1.02 Preliminary Design Phase

A. Upon authorization from Owner, Engineer shall:

1. Facilitate a kickoff meeting and field review with Owner's personnel. On the same day, conduct a preliminary field assessment to identify the location of necessary field surveys, prior to survey crew mobilization.
2. Advise Owner if additional reports, data, information, or services are necessary.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Surveys are limited to the following:
 - a. The project will begin at the concrete/asphalt pavement transition north of Villard Street and end at the north curb return of the Museum Drive intersection.
 - b. Limited street design survey necessary to evaluate existing cross slope (centerline and edge of pavement) and areas for full-depth pavement repairs or ponding in existing gutters.
 - c. Design survey of 25 accessibility ramps anticipated for reconstruction.
 - d. Existing utility locations based on one-call requests coordinated with Owner's geotechnical engineer.
 - e. Conduct a visual inspection of manholes to document the condition and obtain information to determine if repairs are necessary. Manhole inspections will include photo documentation and a summary report that will be provided to Owner.

4. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
 - a. Coordinate with Owner's geotechnical engineer to confirm the scope of work related to geotechnical data collection and analysis.
 - b. Mill & overlay will be accomplished by a uniform depth across the entire pavement width, rather than variable depths along the corridor.
 - c. Locations for full-depth pavement repairs will be identified during the kickoff meeting field review, documented during the initial topographic survey mobilization, and indicated on construction drawings.
 - d. Accessibility ramp repairs are anticipated at 25 of the 32 ramps within the project limits. Ramp design will be Level 3 as defined by NDDOT to include grades and spot elevations shown for each ramp. Ramps not anticipated to be affected by construction will not be designed.
 - e. Valley gutters will only be designed if repairs are deemed necessary during the kickoff meeting field review.
 - f. Two side street intersection pavement transitions will be evaluated to improve drainage and included in the construction drawings.
5. Evaluate the potential application of Rapid Rectangular Flashing Beacons (RRFB) at the Museum Drive intersection. The task is limited to coordinating with Owner and Dickinson Parks & Recreation to evaluate their respective specific needs in the area, documenting alignment with previous studies and planning documents, and then preparing a memorandum for Owner's use as a decisions document.
6. Facilitate signed sidewalk curb ramp agreements between Owner and landowners affected by accessibility ramp improvements. These agreements are anticipated for up to six (6) properties and Engineer's fee is based on an average of four (4) hours of negotiations per property. Obtaining other temporary construction easements and right-of-way acquisition is not included.
7. Prepare a Categorical Exclusion by Definition (CED) checklist to be submitted for review and approval by NDDOT. Engineer's services are based on Section 106 coordination (Class I, desktop) as well as summarizing the need for temporary construction easements. Field services and other state and federal permits are not anticipated for CED approval.
8. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications (plan notes), and written descriptions of the Project. Specifications will be included as plan notes and incorporating NDDOT standards by reference. Drawings are anticipated to include plan-view street drawings, accessibility ramp grading details, miscellaneous details, plan notes and general sheets.
9. Prepare an opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
10. Obtain and review Owner's instructions regarding Owner's procurement of construction services according NDDOT bidding and construction requirements.

11. Furnish electronic (PDF) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner. Within 10 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items and decisions required in order for Engineer to commence with Final Design Phase services.
12. Facilitate a review meeting with Owner prior to commencement of Final Design Phase.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase deliverables, Engineer shall:
 1. Complete final design related to the tasks identified in A1.02.A.4 above.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Prepare final Drawings indicating the scope, extent, and character of the Work to be performed by Contractor. Drawings will include the same content as described above.
 4. Advise Owner of any adjustments to the opinion of probable Construction Cost.
 5. Perform or provide the following other Final Design Phase tasks or deliverables: (None)
 6. Furnish for review by Owner electronic (PDF) copies of the final Drawings and review them with Owner. Within 10 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 7. Facilitate a review meeting with Owner to review Final Design Phase comments.
 8. Revise the final Drawings and submit electronic (PDF) final copies of such documents to Owner within 10 days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner final Drawings and any other final deliverables.

A1.04 *Bidding or Negotiating Phase—Not Included*

A1.05 *Construction Phase—Not Included*

A1.06 *Post-Construction Phase—Not Included*

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Article 2.03 of the Agreement.
 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact

statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
3. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
4. Preparing a project manual, bidding documents and construction contract documents associated with an EJCDC construction contract.
5. Services associated with public involvement, including meetings, mailings and other associated tasks.
6. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
7. Services resulting from Owner's request to modify previously-approved deliverables.
8. Furnishing services of subconsultants.
9. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
10. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
11. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization—None