

ConsensusDocs® 205

**STANDARD SHORT FORM AGREEMENT BETWEEN OWNER AND  
CONSTRUCTOR  
(Lump Sum Price)**

Job Number: #5596

This Agreement is made this 31st day of July, 2020, by and between

OWNER, Mills Fire Department  
Po Box 789  
Mills, WY 82644

and

CONSTRUCTOR, Rapid Fire Protection, LLC  
1530 Samco Road  
Rapid City, SD 57702

Tax identification number (TIN) 46-0428403

Owner and Constructor are collectively the "Parties."

PROJECT: Mills Fire hall

**ARTICLE 1 THE WORK**

THE WORK Constructor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work in full accord with and reasonably inferable from the Contract Documents.

**ARTICLE 2 PRICE**

PRICE As full compensation for performance by Constructor of the Work, Owner shall pay Constructor the lump sum price of Thirty-Two Thousand Two-Hundred Forty dollars and Zero Cents (\$32,240.00). The lump sum price, "Contract Price," is subject to adjustment as provided in this Agreement.

**ARTICLE 3 EXHIBITS**

EXHIBITS The following attached exhibits are made part of this Agreement:

- (a) Exhibit A: The Work, 1 page(s) and dated 07/13/2020.

**ARTICLE 4 ETHICS**

ETHICS Each Party shall perform their obligations with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts that arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, suppliers, or others to secure preferential treatment.

**ARTICLE 5 CONSTRUCTOR'S RESPONSIBILITIES**



**5.1 CONSTRUCTOR'S RESPONSIBILITIES** Constructor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1.1 Except for permits and fees that are the responsibility of Owner pursuant to this Agreement, Constructor shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work.

5.1.2 Constructor shall pay all applicable taxes for the Work provided by Constructor.

5.1.3 Owner may elect to perform work at the Worksite directly or by others retained by Owner. The Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Constructor and to assist with the coordination of activities and the review of construction schedules and operations. Contract Price and Contract Time may be equitably adjusted in accordance with this Agreement for changes made necessary by the coordination of construction activities, and the construction schedule shall be revised accordingly.

5.1.4 Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents; relevant field measurements made by Constructor; and any visible conditions at the Worksite affecting the Work.

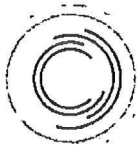
5.1.5 **COMPLIANCE WITH LAWS** Constructor shall comply with all laws at its own costs. Constructor shall be liable to Owner for all loss, cost, or expense, attributable to any acts or omissions by Constructor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures.

**5.1.6 WARRANTY**

5.1.6.1 Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Constructor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others retained by Owner, or abuse.

5.1.6.2 If, prior to the Date of Substantial Completion and within one year after the date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.1.7 **SAFETY** Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Constructor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Constructor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.



**5.1.8 HAZARDOUS MATERIALS** A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Constructor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency. If Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

**5.1.9 MATERIALS BROUGHT TO THE WORKSITE** Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

**5.1.10 SUBMITTALS** Constructor shall submit to Owner and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required by §6.1.5. Constructor shall be responsible to Owner for the accuracy and conformity of its submittals to the Contract Documents. Constructor shall prepare and deliver its submittals to Owner and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Owner and others retained by Owner. Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Constructor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Owner nor Design Professional shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Constructor shall perform all Work strictly in accordance with approved submittals. Owner's approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

**5.1.11 CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Constructor shall stop Work and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Constructor is to proceed. Constructor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be made by Change Order.

**5.1.12 CUTTING, FITTING, AND PATCHING** Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or others retained by Owner.



5.1.13 **CLEANING UP** Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

## **ARTICLE 6 OWNER'S RESPONSIBILITIES**

6.1 **OWNER'S RESPONSIBILITIES** Any information or services to be provided by Owner shall be provided in a timely manner.

6.1.1 **FINANCIAL INFORMATION** Before commencing the Work and thereafter at the written request of Constructor, Owner shall provide Constructor with evidence of Project financing. Evidence of such financing shall be a condition precedent to Constructor's commencing or continuing the Work. Constructor shall be notified prior to any material change in Project financing.

6.1.2 **WORKSITE INFORMATION** To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following, which Constructor shall be entitled to rely upon for its accuracy and completeness:

6.1.2.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;

6.1.2.2 tests, inspections, and other reports dealing with environmental matters, hazardous material, and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;

6.1.2.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and any other information or services requested in writing by Constructor which are required for Constructor's performance of the Work and under Owner's control.

6.1.3 **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Constructor's written request, Owner shall provide Constructor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the record legal title.

6.1.4 **BUILDING PERMIT, FEES, AND APPROVALS** Except for those required of Constructor pursuant to this Agreement, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

6.1.5 **DOCUMENTS IN ELECTRONIC FORM** If Owner requires that Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Constructor shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum.

## **ARTICLE 7 SUBCONTRACTS**

**SUBCONTRACTS** Constructor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.



## ARTICLE 8 CONTRACT TIME

8.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date on page one, unless otherwise set forth below.

8.2 TIME Substantial Completion of the Work shall be achieved in [\_\_\_\_\_] ([\_\_\_\_\_] ) Days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, the Work shall be finally complete within [\_\_\_\_\_] ([\_\_\_\_\_] ) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents. Time is of the essence for obligations of the Contract Documents.

## ARTICLE 9 SCHEDULE OF THE WORK

9.1 SCHEDULE OF THE WORK Before submitting its first application for payment, Constructor shall submit to Owner, and if directed, to Design Professional, a Schedule of the Work showing the dates on which Constructor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from Owner.

9.1.1 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. Owner may require Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or others. If Constructor subsequently incurs costs or is delayed, Constructor may seek equitable adjustment in the Contract Price and Contract Time under this Agreement.

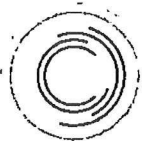
## ARTICLE 10 DELAYS AND EXTENSIONS OF TIME

10.1 If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or others; (b) changes in the Work or the sequencing of the Work ordered by Owner or arising from an Owner decision that impacts Contract Time; (c) encountering Hazardous Materials, or concealed and unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) terrorism, (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 12.

10.2 In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) in §10.1, Constructor may be entitled to an equitable adjustment in the Contract Price subject to ARTICLE 12

10.3 In the event delays to the Work are encountered for any reason, Constructor shall provide prompt written notice to Owner of the cause of such delays after Constructor first recognizes the delay. The Parties each agree to undertake reasonable steps to mitigate the effect of such delays.

10.4 NOTICE OF DELAY CLAIMS If Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, Constructor shall give Owner written notice of the claim. If Constructor causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs, subject to ARTICLE 17.



## ARTICLE 11 ALLOWANCES

11.1 ALLOWANCES All allowances stated in the Contract Documents shall be included in the Contract Price. While Owner may direct the amounts of, and particular suppliers or subcontractors for, specific allowance items, if Constructor reasonably objects to a supplier or subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work. Allowances shall include the costs of materials and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Constructor's overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

## ARTICLE 12 CHANGES

12.1 Constructor may request or Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.

12.2 The Parties shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld. Constructor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.

### 12.3 INTERIM DIRECTIVES

12.3.1 Owner may issue a written Interim Directive directing a change in the Work before agreeing on an adjustment to the Contract Price or the Contract Time, or directing Constructor to perform Work that Owner believes is not a change.

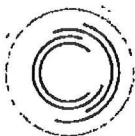
12.3.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed work is performed, Constructor shall submit its costs for such work with its application for payment. If there is a dispute as to the cost of the Work, Owner shall pay Constructor fifty percent (50%) of its actual (incurred or committed) cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 19.

12.3.3 When Owner and Constructor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.

12.4 UNIT PRICES If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Constructor, such unit prices shall be equitably adjusted.

## ARTICLE 13 PAYMENT

13.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Constructor shall prepare and submit to Owner and, if directed, Design Professional, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a monetary price such that the total of all items shall equal the Contract Price.



13.2 PROGRESS PAYMENTS Constructor shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the 28 day of the calendar month for the preceding calendar month. Constructor's applications for payment shall be itemized and supported by Constructor's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount due on any payment application, less any amounts as set forth below, no later than fifteen (15) Days after Constructor has submitted a complete and accurate payment application. Owner may deduct, from any progress payment, such amounts as may be retained pursuant to §13.3.

13.3 RETAINAGE From each progress payment made before Substantial Completion Owner may retain Zero percent ( 0 %) of the amount otherwise due after deduction of any amounts as provided in §13.4. After the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Constructor the full amount due on subsequent progress payments.

13.4 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Constructor is responsible for such under this Agreement:

13.4.1 Constructor's repeated failure to perform the Work as required by the Contract Documents;

13.4.2 loss or damage arising out of or relating to this Agreement and caused by Constructor to Owner or to others retained by Owner to whom Owner may be liable;

13.4.3 Constructor's failure to properly pay either Subcontractors or Suppliers following receipt of payment from Owner for that portion of the work or for supplies, provided that Owner is making payments to Constructor in accordance with the terms of this Agreement;

13.4.4 rejected or Defective Work not corrected in a timely fashion;

13.4.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

13.4.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

13.4.7 uninsured third-party claims involving Constructor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Constructor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Constructor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

13.5 PAYMENT DELAY If for any reason not the fault of Constructor, Constructor does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, Constructor, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Constructor has been received.



If Constructor incurs costs or is delayed resulting from shutdown, delay, and start-up, Constructor may seek an equitable adjustment in the Contract Price or Contract Time.

**13.6 SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion thereof is achieved, Constructor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of Owner and Constructor for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Constructor to Owner for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

**13.6.1** Upon acceptance by Owner of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining retainage held by Owner for the work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by Owner and Constructor as necessary to achieve final completion. Uncompleted items shall be completed by Constructor in a mutually agreed timeframe. Owner shall pay Constructor monthly the amount retained for unfinished items as each item is completed.

**13.7 FINAL COMPLETION** When final completion has been achieved, Constructor shall prepare for Owner's acceptance a final application for payment stating that to the best of Constructor's knowledge, and based on Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

**13.7.1** Final payment of the balance of the Contract Price shall be made to Constructor within fifteen (15) Days after Constructor has submitted to Owner a complete and accurate application for final payment and the following submissions:

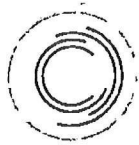
- (a) an affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;
- (b) as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
- (c) release of any liens, conditioned on final payment being received;
- (d) consent of any surety, if applicable; and
- (e) any outstanding known and unreported accidents or injuries experienced by Constructor or its subcontractors at the Worksite.

**13.8** Claims not reserved by Owner in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Constructor provides written identification of unsettled claims known to Constructor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

**13.9 LATE PAYMENT** Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

## ARTICLE 14 INDEMNITY

**14.1** To the fullest extent permitted by law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees and Design Professional (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and





other property insured under §15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Constructor shall be entitled to reimbursement of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

14.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Constructor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or others retained by Owner, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner, Design Professional, or others retained by Owner. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided in the section immediately above.

*14.3 The fullest extent allowable by law shall not exceed that amount set out at WSH-39-118.*

#### ARTICLE 15 INSURANCE

15.1 Before commencing the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Constructor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. If requested, Constructor shall provide Owner with certificates of the insurance coverage required. Constructor's Employers' Liability, Business Automobile Liability, and CGL policies, as required in this article, shall be written with at least the following limits of liability:

15.1.1 Employers' Liability Insurance:

(a) \$1,000,000.00 bodily injury by accident per accident;

15.1.2 Business Automobile Liability Insurance \$1,000,000.00 per accident.

15.1.3 CGL Insurance:

- (a) \$1,000,000.00 per occurrence;
- (b) \$2,000,000.00 general aggregate;
- (c) \$2,000,000.00 products/completed operations aggregate;
- (d) \$1,000,000.00 personal and advertising injury limit.

15.2 Employers' Liability, Business Automobile Liability, and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Constructor shall maintain in effect all insurance coverage required in the section immediately above with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Constructor fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Constructor, or terminate this Agreement. To the extent commercially available to Constructor from its current insurance company, insurance policies required under §15.1 shall contain a provision that the insurance company or its designee must give Owner written



notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, Constructor shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

15.3 ADDITIONAL LIABILITY COVERAGE Owner  shall/  shall not require Constructor to purchase and maintain liability coverage. If required, Constructor shall provide:

15.3.1  ADDITIONAL INSURED. Owner shall be named as an additional insured on Constructor's CGL insurance specified, for on-going operations and completed operations excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Constructor, or those acting on Constructor's behalf, in the performance of Constructor's Work for Owner at the Worksite. The insurance of the Constructor and its Subcontractors (both primary and excess) shall be primary to any insurance available to the Additional Insureds. Any insurance available to the Additional Insureds shall be excess and non-contributory.

15.3.2  OCP. Constructor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Owner. Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly, or the costs may be reimbursed by Owner to Constructor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the additional liability coverage. Before commencing the Work, Constructor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

15.4 LIMIT OF LIABILITY In no case will Rapid Fire Protection's liability, for any reason other than gross sole negligence be more than the insurance limits provided in this contract.

## ARTICLE 16 BONDS

16.1 Performance and Payment Bonds  are/  are not required of Constructor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

## ARTICLE 17 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

17.1 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for (a) losses covered by insurance required by the Contract Documents, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The following items of damages are excluded from this mutual waiver: [\_\_\_\_]. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall require similar



waivers in contracts with subcontractors and others retained for the project.

## ARTICLE 18 NOTICE TO CURE AND TERMINATION

18.1 NOTICE TO CURE A DEFAULT If Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Constructor may be deemed in default. If Constructor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) days after written notification, then Owner shall give Constructor a second written notice to correct the default within a three (3) business Day period. If Constructor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Constructor, who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

18.2 TERMINATION BY OWNER Upon expiration of the second notice for default period pursuant to §18.1, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner. If Owner's costs arising out of Constructor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Constructor shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid Contract Price, Owner shall pay the difference to Constructor. If Owner exercises its rights under this section, upon the request of Constructor, Owner shall furnish to Constructor a detailed accounting of the costs incurred by Owner.

18.2.1 Owner shall make reasonable efforts to mitigate damages arising from Constructor default and shall promptly invoice Constructor for all amounts due.

18.3 TERMINATION BY CONSTRUCTOR Seven (7) Days after Owner's receipt of written notice from Constructor, Constructor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of Constructor for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Constructor, materials are not available.

18.3.1 In addition, upon seven (7) Days' written notice to Owner, and an opportunity to cure within three (3) Days, Constructor may terminate the Agreement if Owner does any of the following: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with §6.1.1; (b) assigns this Agreement over Constructor's reasonable objection; (c) fails to pay Constructor in accordance with this Agreement and Constructor has stopped work in compliance with applicable notice provisions; or (d) otherwise materially breaches this Agreement.

18.3.2 Upon termination by Constructor pursuant to this Agreement, Constructor shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

18.4 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

## ARTICLE 19 DISPUTE MITIGATION AND RESOLUTION



19.1 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in §10.3 and §10.4 for any claim for an increase in the Contract Price or the Contract Time, Constructor shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before beginning the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

19.2 WORK CONTINUANCE AND PAYMENT Constructor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Constructor continues to perform, Owner shall continue to make payments in accordance with the Agreement.

19.3 DIRECT SETTLEMENT DISCUSSIONS If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.

19.4 MEDIATION Disputes between Owner and Constructor not resolved by direct discussion shall be submitted to mediation pursuant to the ~~Construction Industry Mediation Rules of the American Arbitration Association (AAA)~~. The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

19.5 BINDING DISPUTE RESOLUTION If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

~~ARBITRATION~~ The Parties choose binding arbitration decided by arbitrator in accordance with the ~~Construction Industry Arbitration Rules of the AAA then in effect~~. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

LITIGATION Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

If not indicated, then litigation is default as opposed to arbitration.

19.5.1 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

19.5.2 VENUE The Project location shall serve as the venue.

19.5.3 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files



its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

**ARTICLE 20 MISCELLANEOUS**

20.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

20.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

20.3 GOVERNING LAW The law in effect at the location of the Project shall govern.

20.4 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

20.5 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

OWNER: Mills Fire Department

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

Date: \_\_\_\_\_

CONSTRUCTOR: Rapid Fire Protection, Inc.

BY: \_\_\_\_\_ NAME:  Kyle Watson  TITLE:  Operations Manager

WITNESS: \_\_\_\_\_ NAME:  Mindy Falkenhagen  TITLE:  Project Assistant

Date: \_\_\_\_\_

END OF DOCUMENT.





# Rapid Fire Protection Inc.

600 E Carlson St, Suite AB – Cheyenne, WY 82009  
Phone: 307.426.4077 - Fax: 307.426.4076



Date: July 13, 2020  
Attn: **Dave North @ Mills Fire Department**  
Subject: Fire Sprinkler System Estimate – Mills Fire Hall, Mills WY

## EXHIBIT A

### Scope:

1. Providing the building with a fire sprinkler system per the request of the owner's representative based on a site visit conducted. The system will be designed to light hazard and ordinary hazard occupancy per requirements of Mills Fire Department.
2. Our proposal includes providing a wet system which contains a single zone for the entire building. All pendant heads are to be chrome semi recessed type. All areas without ceilings will have exposed brass upright heads. All piping for the system is to be light wall type black steel pipe. The fire department connection will be located on the exterior wall adjacent to the valve assembly.
3. Our proposal includes a system the is an AHJ modified system and does not meet code.

### Clarifications:

1. Our proposal includes all taxes as required. We will design, install, test, and commission the system. Our system comes complete with a one year warranty and comprehensive owners training.
2. Our proposal assumes that there will be adequate water available to supply the fire sprinkler system without the use of a fire pump.
3. Any AutoCAD .DWG files required per NFPA for submittals are to be provided at no cost to this contractor.
4. Owner is to maintain adequate heat in all areas where a wet system is installed. Owner is also responsible to maintain the system to NFPA requirements.
5. We are a Wyoming state resident contractor and have provided our certificate for you along with this proposal.
6. Our proposal assumes all work is to be done during normal working hours from 7am to 3:30pm for a 40 hour work week.
7. If delays in receiving signed submittals back from authorities arise and overtime is required to not hold on project progress, a charge will need to be added.
8. Price is subject to AHJ and/or engineer approval and may vary with any additional AHJ and/or Engineer requirements.
9. We guarantee our pricing for 30 days. After this time period we may withdraw this bid for any reason.

### Exclusions:

1. Our proposal does not include any electrical work, fire alarm system panels, detectors or wiring of any kind. We will provide all switches that are needed to complete the fire sprinkler system, however, their complete installation will require an electrician to hook them to the new or existing alarm system.
2. Our proposal does not include any work associated with the underground service entrance into the building. This also excludes the buried piping required for the FDC. We will start from a flange inside the building. The underground piping shall be flushed and tested by others in a manner that complies with NFPA, local, and state codes.
3. This proposal does not contain provisions to comply with the Wyoming Prevailing Wage, Davis Bacon Act, or Buy American Act.
4. Our proposal does not include any painting of exposed piping on our system.
5. Our proposal does not include sprinkler protection for the concealed combustible space.
6. This proposal does not include the cost of performance or payment bonds.
7. This proposal does not include BIM or 3D coordination.
8. Our proposal does not include any permit fees as it is assumed the owner will waive those fees for their project.

Our base bid complete is thirty-two thousand two hundred forty dollars (\$32,240)

Sincerely,  
Gabe Hastings  
Rapid Fire Protection, Inc.

Accepted by \_\_\_\_\_ Date \_\_\_\_\_

Locations in: Bismarck, ND Casper, WY Cheyenne, WY Denver, CO Rapid City, SD Salt Lake City, UT



# CERTIFICATE OF LIABILITY INSURANCE

6/18/2021

DATE (MM/DD/YYYY)

7/31/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Lockton Companies 3280 Peachtree Road NE, Suite #250 Atlanta GA 30305 (404) 460-3600	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> _____ <b>FAX (A/C, No):</b> _____ <b>E-MAIL ADDRESS:</b> _____	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> 1467811 Rapid Fire Protection, Inc. 1530 Samco Road Rapid City, SD 57702	<b>INSURER A:</b> Everest Indemnity Insurance Company <b>NAIC #</b> 10851	
	<b>INSURER B:</b> The Travelers Indemnity Company <b>25658</b>	
	<b>INSURER C:</b> The Charter Oak Fire Insurance Company <b>25615</b>	
	<b>INSURER D:</b> Everest National Insurance Company <b>10120</b>	
	<b>INSURER E:</b> Indian Harbor Insurance Company <b>36940</b>	
	<b>INSURER F:</b>	

**COVERAGES** **CERTIFICATE NUMBER:** 16891169 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	N	N	51GL014466-201	6/18/2020	6/18/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	810-9P081111-20-26	6/18/2020	6/18/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ 10,000	N	N	51CC005264-201	6/18/2020	6/18/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB-9P075430-20-26-G	6/18/2020	6/18/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Cyber Liability	N	N	CYBP000717-201	6/18/2020	6/18/2021	Limit: \$5,000,000
E	Prof. & Pollution Liab.	N	N	PEC005164102	6/18/2020	6/18/2021	Limit: \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Project #5596 Mills Fire Hall

**CERTIFICATE HOLDER****CANCELLATION** See Attachment

16891169  
 Mills Fire Department  
 PO Box 789  
 Mills WY 82644

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**Mills Fire Department  
PO Box 789  
Mills, WY 82644**

**To whom it may concern:**

In our continuing effort to provide timely certificate delivery, Lockton Companies is transitioning to paperless delivery of Certificates of Insurance.

To ensure electronic delivery for future renewals of this certificate, we need your email address. Please contact us via the method listed below, referencing Certificate ID **16891169**.

Email: [SE-EDelivery@lockton.com](mailto:SE-EDelivery@lockton.com)

- - Please include the above Certificate ID number and "Email Address for E-Deliver" in the subject line.

In the event your mailing address has changed, will change in the future, or you no longer require this certificate, please let us know using the method above.

The above inbox is for automating electronic deliver of certificates only. Please do NOT send future certificate requests to this inbox.

Thank you for your cooperation and willingness in reducing our environmental footprint.

**Lockton Companies**

Lockton Companies  
3280 Peachtree Road NE, Ste. 250  
Atlanta, GA 30305