

AGREEMENT TO FURNISH ENGINEERING SERVICES
to
CITY OF MILES CITY
for
5-YEAR GENERAL ENGINEERING SERVICES - 2026

For the consideration hereinafter set forth, ROBERT PECCIA & ASSOCIATES, INC. (hereinafter referred to as the Engineer) agrees to provide engineering and related services as described herein to the CITY OF MILES CITY (hereinafter referred to as the Client) for a project generally described as follows (hereinafter the Project):

5-Year General Engineering Services – General engineering services and related services necessary for roads, bridges, trails, water, wastewater, storm sewer, solid waste, annexations, floodplain, subdivision reviews, site development, environmental reviews, miscellaneous public works and utilities projects and inspections, preliminary studies, funding applications, zoning, surveying, preliminary and final design, bidding, construction administration and inspection work.

ARTICLE 1 - SCOPE OF SERVICES

The Engineer agrees to provide engineering and related services for the Client's Project. The services to be provided, and the compensation for such services, shall be as mutually agreed to in separate Task Orders to this Agreement executed by both parties. Unless otherwise indicated in a Task Order, execution of a Task Order by the Client shall constitute notice to and authorization for the Engineer to proceed with the services enumerated in the Task Order. The Engineer shall have no other obligations or responsibilities for the Project except as agreed to in writing.

ARTICLE 2 - BASIS OF COMPENSATION

A. COMPENSATION

As a consideration for providing the services covered under this Agreement, the Client shall pay the Engineer a lump sum fee or the Engineer's current salary cost, overhead, and direct costs, plus a fixed fee, whichever is appropriate, as described in each Task Order.

B. BUDGET

The budget for the Scope of Services as established in each Task Order shall be negotiated by the parties at the time each service is authorized.

C. CHANGE OF SCOPE

The Scope of Services and its related budget for each Task Order shall be limited to the scope and budget expressly set forth in the Task Order. Changes in the indicated Scope of Services shall be subject to renegotiation and shall be implemented by a formal amendment to the appropriate Task Order.

D. BASIS OF COSTS

The budgets listed in the Task Orders are based on salaries and expenses estimated for completing the work in the time frames indicated in each Task Order. Should the services scheduled be delayed because of circumstances beyond the reasonable control of the Engineer, the parties will renegotiate the Engineer's compensation to provide for additional costs of service.

The Client recognizes that in the course of completing the services under this Agreement, the Engineer may encounter conditions which are beyond the control of the Engineer and thus creating potential for claims and additional costs to the Engineer which are not covered in fees charged and earned for services provided. This category includes, but is not limited to the following:

1. Professional services relating to the disposal of hazardous wastes, or the encountering of hazardous wastes during the performance of design and construction of the project.
2. Unknown underground utilities or other man-made underground objects not properly located.
3. Unavoidable contamination of subsurface areas, aquifers, etc. or the disturbance of natural underground resources during the design and construction of the project.
4. Changes in statutes, codes, regulations or standards that occur during the course of design or the work.
5. Information provided by others which is not accurate or complete.
6. Physical or environmental conditions that may arise and differ materially from those existing at the beginning of the Project

Should any such condition occur during the performance of this Agreement, the Client hereby waives any claim against the Engineer and agrees to defend, indemnify and hold the Engineer harmless from any claim or liability for injury or loss allegedly arising from the Engineer encountering of said conditions other than claims or liability arising from the sole negligence or willful misconduct of the Engineer. The Client agrees to compensate the Engineer for any time spent and expenses incurred by the Engineer in defense of any such claim with such compensation based upon the Engineer's prevailing fee schedule and expense reimbursement policy.

E. ADDITIONAL SERVICES

Additional services not specified in Article 1, but subsequently requested by the Client, shall be included in the appropriate Task Order or a separate Task Order shall be written for the additional services.

F. ALTERNATIVE DESIGNS

If the Client directs that competitive bids be taken for construction of alternative designs where this involves the preparation of designs, drawings, and specifications for alternative facilities not previously agreed to, the compensation to the Engineer shall be on the basis of an additional

payment to be mutually negotiated at the time the Client directs that alternative designs, drawings, and specifications be prepared.

G. LITIGATION ASSISTANCE

Engineer will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event Engineer is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse Engineer for its costs and compensate Engineer at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and other similar or related tasks.

ARTICLE 3 - PAYMENT FOR SERVICES

Payment to the Engineer, as prescribed in Article 2, shall be made as follows:

A. PAYMENT FOR SERVICES

Payment is due within 30 days after receipt of billing of the amount due for each service rendered. Engineer may suspend performance of services upon ten (10) calendar days' notice to the Client for failure of payments when due, or for any other breach of this Agreement. Engineer shall not have any liability whatsoever to the Client for any costs or damages as a result of such suspension. If Engineer resumes services after payment by Client, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Engineer to resume performance. If an invoice remains unpaid for more than 90 days, Engineer shall have the right, but not the obligation, to initiate collection procedures.

B. NO OFFSET

The Client shall not withhold amounts from the Engineer's compensation to impose a penalty or liquidated damages on the Engineer, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Engineer agrees in writing, or has been found liable for the amounts in a binding dispute resolution proceeding.

C. INTEREST

If payment of the amounts due or any portion thereof is not made as prescribed above, interest on the unpaid balance will accrue at the rate of one percent (1%) per month and become due and payable at the time said overdue payments are made, unless delay in payment is due to improper, contested, or inadequate billing procedures followed by the Engineer. If the Engineer has to retain an attorney to assist in recovering amounts due under this Agreement, Engineer also shall be entitled to recover reasonable attorney's fees and costs.

ARTICLE 4 - OBLIGATIONS OF THE ENGINEER

A. AUTHORIZATION TO PROCEED

The Engineer will not begin work on any of the services listed in Article 1 until the Client directs them to proceed. Authorization to proceed on work elements under this Agreement as to scope, cost, and time for completion shall be in the form of a Task Order as previously described.

B. SUBSURFACE INVESTIGATIONS

The Client may retain a geotechnical engineer to provide detailed recommendations based on the characteristics of the soils at the location of the Project. The Engineer does not have the knowledge, or training regarding soils issues that a geotechnical engineer will have, and as a result the Engineer may not identify all potential soils issues, or risks associated with soils issues. The Engineer cannot and does not make any guarantees, representations, promises, or expressions of opinion regarding the soils at the Project site or the possible impacts those soils will have on the Project.

C. PERIODIC SITE VISITS

Visits to the construction site and observations made by the Engineer as part of services during construction are made for the purpose of determining whether, in general, work appears to be proceeding in a manner that indicates that the Project, when completed, will conform to the design intent. Engineer will not make detailed or exhaustive investigations of Contractor's work. Engineering visits and observations shall not relieve the Construction Contractor(s) of an obligation to conduct comprehensive inspections of the work sufficient to ensure conformance with the intent of the Contract Documents and shall not relieve the Construction Contractor(s) of total responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the Construction Contract(s) in conformance with the intent of those Contract(s) and for all safety precautions incidental thereto. Such visits by the Engineer are not to be construed as part of the observation duties of the on-site representative personnel defined herein, nor is the Engineer in any way responsible for inspecting, noting, commenting on, or reporting safety deficiencies. The Engineer shall not be responsible for the acts or omissions of any Contractor(s)' or subcontractor(s)' agents or employees or any persons at the site except Engineer's own employees and agents.

D. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES

Engineer shall be responsible only for those construction phase services expressly required of Engineer in a subsequent Task Order. With the exception of such expressly required services, Engineer shall have no obligation to provide design, shop drawing or submittal review, or other obligations during construction and Client assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing change orders, revisions to the Contract Documents during construction, construction insurance and surety bonding interpretation and enforcement, construction observation and review, review of payment applications, and all other necessary construction phase engineering and professional services. The Engineer will not be able to sign any certifications required by state or federal agencies, or funding agencies, unless the Engineer

is closely involved in those aspects during construction. Client waives all claims against the Engineer that may be connected in any way to construction phase engineering and professional services except for those services that are expressly required of Engineer in a subsequent Task Order.

E. SELECTION OF ON-SITE REPRESENTATIVE

The Client reserves the right to review and approve the qualifications of the Engineer's on-site representative personnel (if an on-site representative is included in the Scope of Services set forth in a subsequent Task Order). The Client may request to interview the Engineer's on-site representative personnel prior to giving final approval.

F. ON-SITE REPRESENTATIVE

If on-site representation is included in the Scope of Services set forth in a subsequent Task Order, the Engineer's on-site representative personnel will make reasonable efforts to assist in determining whether the work of the Contractor(s) fulfills the provisions of the Contract Documents. Their day-to-day presence and observations will not, however, cause the Engineer to be responsible for those duties and responsibilities that belong to the Client and/or Construction Contractor(s) or other parties and which include, but are not limited to, full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work and for all safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents. Such on-site observations shall not, in any way, make the Engineer responsible for inspecting, noting, observing, or reporting on safety deficiencies of the Contractor nor for the acts or omissions of said Contractor(s)' or subcontractor(s)' agents or employees or any other persons at the site except Engineer's own employees and agents.

G. ON-SITE RESPONSIBILITIES

If on-site representation is included in the Scope of Services set forth in a subsequent Task Order, the Engineer shall act as the Client's representative for all matters incidental to coordination of the project during construction; but the Engineer has not been retained or compensated to direct or supervise the Contractor's personnel; operate or have direct use of equipment; be responsible for construction means, methods, techniques, and procedures; be responsible for safety precautions on the project, or in any way infringe on the duties of the Contractor(s). The Contractor alone is responsible for the adequate performance in conformance with the intent of the Construction Contract involving all aspects of the project and for the acts or omissions of the Contractor's agents or employees.

H. OPINIONS OF PROBABLE CONSTRUCTION COSTS

Engineer's opinion of probable construction cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, 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 Client wishes greater assurance as to probable construction cost, Client shall employ an independent cost estimator.

I. CONSTRUCTION PROGRESS PAYMENTS

Recommendations by the Engineer to the Client for periodic construction progress payments to the Contractor are based on the Engineer's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated and that the quality of work represented by the recommendation is generally in accordance with the intent of the Contract Documents. Such recommendations, however, shall not be deemed to represent that continuous, exhaustive, or detailed examinations or reviews of the work have been made by the Engineer to ascertain that the Contractor has completed the work in exact accordance with the Contract Documents nor that the final work will be acceptable in all respects. Recommendation of such payment does not infer that the Engineer has made an examination to ascertain how or for what purpose any construction Contractor has used the moneys paid on account of the Contract Price or that title to any of the work, materials, or equipment has passed to Client free and clear of liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

J. STANDARD OF CARE

The standard of care ("Standard of Care") for all services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality on the same or similar projects. ENGINEER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ENGINEER'S SERVICES.

K. RECORD DRAWINGS

Record drawings will be prepared, in part, on the basis of information compiled and furnished by others and are not intended to represent in detail the exact location or type of various components nor the exact manner in which the project was finally constructed. The Engineer will not be responsible for any errors or omissions that have been incorporated into the record drawings through the negligence or faulty information of others.

L. NO AUTHORITY OVER WORKSITE ACTIVITIES OR OTHER CONTRACTORS

Engineer shall not have any duty or authority to direct, supervise, oversee or control (i) any activities at the worksite, or (ii) any contractors of Client or their work. Engineer is not responsible for the means, methods, techniques, procedures or sequences of the Contractor or any subcontractor. The Contractor and subcontractors are solely and exclusively responsible for performing their work in accordance with the plans and specifications. Engineer's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. Engineer shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities, and Client agrees to indemnify, hold harmless and defend Engineer against any claims arising out of such failures. Neither the professional activities of Engineer, nor the

presence of Engineer at the construction/project site, shall relieve the general Contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the Contract Documents and to comply with any health or safety precautions required by any regulatory agencies. Engineer does not have authority to control any Contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the Contractor and subcontractors are solely responsible for job site safety. Accordingly, the Client shall require the Contractor and all subcontractors to defend, indemnify, and hold harmless the Engineer from any and all claims, losses, suits, damages, and liabilities, including attorneys' fees and costs, arising in any way from such contractors' or subcontractors' services or work product, except to the extent caused by the sole negligence of the Engineer.

M. CONFIDENTIAL INFORMATION

Although Engineer generally will not disclose without Client's consent information provided by Client or developed by Engineer in the course of its services that is designated by Client in writing as confidential, Engineer shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public; if such disclosure is ordered by a court of competent jurisdiction, or if the information designated as confidential becomes publicly known through no fault of the Engineer. Engineer shall notify Client of any such disclosure.

N. CONTRACTOR'S PAYROLLS AND BASIC RECORDS

During construction the Contractor will be required to submit copies of their payroll and basic records to both the Engineer and Client for archive purposes only. In addition, the Contractor will be required to submit a certification signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Montana Department of Labor and Industry, and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. Because the Engineer has no formal training in contractor labor laws or in the interpretation of payroll reports, the Engineer will rely on the Contractor's certification that the employees are being classified and paid appropriately. If the Client wishes to monitor the Contractor's payroll records they shall do so on their own or shall employ an independent consultant trained in these matters.

O. CONTRACTOR'S INSURANCE AND BONDS

Engineer shall not provide or have any responsibility for surety bonding or insurance related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

P. SIGNING DOCUMENTS

Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot personally ascertain. Client agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing such documents.

Q. SUBMITTAL REVIEW

If the Scope of Services in a subsequent Task Order includes review of submittals, the Engineer shall review and accept or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Engineer's review shall be conducted with reasonable promptness while allowing sufficient time in the Engineer's judgment to permit adequate review. Review of a specific item shall not indicate that the Engineer has reviewed the entire assembly of which the item is a component. The Engineer shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Engineer in writing by the Contractor. The Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

R. ACCESSIBILITY ACTS

The Americans with Disabilities Act, the Fair Housing Amendments Act, and related federal and state "accessibility" laws and regulations (collectively "Acts") are not detailed building codes. The requirements of the Acts are general in nature and open to differing interpretations. The Engineer will provide services in a manner consistent with the intent of the Acts and shall comply with the Standard of Care in responding to the requirements of the Acts but does not warrant or guarantee that the project will satisfy all possible interpretations or applications of the Acts.

ARTICLE 5 - OBLIGATIONS OF THE CLIENT

A. AUTHORIZATION TO PROCEED

Authorize the Engineer to proceed prior to the Engineer starting work on any of the services listed in Article 1 by executing a Task Order for each phase of the work.

B. CLIENT'S REPRESENTATIVE

Designate a person to act as Client's representative with respect to the services to be performed or furnished by Engineer under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to Engineer's services for this Project.

C. PROJECT REQUIREMENTS

Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the Drawings and Specifications.

D. CLIENT-FURNISHED DATA

Provide to the Engineer all technical data in the Client's possession, including previous reports, maps, surveys, borings, and all other information required by the Engineer and relating to the Engineer's work on the project. Such information shall include, but not be limited to, the Client's requirements for the project, any design criteria or constraints, and copies of design and construction details or standards that Client requires to be included. Engineer may rely upon the accuracy, timeliness, and completeness of the information provided by the Client in performing Engineer's services to the Client.

E. ACCESS TO FACILITIES AND PROPERTY

Make its system facilities and properties available and accessible for inspection by the Engineer and provide labor and safety equipment as required by the Engineer and as authorized by Client.

F. ADVERTISEMENTS, PERMITS, AND ACCESS

Pay all costs and be responsible for publishing advertisements for bids and for obtaining permits and licenses that may be required by local, state, or federal authorities and shall secure the necessary land, easements, and rights-of-way, and shall provide access as necessary for the Engineer to perform his services on public or private property as required, unless as otherwise specified herein.

G. TIMELY REVIEW

The Client shall examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by the Engineer, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as to not delay the services of Engineer.

H. PROMPT NOTICE

The Client shall give prompt written notice to Engineer whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services or any defect in the work of the Engineer or Contractors.

ARTICLE 6 - GENERAL LEGAL PROVISIONS

A. FORCE MAJEURE

Engineer shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority to timely review or to approve the services or to grant permits or approvals, or any other cause beyond Engineer's reasonable control, and Engineer's compensation shall be equitably adjusted to compensate it for any additional costs it incurs due to any such delay.

B. INDEMNIFICATION

Indemnification by Engineer:

The Engineer shall indemnify and hold harmless the Client and its officers, directors and employees against and from any and all liability, loss, damage, claims, demands, costs and expenses, including court costs and reasonable counsel fees, arising out of personal injury or death of any person, or loss or damage to property, but only to the extent such personal injury, death, loss or damage is caused by the negligence, knowingly wrongful acts, errors or omissions of the Engineer, its agents and/or employees.

Indemnification by Client:

The Client shall indemnify and hold harmless the Engineer and its employees and agents, against and from any and all liability, loss, damage, claims, demands, costs and expenses, including court costs and reasonable counsel fees, arising out of personal injury or death of a person or loss or damage to property but only to the extent such personal injury, death, loss, destruction or damage is caused by the negligence, knowingly wrongful acts, errors or omissions of the Client, its agents and/or employees.

C. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Client, and anyone claiming by or through the Client, for any and all claims, losses, costs, damages of any nature whatsoever, and claims expenses from any cause or causes (including attorneys' fees and costs and expert witness fees and costs), including those resulting from negligence, breach of contract, breach of statutory duty or otherwise (collectively "Claims") so that the total aggregate liability for and in connection with the entire Project, regardless of how limited in scope the services under this Agreement may be, shall not exceed an amount equal to the Engineer's total compensation under this Agreement. The Client further agrees that the officers, principals, directors and employees of the Engineer and its agents will not be individually liable in respect of any Claims, holds such individuals harmless from all Claims and covenants not to bring any Claims against such individuals. Claims by, through or under the Client shall specifically include any claims by purchasers of the Project (both first purchasers and subsequent purchasers), subsequent purchasers of the entire Project (during or after completion), lenders of the Client and their assignees, any assignee of the Client, and any invitee of the Client. The parties agree that specific consideration has been given by the Engineer for this limitation and that it is deemed adequate. The Client acknowledges that it could obtain a higher liability limit from the Engineer in return for increasing the Engineer's fee but has elected not to do so.

D. LEVEL OF ENGINEERING EFFORT

The Client and Engineer recognize that established compensation schedules and cost guidelines, plus previous experience and estimates of work efforts, were used in negotiating the basis of compensation in this Agreement. The Client and Engineer further recognize that it is cost-prohibitive to the Client to expect or require an absence of construction Contract Change Orders

because of Contract Document ambiguities, inconsistencies, and/or discrepancies on a project of this type. Said guidelines and estimates and resulting basis of compensation, therefore, reflect a generally recognized level of engineering effort and professional competence that represent a balance between additional project costs directly attributable to said Change Orders and the necessary additional engineering changes to minimize or eliminate said Change Orders. The Contractor may require additional information from the Engineer to clarify, correct, supplement, and coordinate the design intent shown in the Construction Documents that result in increases in the construction cost, and that an increase in the construction cost does not automatically mean that the Engineer has breached the Standard of Care.

E. TERMINATION

This Agreement may be terminated by the Client for its convenience by giving 30-days written notice to the Engineer.

This Agreement may be terminated by either party upon 30-days written notice should the other party fail substantially to perform in accordance with this Agreement through no fault of the other or if the project is stopped by conditions beyond the control of the Client. Failure to perform includes failure of the Client to promptly pay the Engineer in conformance with Article 3.

In the event of termination, the Engineer shall be paid in full for all work previously authorized and performed up to the termination date, plus termination expenses if termination is not caused by failure of the Engineer to perform in accordance with this Agreement.

If no termination is implemented, relationships and obligations created by this Agreement shall terminate upon completion of all applicable requirements of this Agreement.

F. SUSPENSION, DELAY, OR INTERRUPTION OF WORK

The Client may suspend, delay, or interrupt the work of the Engineer on the project for the convenience of the Client or for reasons beyond the control of the Client or Engineer.

In the event of such suspension, delay, or interruption, an adjustment in compensation due the Engineer shall be made for all increases in cost of the Engineer's performance under this Agreement, including personnel relocation and/or replacement costs, and all other identifiable labor and expense costs.

G. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

H. VENUE

In the event of litigation or arbitration concerning this Agreement, venue shall be in the Sixteenth Judicial District in and for the County of Custer, Montana, and this Agreement shall be governed by the laws of the State of Montana both as to interpretation and performance.

I. WAIVER OF CONSEQUENTIAL DAMAGES

Client agrees to waive all claims against Engineer or Engineer's officers, directors, employees, agents, subcontractors and consultants for special, indirect, incidental or consequential losses or damages of any kind or nature whatsoever, including but not limited to commercial loss, loss of use, or lost, delayed or diminished profits, revenues or opportunities, even if Engineer has been advised of the possibility of such damages. This waiver shall apply to any such damages based upon any cause of action whatsoever, including but not limited to breach of warranty, guaranty or contract, product liability, negligence, breach of contract, strict liability or indemnity.

J. HAZARDOUS ENVIRONMENTAL CONDITION

Client represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist. Client has disclosed to the best of its knowledge to Engineer the existence of all asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location.

If a Hazardous Environmental Condition is encountered or alleged, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the work, the Engineer shall have the obligation to notify Client and, to the extent of applicable laws and regulations, appropriate government officials.

It is acknowledged by both parties that the Engineer's scope of services does not include any services related to a Hazardous Environmental Condition. In the event the Engineer or any other party encounters a Hazardous Environmental Condition, the 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 Client: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

K. NO THIRD-PARTY BENEFICIARY

Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third-party against the Engineer or the Client. The Engineer's services under this Agreement are being performed solely for the benefit of the client, and no other party or entity shall have any claim against the Engineer because of this Agreement or the performance or non-performance of any services under this Agreement. No other party or entity is intended to benefit from this Agreement.

L. EMPLOYMENT PRACTICES – EQUAL EMPLOYMENT OPPORTUNITY

To provide equal employment and advancement opportunities for all individuals, the Engineer will base employment decisions on merit, qualifications, and abilities. The Engineer is an equal opportunity employer and will not discriminate in employment opportunities or practices on the basis of sex, age, religion, creed, race, color, marital status, physical or mental disability, national origin, pregnancy, veteran or military status, sexual orientation, or any other characteristics protected by law, unless the reasonable demands of the job require a distinction to be made. This applies to all areas of employment including hiring, training, salary administration, promotion, job assignment, discipline, layoffs, and termination.

M. WAIVER OF SUBROGATION

To the extent damages are covered by property insurance or other insurance applicable to the work at the Project site, the Client and Engineer waive all rights against each other and employees of the other for damages, except such rights as they may have to the proceeds of such insurance.

N. NO ASSIGNMENT

During the term of this Agreement and following its expiration or termination for any reason, neither Client nor the Engineer shall transfer, assign, convey or sublet any right, claims (including any causes of action or claims alleging breach, negligence, loss or damages arising out of this Agreement), duty or obligation under it, nor any other interest therein, without the prior written consent of the other party. The sole exception to this provision is that the Client may assign this Agreement to a lender providing financing for the Project so long as the lender agrees to assume the Client's rights and obligations under this Agreement, including any payments due to the Engineer by the Client prior to the assignment.

ARTICLE 7 - GENERAL PROVISIONS

A. ACCESS TO DOCUMENTS

It is expressly understood that the Engineer's records relating to this Agreement will be available during normal business hours for inspection by the Client, or authorized representative of the above.

B. REUSE OF DOCUMENTS

All documents including Drawings and Specifications provided or furnished by Engineer (or Engineer's Consultants) pursuant to this Agreement are Instruments of Service in respect of the Project, and Engineer and Engineer's Consultants, as appropriate, shall retain all ownership and property interest, including all copyrights and intellectual property rights, in the Instruments of Service (including the right of reuse by and at the discretion of Engineer and Engineer's Consultants, as appropriate) whether or not the Project is completed. Provided the Client fully performs its obligations under this Agreement, including timely payment of all sums due, the Engineer grants to the Client a non-exclusive license to use the Instruments of Service solely and exclusively for the purpose of constructing and maintaining the Project. The Client may make

and retain copies for information and reference in connection with the use and occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by Engineer and Engineer's Consultants, as appropriate, for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Engineer, or to Engineer's Consultants, and Client shall defend, indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Client and Engineer.

C. ELECTRONIC TRANSFER OF DOCUMENTS

The Engineer may furnish to the Client, upon request, drawings in electronic media (disk) format. Client is aware that differences may exist between the electronic files delivered and any printed hard-copy documents signed and sealed by the Engineer. In the event of a conflict between any signed hard-copy documents by Engineer and electronic files, the signed or sealed hard-copy documents shall govern. Plot files in electronic media format of text, data, graphics, or of other types that are furnished by the Engineer to the Client, are only for the convenience of the Client and others. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30-days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by the Client.

Engineer makes no representation as to the compatibility of electronic files with any hardware, software or system used by the Client or any other party. The Client assumes all risk and cost associated with the use of these files on the Client's system. Client assumes sole and exclusive responsibility for determining if any conflict exists. Nothing in the electronic files alters the requirements of the Contract Documents, including, and without limitation, the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions and coordinate the recipient's work with that of other contractors or subcontractors for the various projects

Delivery of the electronic files shall not be deemed a sale by the Engineer, and the Engineer makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

D. DISPUTE RESOLUTION

Client and Engineer agree that they shall first attempt to resolve the dispute through direct discussion by principals or representatives with full authority to reach a compromise. If the dispute is not resolved through direct discussion the parties will then submit any and all unsettled

claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by an independent party agreed to by the Client and Engineer. Client and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days of the event causing the dispute. If such mediation is unsuccessful in resolving the dispute, then (i) the parties may mutually agree to a dispute resolution of their choice, such as arbitration, or (ii) either party may seek to have the dispute resolved by a court of competent jurisdiction.

E. NON-DISCRIMINATION AGAINST FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS (MCA 30-20-301)

Engineer does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association.

ARTICLE 8 - DESCRIPTION AND SIGNATURES

A. AGREEMENT DESCRIPTION

This Agreement (consisting of pages 1 to 16, inclusive) constitutes the entire Agreement between the Client and the Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written Contract Amendment executed by both parties.

DATED this ____ day of _____, 2026.

CITY OF MILES CITY

By: _____

Mayor Chris Grenz

ROBERT PECCIA & ASSOCIATES, INC.

By: _____

Craig Jenneskens, P.E., President