

TOWN OF JEROME
AGREEMENT FOR ON-CALL ENGINEERING SERVICES

Between the
Town of Jerome, Arizona
and
Southwestern Environmental Consultants, Inc.

This Agreement (“Agreement”) is entered into as of this 1st day of September 2024, by and between Southwestern Environmental Consultants, Inc., with a business address of 825 Cove Parkway, Cottonwood, AZ 86326 (“Engineer”) and the Town of Jerome, a municipal corporation (“Town”) with a business address of 600 Clark Street, P.O. Box 335, Jerome, AZ 86331.

The Town engages the Engineer to perform professional services for various projects assigned and general consulting on as-needed basis as determined by the Town.

Krishan Ginige, P.E., MS, CFM, will serve as Project Manager. Appointment of a different Project Manager shall first be approved by the Town.

This Agreement does not create an employee/employer relationship between the parties and shall not be deemed to guarantee any employment of the Engineer, or any employee of the Engineer, or any subcontractor, or any employee of any subcontractor, by the Town at the present time or in the future. It is the parties' intention that the Engineer will be an independent contractor and not an employee of the Town for all purposes, including, but not limited to, the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code (and any other Arizona income tax laws), the State of Arizona workers' compensation laws and unemployment insurance laws and any of the Town's benefit plans for the Town's employees. Engineer agrees that it is a separate and independent enterprise from the Town, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform any work performed for the Town. This Agreement shall not be construed as creating any joint employment relationship between Engineer and the Town. The Town will not be liable for any obligation incurred by the Engineer, including, but not limited to, unpaid minimum wages and/or overtime premiums. This Agreement shall not be construed to authorize the Engineer to act as an agent for the Town in any manner.

The parties further agree and acknowledge that the Town is engaging Engineer as an independent contractor to provide on-call services to the Town on an as-needed basis under the terms of this Agreement and that the Town shall not be required, under any circumstance(s), to assume liability for the direct payment of any salary, wage, or other compensation to any person employed by the Engineer before, during, or after this agreement is in effect. Engineer acknowledges that none of Engineer's employees are entitled to any benefits whatsoever from the Town.

In performance of services hereunder, Engineer shall determine his/her necessary hours

of work. Engineer shall provide whatever employees, tools, equipment, vehicles, and supplies Engineer may determine to be necessary in performance of services hereunder.

Engineer is aware of and understands the hazards which are presented to persons, property and the environment relating to, and arising out of Engineer's work or service. Engineer will take appropriate steps to assure that appropriate safety precautions are taken by Engineer, Engineer's employees and/or Engineer's subcontractors when performing work for the Town.

Section I. Period of Service

The term of this Agreement shall be for the period commencing on **September 1, 2024**, and shall continue **Thirty-Six Months** until **August 30, 2027**, unless terminated sooner by the parties, pursuant to Section IV below, and shall automatically renew for a one-year period if no action is taken thirty (30) days prior to August 30, 2027.

Section II. Compensation

The compensation schedule for services rendered by the Engineer at the rates set forth in the attached Schedule A.

Section III. Terms and Conditions

The terms and conditions set forth on the attached Schedule B are incorporated herein.

Section IV. Termination

The Town or the Engineer reserves the right to cancel the whole or part of this Agreement with or without cause and for any reason or no reason by giving **30 days** written notice to either party.

In the event that this Agreement is terminated, the Town shall pay Engineer in full for all services already rendered, exclusive of any markup for profit or expected compensation following such termination, and all future obligations under this Agreement shall cease.

In the event that this Agreement is terminated, the Engineer shall: (1) immediately discontinue all services affected (unless the Town Manager directs otherwise), and (2) deliver to the Town copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated or obtained by the Engineer in performing this Agreement, whether completed or in process.

This Agreement is subject to termination pursuant to A.R.S. § 38-511.

Section V. Successors and Assigns

Neither this Agreement, nor any obligation of Engineer hereunder, shall be assigned in whole or in part by Engineer without the prior written consent of the Town Manager.

Section VI. Waiver and Severability

A waiver of any part of this Agreement, whether express or by conduct, shall not constitute a continuing waiver of such part (unless explicitly stated to be so), or a waiver

of any other part, nor shall a waiver of any breach of this Agreement, or any part of it, whether express or by conduct, constitute a waiver of any succeeding breach. The provisions of this Agreement shall be severable such that if any provision shall be deemed to be invalid and unenforceable for any reason, such invalidity or unenforceability shall not affect the remaining provisions hereof.

Section VII. Whole Agreement

This Agreement represents the parties' whole Agreement. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

Section VIII. Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

Section IX. Insurance Requirements

The insurance requirements under this Section IX apply to Engineer and any subcontractors hired by Engineer. The Engineer shall cause all of its subcontractors to comply with the requirements of this Section IX. The Engineer/Subcontractor agrees to procure and maintain at Engineer/Subcontractor's sole expense and to provide a Certificate of Insurance/Endorsement evidencing insurance coverages below.

1. COMPREHENSIVE COMMERCIAL GENERAL LIABILITY

Combined single limit against claims for Bodily Injury, Death and Property Damage, in connection with services provided and, in an amount, not less than:

\$1,000,000 each occurrence
\$2,000,000 aggregate

General Liability Insurance certificates *shall name the Town of Jerome and its officers, officials, employees and agents as Additional Insureds (with corresponding endorsement relative to the additionally insured status)* and provide a description of operations.

2. COMPREHENSIVE COMMERCIAL AUTOMOBILE LIABILITY

Required if the Engineer/Subcontractor is driving for the town beyond the normal commute to the job site, to include owned, non-owned, leased and hired vehicles.

Combined single limit for Bodily Injury and Property Damage, in an amount not less than \$1,000,000.

Commercial Auto Liability Insurance policies or certificates *shall name the Town of Jerome and its officers, officials, employees and agents as Additional Insureds (with corresponding endorsement relative to the additionally insured status)*.

3. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY

Statutory Minimum \$1,000,000

Plus Employer's Liability Coverage for:

A:	Each Accident	\$1,000,000
B:	Each Employee	\$1,000,000
C:	Each Disease	\$1,000,000

4. All carriers shall be approved to write insurance in the State of Arizona and possess an A- or better A.M. Best rating.
5. With the execution of this Agreement, Engineer/Subcontractor shall simultaneously furnish any original Certificates of Insurance and corresponding endorsement(s) evidencing the required coverage to be in force on the date of this Agreement.
6. Engineer/Subcontractor shall furnish to the Town of Jerome any renewal Certificates of Insurance (if coverage has an expiration or renewal dates occurring during the term of this Agreement).
7. The Engineer/Subcontractor shall keep said policies in force for the duration of the Agreement and for any possible extension thereof, and if any policy is written on a claims made basis, coverage shall extend for a period of two (2) years after termination of this Agreement. The policy shall not be suspended, voided, canceled or reduced in coverage for the duration of the Agreement and for any possible extension thereof without at least thirty (30) days' notice of cancellation of material change in coverage. Such notice shall be sent directly to Town of Jerome, Attn: Town Manager, P.O. Box 335, Jerome, AZ 86331.
8. The receipt of any Certificate of Insurance and endorsement does not constitute an agreement by the Town of Jerome that insurance requirements have been met.
9. Failure of Engineer/Subcontractor to obtain Certificates or other insurance evidence from other Engineers shall not be deemed a waiver by the Town of Jerome.
10. The Engineer's/Subcontractor's liability under this Agreement is not in any way limited by the insurance required by this Agreement.
11. Failure to comply with insurance requirements may be regarded as a breach of the Agreement terms.

Section X. Indemnity

Engineer agrees, to the fullest extent permitted by law, to indemnify, defend, save and hold harmless the Town of Jerome, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Engineer

or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Engineer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Engineer from and against any and all claims. It is agreed that Engineer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Engineer agrees to waive all rights of subrogation against the Town of Jerome, its officers, officials, agents and employees for losses arising from the work performed by the Engineer for the Town of Jerome.

The Town agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subcontractors (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Town's negligent acts in connection with the Project and the acts of its engineers or anyone for whom the Town is legally liable in connection with the Project.

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

Section XI. Compliance with Federal and State Laws

The Engineer understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Under the provisions of A.R.S. §41-4401, Engineer hereby warrants to the Town that the Engineer and each of its Subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Engineer Immigration Warranty").

A breach of the Engineer Immigration Warranty shall constitute a material breach of the Agreement and shall subject the Engineer to penalties up to and including termination of this Agreement at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Engineer's or Subcontractor's employee who works under this Agreement to ensure that the Engineer or any Subcontractor is complying with the Engineer Immigration Warranty. Engineer agrees to assist the Town regarding any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Engineer and any of the Subcontractors to ensure compliance with Engineer's Immigration Warranty. Engineer agrees to assist the Town regarding any random verification performed.

Neither the Engineer nor any of the Subcontractors shall be deemed to have materially breached the Engineer Immigration Warranty if the Engineer or Subcontractor establishes

that is has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

Pursuant to A.R.S. § 35-394, as may be amended, unless exempt, the Engineer hereby certifies that it does not use, and agrees not to use during the term of this Agreement, any of the following: forced labor of ethnic Uyghurs in the People’s Republic of China; any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals, this _____ of _____, 2024.

APPROVED AS TO FORM:

Town of Jerome:

By: _____
Christina “Alex” Barber, Mayor Date

Southwestern Environmental Consultants, Inc.

By: _____
Krishan Ginige, P.E., Principal Date

ATTEST:

The Mayor and Council approved this agreement for execution at a meeting held on _____, 2024.

Brett Klein, Town Manager / Clerk