



TAP Attachment J – Consultant Services Policy

CONSULTANT SERVICES POLICY

[City of Lander]

[June 20, or July 11, 2023]

SECTION I. INTRODUCTION

This policy establishes procedures of the *[City of Lander]* for the procurement, management, and administration of consultant services required for a project using federal or non-federal funds obtained through the Wyoming Department of Transportation (WYDOT). This policy and procedures will be followed when hiring consultants to supplement the *[City of Lander]* personnel or to provide other professional services that the *[City of Lander]* determines can be best completed by qualified private-sector firms.

Consultant, as used in this document, means engineering firms, architectural firms, survey firms, educational institutions, and other firms or individuals engaged in providing consulting or other professional services. *Subconsultant*, as used in this document, means an individual or firm contracted by the consultant to provide related services.

Simplified Acquisition Threshold (SAT), as used in this document, means the dollar amount at or below which a government entity may purchase services using small agreement/purchase methods. The SAT is currently \$250,000, but this threshold is periodically adjusted for inflation. (48 CFR 2.101)

Architectural and Engineering (A & E) services are defined to mean:

1. Professional services of an architectural or engineering nature, as defined by state statute, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide related services.
2. Professional services of an architectural or engineering nature, performed by consultant agreement, and associated with research, planning, development, design, construction, alteration, or repair of real property.
3. Professional services of an architectural or engineering nature, which a firm or individual within the engineering or architectural professions would perform, such as studies, investigations, survey and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Architectural and Engineering services that directly lead to development of a construction project are defined and limited to:

1. Preparation of roadway/bridge contract documents including preliminary through final design, contract plans, specifications, and incorporated engineering drawings, details, and estimates.
2. Completion of surveys and mapping necessary for preparation of roadway/bridge contract documents.
3. Completion of architectural services directly leading to facility construction.
4. Completion of feasibility studies when used for project planning leading to project construction.
5. Construction project management including contract administration and construction engineering.
6. Completion of consultant services not clearly within (1) thru (5) above, which must be performed or approved in accordance with state law by a registered professional (i.e. engineer, land surveyor, architect, geologist, etc.).
7. The final cost of these services, including the original agreement cost and subsequent agreement modifications, must exceed the SAT.

SECTION II. CONSULTANT PROCUREMENT – GENERAL

Two methods for procuring consultant services are available for use depending on administrative controls which consider the estimated cost of the proposed services.

Consultant services with an estimated cost at or less than the SAT (Small Agreement) will be procured using a simplified procurement process presented in SECTION IV(A) – Small Agreement – Estimated Cost at or less than the SAT.

Consultant services with an estimated cost exceeding the SAT (Large Agreement) will be procured using a formal request for proposal (RFP) process as presented in SECTION IV(B) – Large Agreement – Cost greater than the SAT.

SECTION III. CONSULTANT NEED AND OTHER SUPPORTING INFORMATION

The *[City of Lander]* will develop supporting information to establish the need for consultant services and identify the procurement method, selecting one of the procurement methods

outlined in SECTION IV – CONSULTANT PROCUREMENT PROCESSES. Supporting information should be tailored to the procurement method and include the following:

A. Small Agreement – Estimated Cost at or less than the SAT

Small agreements, developed consistent with SECTION IV(A) – Small Agreement – Estimated Cost at or less than the SAT, should include the following supporting information:

1. A statement supporting the use of a consultant to perform work due to unique capabilities not readily available within the *[City of Lander]* or that *[City of Lander]* personnel are not available to complete the necessary work or meet proposed schedules.
2. A preliminary scope of work for the proposed services.
3. A schedule for completion of work to be performed by the consultant.
4. A funding source for the required consultant services.
5. A preliminary cost estimate.
6. The agreement type to be used as the basis of compensation (See SECTION VI – AGREEMENT TYPE, BASIS FOR COMPENSATION, PAYMENT).

B. Large Agreement – Cost greater than the SAT

Large agreements, developed consistent with SECTION IV(B) – Large Agreement – Cost greater than the SAT, require that consultant services be procured through a request for proposal. The supporting information for these services should include the following:

1. A statement supporting the use of a consultant to perform work due to unique capabilities not readily available within the *[City of Lander]* or that *[City of Lander]* personnel are not available to complete the necessary work or meet proposed schedules.
2. A preliminary scope of work for the proposed services.
3. A schedule for completion of work to be performed by the consultant.
4. A funding source for the required consultant services.

5. A preliminary cost estimate. See SECTION IV(B) – Large Agreement – Cost greater than the SAT.
6. The agreement type to be used as the basis of compensation (See SECTION VI – AGREEMENT TYPE, BASIS FOR COMPENSATION, PAYMENT).
7. Consultant selection by the selection committee. Selection committee members should be identified by name and title.
8. A listing of evaluation factors and weighting factors for the ranking and selection of a qualified consultant firm. The use of evaluation factors and weighting factors should be tailored to the procurement process; the number of evaluation factors can be limited and the use of weighting factors can be limited or eliminated. The selected factors should assess the consultant’s qualifications and competency, tailored to the proposed type/scope of work and any anticipated work types. Evaluation factors **may** consider:
 - a. Established expertise;
 - b. Related work experience in a responsible role;
 - c. Qualifications of the firm’s personnel;
 - d. Previous performance on *[City of Lander]* projects;
 - e. Project understanding/knowledge, including proposed approach to completing project work;
 - f. Workload capacity;
 - g. Ability to meet project schedule;
 - h. Specialized expertise or product delivery requirements (such as computer hardware or software);
 - i. Other evaluation factors relating to the specific project may be used.

Evaluation factors that cannot be used on federal funded A & E services include:

- a. Cost components – consultant fee proposal, direct salaries/wages, other direct costs, or indirect cost rates;

- b. In-state or local preferences.

Cost, as one evaluation factor, may be used on federal funded non-A & E services.

The selection committee should note that two specific non-qualification-based evaluation factors may be used, if appropriate, but together cannot exceed 10% of the total weighted evaluation. These two factors, directed to an individual proposed project, are:

- a. A local presence, where that presence will add value to the quality or efficiency of project delivery, but will still allow for the consideration of a sufficient number of qualified firms;
- b. The participation of qualified and WYDOT-certified Disadvantaged Business Enterprise (DBE) consultants or subconsultants. The *[City of Lander]* should coordinate with the WYDOT Civil Rights Office to obtain a current listing of DBE consultants.

The need/use of a consultant firm in a management role for the *[City of Lander]* will require approval by WYDOT and FHWA before consultant solicitation. (23 CFR 172.7(b)(5))

SECTION IV. CONSULTANT PROCUREMENT PROCESSES

Two methods for procuring consultant services are available for the *[City of Lander]* use. The use of each method is limited depending on the estimated cost of the proposed services; these administrative controls are presented as an introductory paragraph to each procurement method/agreement type.

A. Small Agreement – Estimated Cost at or less than the SAT

The use by the *[City of Lander]* of a small agreement is limited to consultant services with an estimated cost at or less than the SAT, including the original agreement cost and subsequent agreement modifications. Small agreements can be used for non-federal and federal funded services, and for A & E and non-A & E services.

A preliminary cost estimate will be prepared for use as required in SECTION VIII – NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL.

The *[City of Lander]* will make an informal consultant selection utilizing a consultant list obtained from WYDOT Engineering Services or a list generated by the *[City of Lander]*. A minimum of three consultants must be evaluated leading to a qualification-based

selection. The evaluation should use information available from the consultant's Statement of Interest, and if needed, that information can be supplemented with interviews, or written or oral discussion with each firm.

If less than three qualified consultants are available, the *[City of Lander]* will proceed with evaluation and selection when assured that the selected consultant has the minimum qualifications to complete the agreement type of services and has the experience necessary to satisfactorily perform the required services.

The basis for selection will be documented. The following items should always remain under consideration to conclude that a consultant firm has the minimum qualifications to complete the proposed project scope of work:

1. The consultant shall have an exemplary ethical and professional reputation.
2. The consultant's employees shall have levels of education, training, and experience necessary to perform the required services satisfactorily.
3. Professional services provided to the *[City of Lander]* require that the consultant employee overseeing the work and the consulting firm be licensed, if required by the applicable State Board.
4. The consultant shall be established in the area of expertise for which the firm is being considered, with recent work experience in a responsible role.

After the consultant selection, the *[City of Lander]* shall follow procedures outlined in SECTION V – APPROVAL OF CONSULTANT prior to proceeding with the process of negotiating the agreement with the selected consultant.

A detailed scope of work shall be prepared, often by the selected consultant. The consultant shall submit a fee proposal including proposed billing rates, estimated units of work, and the total proposed fee. The *[City of Lander]* will negotiate and prepare an agreement for execution.

Execution of the agreement will follow procedures outlined in SECTION X – EXECUTION OF THE AGREEMENT.

B. Large Agreement – Cost greater than the SAT

The use by the *[City of Lander]* of a large agreement is required for consultant services with an estimated cost greater than the SAT, including the original agreement cost and

subsequent agreement modifications. Large agreements can be used for non-federal and federal funded services, and for A & E and non-A & E services.

When the *[City of Lander]* requires consultant services and proposes to use this large agreement, the following requirements apply.

A preliminary cost estimate will be prepared for use as required in SECTION VIII – NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL. For architectural and engineering services directly leading to construction, as defined in SECTION I – INTRODUCTION, the cost estimate must establish major elements of agreement costs: labor hours by work type and classifications of labor, direct salaries by labor classifications, other direct costs, anticipated indirect cost rates, and anticipated fixed fees (profit). This estimate will be used as the basis for negotiation. For all other services, the preliminary cost estimate can be less formal.

The *[City of Lander]* will direct the procurement process in coordination with the WYDOT Local Government Office and an appointed selection committee.

An early action will be to appoint participants to a selection committee. The committee should consist of at least three members, but generally not more than five members. The *[City of Lander]* should select committee members who can best evaluate consultant qualifications, but without previous experiences that could potentially influence their actions leading to a conflict of interest. Each committee member will ensure that he or she has no possible conflict of interest that may influence the evaluation, ranking, and selection process. If a conflict of interest may exist, the committee member will be excused from serving on the committee.

A pre-selection meeting will be conducted to establish the requirements of the RFP and the public announcement/advertisement to be used to assure that consultants have fair opportunity to be considered for award of the agreement.

The *[City of Lander]* may solicit project-specific letters of interest through a public announcement, public advertisement, or any other public forum or method (such as soliciting firms on a consultant list obtained from WYDOT Engineering Services) that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered. A minimum seven day announcement period is required.

The selection committee will determine a short list of firms from the respondents to the public announcement/advertisement to receive the RFP. If enough firms respond, a minimum of five firms should be short-listed.

Alternatively, the *[City of Lander]* may go directly to the RFP process and consider all the proposals submitted.

The RFP will include the following requirements and information to provide direction for the content of consultant proposals. The RFP requirements and information will not include any condition that would limit competition and the resulting number of proposals.

1. Detailed scope of work, including a preliminary project purpose and description.
2. Technical requirements: specific services; deliverables; applicable policies and guides; proposed standards, criteria, specifications, or contracting requirements; proposed schedule for completion of agreement work.
3. Evaluation and weighting factors to be used for the ranking and selection based on consultant competency and qualifications.
4. The anticipated schedule leading to consultant selection. The schedule should identify consultant submittal dates using a minimum of 14 calendar days from issuance of the RFP, but set to assure that interested firms have sufficient time to receive the RFP, and prepare and submit a proposal.
5. The type of agreement to be used and the basis for compensation.
6. Address potential discussions with interested firms after submittal of their proposal, if any, directed to clarification of technical requirements or approach, qualifications, or capability. Based on the size and complexity of the project, it may be beneficial to the selection committee to have one-on-one discussions with all or some of the qualified firms (minimum of three). The intent and structure of these discussions, if needed, should be outlined in the RFP.
7. Consultant proposal shall include additional submittals concerning proposed subconsultants.
8. Consultant cost proposals, if requested, should be included in a concealed format that is clearly separate from the technical proposal.

The RFP should provide an adequate number of consultant proposals. When three or more qualified firms respond, the *[City of Lander]* will proceed with consultant ranking and selection. If less than three firms respond, the *[City of Lander]* may proceed with ranking and selection of a qualified firm or may elect to re-distribute the RFP in an attempt to gain additional proposals. In the event the response to an RFP does not result in either qualified or competitive firms, the *[City of Lander]* may pursue other

contracting options, including non-competitive, to procure professional services. The *[City of Lander]* will coordinate with the WYDOT grant administrator prior to non-competitive selection of a consultant.

After receipt of consultant responses to the RFP, the final selection meeting will be held. The selection process will include a series of actions taken by the *[City of Lander]*.

1. Review RFP proposals to assure they are complete.
2. Distribute the supporting information outlined in SECTION III(B) – Large Agreement – Cost greater than the SAT, to include the RFP, all consultant proposals, and each consultant’s Letter of Interest, if applicable.
3. Assist the selection committee, as needed, to complete the evaluation, ranking, and selection process.
4. Notify, subsequent to consultant selection, all consultants responding to an RFP of the final ranking of the three most highly qualified consultants.
5. Properly dispose as necessary, subsequent to consultant selection, the concealed cost proposals of the unsuccessful consultant firms.
6. Retain documentation supporting the solicitation, RFP, proposals, evaluation, and selection of the consultant firm.

The selection committee completes the evaluation and selection process by using the supporting information for each evaluation factor and then developing an overall score and subsequent ranking. The committee must rank in order of preference at least the three most highly qualified firms, leading to final selection. If less than three qualified firms respond to the RFP and it is concluded that the responding firms represent those firms available to meet the requirements of the RFP, the evaluation and selection will be completed.

The selection committee may not use a consultant’s cost components – consultant fee proposal, direct salaries, direct costs, and indirect cost rates – as a factor in the evaluation, ranking, or selection process for federal funded A & E services. Federal funded non-A & E services may, or may not, use cost as an evaluation factor.

The following items should always remain under consideration to conclude that a consultant firm has the minimum qualifications to complete the proposed project scope of work:

1. The consultant shall have an exemplary ethical and professional reputation.
2. The consultant's and subconsultant's employees shall have levels of education, training, and experience necessary to perform the required services satisfactorily.
3. Professional services provided to the *[City of Lander]* require that the consultant employee overseeing the work and the consulting firm be licensed, if required by the applicable State Board.
4. The consultant shall be established in the area of expertise for which the firm is being considered, with recent work experience in a responsible role.

During this process, an unqualified consultant firm may be dismissed from further consideration.

After the consultant selection, the *[City of Lander]* shall follow procedures outlined in SECTION V – APPROVAL OF CONSULTANT prior to proceeding with the process of negotiating the agreement with the selected consultant.

The final scope of work may be refined through negotiations with the selected consultant. The consultant shall submit a fee proposal including proposed billing rates, estimated units of work, and the total proposed fee. The *[City of Lander]* will negotiate and prepare an agreement for execution.

Execution of the agreement will follow procedures outlined in SECTION X – EXECUTION OF THE AGREEMENT.

SECTION V. APPROVAL OF CONSULTANT

After the selection committee or the *[City of Lander]* authorized representative has completed the procurement process, the *[City of Lander]* shall submit, in writing, the selected consultant's name to the WYDOT grant administrator for approval. The WYDOT grant administrator's approval authorizes the process of negotiating the agreement with the selected consultant.

The WYDOT grant administrator will initiate a pre-negotiation audit, if necessary (see SECTION VII – PRE-NEGOTIATION AUDIT EVALUATION).

The *[City of Lander]* will maintain a correspondence file for each consultant services agreement documenting all aspects of the selection and approval process.

SECTION VI. AGREEMENT TYPE, BASIS FOR COMPENSATION, PAYMENT

Contractual requirements and the method of payment to direct and compensate the consultant will be established by agreement. An agreement type and basis for compensation will be selected as the need for consultant services is developed, as presented in SECTION III – CONSULTANT NEED AND OTHER SUPPORTING INFORMATION.

A. Agreement Types. An agreement type will be selected by the *[City of Lander]*.

1. **Project Specific.** This will be used with a defined scope of work and the related consultant services when these services are directed to one or more specific projects.
2. **Multi-Phase.** This can be used, similar to Project Specific, when the *[City of Lander]* determines that a consultant's services should be divided into defined phases to gain better definition of the scope of work and related consultant services. Each phase would require a separate cost estimate.

B. Basis for Compensation. The method of payment to compensate the consultant will be specified in the agreement. It may establish a single method for all work or may be better administered with different methods for different elements of work.

1. **Cost Plus Fixed Fee.** Cost reimbursement includes actual costs payable for direct labor and indirect labor (overhead) as established in the agreement, plus direct reimbursable expenses. Cost reimbursement also includes a negotiated fixed fee, established in the agreement, and is calculated to cover the consultant's profit. Billing rates established in the agreement shall be used for all billings and a maximum amount payable will be established.

Cost plus percentage of cost and percentage of construction cost cannot be used as a basis for compensation.

2. **Lump Sum.** May only be used when the scope of work and the duration of work can be accurately established, and an estimate of cost, including fixed fee, can be calculated with reasonable accuracy at the time of negotiation with the selected consultant.
3. **Unit of Work.** May be used when a unit cost of work can be determined in advance with reasonable accuracy, but the extent of work is indefinite. Quantities and characteristics of each unit should be uniform, and a maximum amount payable will be established.

4. **Specific Rates for Compensation.** The specific rates for compensation will provide for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and profit, plus any other direct expenses or costs. This method of payment will be used for those types of services and agreements that establish a maximum amount payable and provide the *[City of Lander]* direct control of the number of consultant labor hours and resultant cost.

Specific Rates may also be used when a consultant's services are required to perform work that cannot be estimated for extent, duration, or cost.

Consistent with all consultant agreements, a *[City of Lander]* representative will monitor the consultant's performance of services to include labor hours, and classification/pay rate of consultant employees used to perform agreement services.

- C. **Consultant Payments and Retainage:** Periodic progress payments will be made for work satisfactorily completed based on invoice submittals to the *[City of Lander]*.

All agreements shall include provisions that require the consultant to make prompt payment to subconsultants within 30 calendar days from receipt of payment from the *[City of Lander]* (49 CFR 26.29). These provisions will advise the consultant to be prepared, if requested, to provide documentation that payment has been made for work satisfactorily completed by a subconsultant. These provisions will also notify the consultant that failure to make prompt payment may be addressed by the *[City of Lander]* as presented in the written procedures in ATTACHMENT 2 – BREACH OF AGREEMENT.

The *[City of Lander]* may withhold retainage from payments, including final payment, if specified in the agreement.

SECTION VII. PRE-NEGOTIATION AUDIT EVALUATION

Pre-negotiation audits are generally performed on first-time consultants, consultants with outdated audits, or as required by WYDOT Internal Review Services. A risk assessment will be performed by WYDOT Internal Review Services to determine if an audit is required and, if so, the type of audit required. An audit report or comparable correspondence will be provided by WYDOT Internal Review Services to the *[City of Lander]* for use in negotiating the consultant agreement.

SECTION VIII. NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL

Approval of the selected consultant in accordance with SECTION V – APPROVAL OF CONSULTANT authorizes the process of negotiating the agreement and cost proposal with the selected consultant.

The *[City of Lander]* will work with the consultant to finalize the scope of work, if needed, and initiate negotiations with the consultant for a final cost proposal. A draft agreement, including the scope of work, is provided to the consultant with instructions for preparing the cost proposal. The consultant is advised at the beginning of negotiations that selection is subject to arriving at a satisfactory agreement for terms and fees, and that the *[City of Lander]* assumes no obligation to the consultant until the agreement is executed.

The consultant's use of subconsultants is allowed only with written approval from the *[City of Lander]* of the proposed subconsultants. The consultant shall describe the work to be done by the subconsultant in the fee proposal, assure incorporation of required agreement provisions into the subconsultant agreement (SECTION IX – AGREEMENT PROVISIONS) and include a cost for the subconsultant's proposed work. The *[City of Lander]* may request a detailed proposal for subconsultant work to include proposed labor rates and direct costs. The cost proposal and included rates will be evaluated for reasonableness. If the subconsultant has a WYDOT-approved audit or approved billing rates, those rates shall be used.

A consultant's fee proposal will be compared to the cost estimate done by the *[City of Lander]*, including careful attention to proposal details. The consultant's fixed fee (profit) will be negotiated separate from other negotiations.

The consultant's or subconsultant's proposed indirect cost rate shall be certified by each firm's chief executive or financial officer as being allowable in accordance with federal cost principles. Each firm's certification shall read as required by WYDOT Internal Review Services.

A consultant's schedule for completing the work, if different from the schedule proposed by the *[City of Lander]*, will be reviewed to assure that the established duration of the agreement permits completing the work in a time frame acceptable to the *[City of Lander]*. When the consultant's fee proposal and the duration of the agreement are acceptable, the agreement is finalized and executed.

If the consultant's proposed fee or schedule varies substantially from the estimate or schedule of the *[City of Lander]*, the items of variance are identified and discussed to resolution. After agreeing on the agreement terms and fees, the consultant submits a final cost proposal.

The *[City of Lander]* will maintain documentation of the negotiation process.

If the selected consultant and the *[City of Lander]* cannot reach a satisfactory agreement, the *[City of Lander]* will cease negotiations and notify the consultant and the WYDOT grant administrator. The *[City of Lander]* will then initiate negotiations with the next highest ranked consultant or, at its option, initiate a new procurement process.

SECTION IX. AGREEMENT PROVISIONS

The *[City of Lander]* will determine the consultant agreement type, the basis for compensation, terms of the agreement, and the required provisions, clauses, assurances, and/or certifications to ensure compliance with state and federal laws, regulations and requirements.

Each agreement will:

1. Name the authorized representative of the *[City of Lander]*.
2. Outline the representative's administrative responsibilities.
3. Identify the project location.
4. Present the scope of work and consultant deliverables.
5. Provide for applicable plans and specifications.
6. Authorize commencement of work.
7. Specify fees and payments based on consultant's progress reports.
8. Specify completion of work by number of calendar days or the calendar date by which all required services shall be completed.

Each agreement will outline data, services, and obligations of the *[City of Lander]* as related to the consultant's performance of required services.

Federal General Provisions will be physically incorporated or incorporated by reference into consultant agreements funded with federal funds. These Provisions will apply to the consultant and all subconsultants engaged by the consultant. ATTACHMENT 1 – FEDERAL GENERAL PROVISIONS presents applicable Federal General Provisions and administrative procedures.

ATTACHMENT 2 – BREACH OF AGREEMENT presents written procedures to administer breach of the agreement.

The *[City of Lander]* reserves the right to terminate any agreement, as described in the agreement. In this event, compensation is made to the consultant based upon the progress of the work performed prior to termination. Work performed shall be defined as the deliverables specified in the agreement and accepted by the *[City of Lander]*, and not the labor hours billed. The *[City of Lander]* will notify the consultant, in writing, of agreement termination.

SECTION X. EXECUTION OF THE AGREEMENT

The *[City of Lander]* will prepare the final agreement for execution by all parties.

Agreements will conform to the state contract requirements as published by the Wyoming Attorney General's office, or as directed by the assistant attorney general assigned to WYDOT.

All agreements shall be forwarded to the WYDOT grant administrator for approval before execution.

Agreements subsidized with federal funds will be made available to the appropriate federal agency upon request. The Federal Highway Administration (FHWA) and the Federal Aviation Administration (FAA) have currently delegated their approval authority to WYDOT.

Agreements shall be executed by the consultant and the *[City of Lander]*.

SECTION XI. AUTHORIZATION TO PROCEED

Once the consultant agreement is finalized and executed, the *[City of Lander]* will notify the consultant using a written "Authorization to Proceed" to commence work.

Consultant services cannot proceed before the "Authorization to Proceed" is issued.

SECTION XII. AGREEMENT MODIFICATIONS

The *[City of Lander]* or the consultant may, during performance of the agreement, propose agreement modifications within the type of services under which the original agreement was procured. Changes in the scope, complexity or quantity of the work, or if changes causing an increase or decrease in agreement fees or time for performance are required, an equitable adjustment in fees and/or contract time will be negotiated with the consultant. Any additional services outside of the original agreement type of work will be procured under a new procurement process.

If changes are required in the agreement, a written request shall be made by the consultant to the *[City of Lander]* and negotiated between the consultant and the *[City of Lander]*. The agreement will then be amended using documentation issued by the *[City of Lander]*. Agreement

modifications must define and document the changes made to the agreement, establish any adjustment in agreement fees and payment, establish any adjustment in completion date, and be in compliance with terms and conditions of the original agreement. An adjustment in agreement fees and payments will be negotiated, as outlined in SECTION VIII – NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL, including the fixed fee, if warranted.

If the consultant is unable to complete the work within the number of calendar days or the calendar date required by the agreement, the *[City of Lander]* may authorize a schedule modification after receiving the consultant’s written request showing sufficient justification for an extension in time to complete agreement required services. In some cases, the *[City of Lander]* may initiate the schedule modification, especially when the *[City of Lander]* has delayed progress. If the schedule modification is significant, the agreement will then be amended to specify an additional number of days or revised calendar date, and the *[City of Lander]* will document the approval action with a formal change order. Minor changes in schedule, without adjustment in agreement cost, can be accepted by the *[City of Lander]* with informal documentation.

All agreement modifications shall be forwarded to the WYDOT grant administrator for approval before execution.

Consultant work shall not begin on any change in services until the agreement modification describing those services and fee has been executed. Services performed without prior request and authorization are deemed to be covered in the compensation and time provided in the original agreement and previously executed change orders.

For those agreements processed consistent with SECTION IV(A) – Small Agreement – Estimated Cost at or less than the SAT, in no case will subsequent change orders be permitted to cause the total fee to exceed the SAT if federal funds are involved. Exceeding the SAT limitation may jeopardize federal participation in the change order or the entire agreement amount. If federal funds are not involved, the *[City of Lander]* should contact the WYDOT grant administrator, and they will review the circumstances and make a determination regarding escalation of the agreement above the SAT.

SECTION XIII. AGREEMENT ADMINISTRATION

The agreement for consultant services will identify the representative for the *[City of Lander]* as the primary contact through which the consultant will coordinate all phases of agreement work, terms and conditions. The *[City of Lander]* representative will:

1. Monitor the consultant’s work and acceptability of work, in compliance with the agreement.

2. Monitor the consultant's work progress – work performed versus agreement completion date – in compliance with the agreement.
3. Ensure the consultant's labor hours and fees are in accordance with the agreement and the percent of the contract total being invoiced is commensurate with the progress of the work.
4. Address consultant correspondence and resolve administrative issues.
5. Monitor the consultant and subconsultant(s) for compliance with ATTACHMENT 1 – FEDERAL GENERAL PROVISIONS, if required by the Agreement.
6. Administer breach of agreement, when required, consistent with procedures presented in ATTACHMENT 2 – BREACH OF AGREEMENT. Consult with the WYDOT grant administrator before initiating procedures leading to breach of agreement.
7. Close-out agreement when all work deliverables have been accepted and all consultant billings have been accepted.

The *[City of Lander]* will maintain a correspondence file for each consultant services agreement, documenting all aspects of the selection, negotiation, and administration processes. The *[City of Lander]* will retain such records for at least three (3) years following agreement completion or termination.

SECTION XIV. FINAL PERFORMANCE EVALUATION

When the consultant services specified in the agreement are completed and accepted, the *[City of Lander]* will evaluate the consultant's performance. This evaluation should consider such factors as the consultant's performance on specific elements of work, promptness in meeting schedules and deadlines, cooperation with the *[City of Lander]*, and overall performance in delivery of the agreement terms and conditions. Documentation will be prepared and provided to the consultant, and request consultant comments on the evaluation. Subsequently, a copy of the final evaluation documentation will be provided to the WYDOT grant administrator.

SECTION XV. ADMINISTRATION, COST PRINCIPLES, AUDIT REQUIREMENTS

The administrative policies and procedures of the *[City of Lander]* for the consultant selection process are presented throughout this document. The *[City of Lander]* is responsible for the oversight and administration of these policies and procedures. The WYDOT Internal Review Services program is responsible for the audit requirements.

References:

- 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Services.
- 23 USC 112(b)(2), Contracting for Engineering and Design Services.
- 40 USC 11, Sections 1101-1104, Selection of Architects and Engineers.
- 48 CFR 2.101, Federal Acquisition Regulations System, Definitions of Words and Terms, Definitions.

ATTACHMENT 1

FEDERAL GENERAL PROVISIONS

The below General Provisions shall also apply to all subconsultants engaged by the Consultant.

SECTION A. ASSUMPTION OF RISK

The Consultant shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Consultant's failure to comply with state or federal requirements. The *[City of Lander]* shall notify the Consultant of any state or federal determination of noncompliance.

SECTION B. AUDITING AND ACCESS TO RECORDS

The *[City of Lander]* and its representatives shall have access to any books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Agreement.

SECTION C. BREACH OF AGREEMENT

The Consultant agrees to provide all professional services as required by the terms, conditions, provisions, and obligations of this Agreement. Failure by the Consultant to perform as required by the terms, conditions, provisions, or obligations of this Agreement shall constitute a breach of contract. The *[City of Lander]* shall consider a Consultant's failure to perform as a material breach of contract when it can be determined that the terms, conditions, provisions, or obligations of the Agreement will not be completed and the *[City of Lander]* will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. A material breach may result in remedies as the *[City of Lander]* deems appropriate, which may include, but are not limited to:

1. Termination as provided in SECTION T – TERMINATION OF AGREEMENT;
2. Withholding monthly progress payments;
3. Assessing damages/sanctions;
4. Disqualifying the Consultant from future solicitations; and/or
5. Legal remedy.

SECTION D. CERTIFICATION FOR LIMITATIONS ON LOBBYING ACTIVITIES

This provision is applicable to all Agreements exceeding One Hundred Thousand dollars (\$100,000). By signing this Agreement, the Consultant certifies and agrees that, to the best of their knowledge:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION E. COMPLIANCE WITH LAWS

The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

SECTION F. CONFLICTS OF INTEREST

1. The Consultant shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which may result in a disadvantage to the *[City of Lander]* or a disclosure which may adversely affect the interests of the *[City of Lander]*. This provision does not prohibit or affect the Consultant's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
2. A conflict of interest may be considered a material breach of this Agreement. A material breach under this section may result in remedies as provided in SECTION C – BREACH OF AGREEMENT. In the event the Agreement is terminated under this provision, the Consultant shall take steps to insure that the file, evidence, evaluation and data are provided to the *[City of Lander]* or its

designee.

3. The Consultant shall notify the *[City of Lander]* of any potential or actual conflicts of interest, including financial or other personal interests, arising during the course of the Consultant's performance under this Agreement. This Agreement may be terminated in the event a conflict of interest arises. Termination of this Agreement will be subject to a mutual settlement of accounts. In the event this Agreement is terminated under this provision, the Consultant shall take steps to ensure that all files, evidence, evaluations, and data are provided to the *[City of Lander]* or its designee.

SECTION G. DETERMINATION OF ALLOWABLE COSTS

The Consultant shall assure, prior to submittal of periodic progress payments, that all costs are in accordance with federal cost principals as provided in 48 CFR 31. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION H. DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR 26 in all subconsultant contract documents.

Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION I. ENVIRONMENTAL POLICY ACTS

The Consultant agrees all activities under this Agreement shall comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

SECTION J. ERRORS AND OMISSIONS

The Consultant shall be responsible for assuring that professional services provided under this Agreement are accurate and without mistakes or omissions. The Consultant shall endeavor to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The *[City of Lander]* shall notify the Consultant at the earliest possible time of the professional services which require corrective action and the Consultant, by mutual agreement with the *[City of*

Lander] and without additional compensation, shall correct those services. Failure by the Consultant to carry out these requirements may be considered, in the sole discretion of the *[City of Lander]*, a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION K. HUMAN TRAFFICKING

As required by 22 USC 7104(g), 2 CFR 175, and 48 CFR 52.222-50 (Amended March 2015), severe forms of human trafficking, procurement of commercial sex acts, and the use of forced labor are prohibited. The March 2015 amendments expand the original requirements and introduce a list of specific types of conduct that are prohibited. The amendments modify mandatory disclosure obligations and specify the minimum level of cooperation required of consultants responding to a trafficking investigation. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION L. KICKBACKS

The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Consultant breaches or violates this warranty, the *[City of Lander]* may, at its discretion, terminate this Agreement without liability to the *[City of Lander]*, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

SECTION M. MANDATORY DISCLOSURES

The Consultant shall disclose, in a timely manner, in writing, to the *[City of Lander]* all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Failure to make required disclosures can result in remedies for non-compliance including suspension or debarment.

SECTION N. MONITORING ACTIVITIES

The *[City of Lander]* shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its subconsultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the Agreement-related work.

SECTION O. OWNERSHIP AND RETURN OF DOCUMENTS AND INFORMATION

The *[City of Lander]* is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Consultant in the performance of this Agreement. Upon termination of services, for any reason, the Consultant agrees to return all such original and derivative information and documents to the *[City of Lander]* in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers.

SECTION P. PATENT OR COPYRIGHT PROTECTION, AND RIGHTS IN DATA

The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Consultant or its subconsultants shall violate any such restriction. The Consultant shall defend and indemnify the *[City of Lander]* for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Copyrighting or other exclusions placed on any documents or materials developed by the Consultant, its sublets, agents or assigns under this Agreement are prohibited.

Data produced, furnished, acquired, or used in meeting the terms and conditions of this Agreement shall be available to the *[City of Lander]*, WYDOT and/or the federal funding agency with unlimited rights. Data means all recorded information, regardless of form, to include both technical – scientific or technical nature - and computer software information. It does not include information related to administration of the Agreement such as financial, cost or pricing, or management information. Unlimited rights means that the *[City of Lander]*, State or federal agency has the right to use, disclose, reproduce, and distribute the data in any manner and for any purpose, and to permit others to also have unlimited rights. Meanings and uses described in this SECTION P are superseded and/or supplemented by 48 CFR 52.227-14.

SECTION Q. PROFESSIONAL REGISTRATION

The Consultant shall endorse, if required by law, plans and reports prepared under this Agreement, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the State of Wyoming.

SECTION R. PUBLICITY

Any publicity given to the projects, program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Consultant and related to the services and

work to be performed under this Agreement, shall identify the *[City of Lander]*, WYDOT and the federal funding agency as the sponsoring agencies and shall not be released without prior written approval of the *[City of Lander]*.

SECTION S. SUSPENSION AND DEBARMENT

By signing this Agreement, the Consultant certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the disbarred, or otherwise ineligible, vendors list at www.sam.gov/portal/public/SAM/. Further, the Consultant agrees to notify the *[City of Lander]* by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION T. TERMINATION OF AGREEMENT

The *[City of Lander]* may terminate all or part of the Agreement, without cause, upon thirty (30) days written notice. The Agreement may be terminated by the *[City of Lander]* immediately for cause if the *[City of Lander]* determines that the Consultant has failed to perform as required by the terms, conditions, provisions, or obligations of the Agreement – Termination for Cause or Breach – or the *[City of Lander]* determines that termination is in the public’s best interest – Termination on Public’s Behalf/Convenience. In either event, compensation shall be made to the Consultant based upon the progress of the work performed prior to termination.

Work performed shall be defined as the deliverables specified in the Agreement and accepted by the *[City of Lander]*, and not the labor hours billed. The ownership of the work completed or partially completed at the time of such termination or abandonment shall be retained by the *[City of Lander]*.

The *[City of Lander]* shall notify the Consultant, in writing, of Agreement termination.

SECTION U. TITLE VI ASSURANCES FOR NON-DISCRIMINATION

The Consultant agrees to comply with the requirements of the nondiscrimination clauses as described in the U.S. Department of Transportation (DOT) Order 1050.2.

(In addition to the Federal General Provisions listed above, additional provisions available from WYDOT shall be used in all consultant contracts which utilize Federal Transit Administration funding.)

ATTACHMENT 2

BREACH OF AGREEMENT (Administrative Written Procedures)

Consultant agreements will incorporate Federal General Provisions regarding breach of agreement consistent with 23 CFR 172 and 2 CFR 200. These Regulations require written procedures to address contractual, legal, and administrative remedies including sanctions and penalties where consultants breach agreement terms, conditions, provisions, or obligations. For purposes of these written procedures, the Agreement terms, conditions, provisions, or obligations will be referred to as Agreement Services.

Numerous Federal General Provisions will be administered using these written procedures. For purposes of administering consultant agreements, breach of agreement may result when analyzing a consultant's professional services under any of the following Federal General Provisions:

ATTACHMENT 1, FEDERAL GENERAL PROVISIONS

SECTION C. BREACH OF AGREEMENT
SECTION D. CERTIFICATION FOR LIMITATIONS ON LOBBYING ACTIVITIES
SECTION F. CONFLICTS OF INTEREST
SECTION G. DETERMINATION OF ALLOWABLE COSTS
SECTION H. DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE
SECTION J. ERRORS AND OMISSIONS
SECTION K. HUMAN TRAFFICKING
SECTION S. SUSPENSION AND DEBARMENT

The consultant's responsibility to make prompt payment to subconsultants will be administered through these written procedures, as required by SECTION VI(C) – Consultant Payments and Retainage and the consultant agreement.

Contractual Remedy

Contractual remedy is provided when the above provisions are physically incorporated, or incorporated by reference, into an executed Agreement. Additionally, contractual remedy requires the physical incorporation of ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

Legal Remedy

Legal remedy is provided by the physical incorporation of ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION E – COMPLIANCE WITH LAWS and enforcement of the Agreement as governed by the laws of the State of Wyoming.

Administrative Procedures, Sanctions, and Penalties

[City of Lander] concerns with consultant performance and/or adherence to Agreement Services will most often be resolved through the coordination and resolution efforts as outline in SECTION XIII – AGREEMENT ADMINISTRATION of this document. The authorized representative/ primary contact of the *[City of Lander]* should document all administrative issues and subsequent resolutions, from start to completion of the Agreement.

There may be an occurrence when a cooperative and acceptable resolution cannot be reached between the *[City of Lander]* and the Consultant. At those occurrences, the *[City of Lander]* will typically make the determination that the Consultant has failed to perform Agreement-required acceptable work, has failed to progress in the performance of Agreement Services, or has not and will not comply with General Provisions. When that determination concludes that the Agreement Services cannot be completed and the *[City of Lander]* will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables, the threshold for a material breach of agreement has been reached and will invoke ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION C – BREACH OF AGREEMENT and the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

A *[City of Lander]* determination that the Consultant has failed to perform Agreement-required acceptable work, has failed to progress in the performance of Agreement Services, or has not and will not comply with General Provisions will need to be supported by the *[City of Lander]* documentation of monitoring activities as allowed by ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION N – MONITORING ACTIVITIES. Issues concerning the Consultant’s billing of allowable costs should be evaluated in accordance with ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION B – AUDITING AND ACCESS TO RECORDS.

The threshold for a material breach of agreement requires that the Consultant has failed to perform Agreement Services and that the *[City of Lander]* has or will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. Both represent a high threshold to assure an acceptable outcome and, as a result, the *[City of Lander]* representative through monitoring activities must identify and document unresolved issues early in the Agreement, before either the Consultant or the *[City of Lander]* has incurred substantial cost or time. All unresolved issues should be promptly addressed, either reaching resolution,

arriving at reasonable penalties/sanctions, or concluding breach of agreement with the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

Penalties and/or sanctions typically available to the *[City of Lander]* would be structured as 1) compensatory damages, 2) specific performance, or 3) termination.

Damages, based on additional cost or time incurred by the *[City of Lander]*, could be quantified and pursued. Damages, based on lost opportunity incurred by the *[City of Lander]*, may be more difficult to quantify. Lost opportunity could include *[City of Lander]* delays in the delivery of supplemental work or successor agreements for work, or delay in the year of project construction and the related increased construction costs. Other lost opportunities may be identified and quantified.

Specific performance would require the Consultant to pursue Agreement Services, with adjustment to allowable costs. Specific performance would be used as a remedy, either prior to or for breach of agreement, if the work required by the Agreement required special expertise, is an emergency, or is only available from a single or restricted number of firms. In those cases, damages would not suffice to place the *[City of Lander]* in as good a position as it would have been had the breach not occurred.

Termination of the Agreement is presented in ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT. The *[City of Lander]* may terminate the Agreement, and either pursue restitution or not pursue restitution. Restitution, as a remedy, means that the *[City of Lander]* is put back in the position it was in prior to the breach; without restitution, the Agreement is terminated with both the Consultant and the *[City of Lander]* no longer under any Agreement obligation.

Signature

Date