

## PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT, made November 12, 2020, by and between Advanced Geotechnical Solutions, Inc., a Wyoming Corporation, having its principal office located at 2435 King Boulevard, Casper, WY 82604, (hereinafter referred to as "AGS") and the Town of Mills having their principal address located at 704 Fourth Street, Mills, Wyoming 82604, (hereinafter referred to as "CLIENT"), in consideration of the mutual covenants contained herein, the parties agree as follows:

The CLIENT hereby engages AGS and AGS hereby agrees to perform the services described in Attachment A, attached hereto, under the terms and conditions hereinafter specified:

**1: INDEPENDENT CONSULTANT STATUS**

Except as may otherwise be noted herein, AGS shall serve as an independent consultant to CLIENT and shall have control over and be responsible for the means and methods for providing services under this AGREEMENT. It is specifically understood that, irrespective of any assignability provisions, AGS may retain subcontractors to perform services usually performed by subcontractors and should AGS determine it appropriate or necessary to rely on a subcontractor where it is not customary to do, AGS shall obtain prior written approval or subsequent written confirmation from CLIENT.

**2: INTEGRATION**

This AGREEMENT comprises a final and complete repository of understanding between CLIENT AND AGS. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this AGREEMENT. Each party has advised the other to read this document thoroughly before accepting it, to help assure it accurately conveys meanings and intents. Acceptance of this AGREEMENT as provided for below signifies that each party has read the document thoroughly and has had any questions or concerns completely explained by independent counsel and is satisfied. CLIENT and AGS agree that modifications to this AGREEMENT shall not be binding unless made in writing and signed by an authorized representative of each party.

**3: GOVERNING LAW**

The law of the State of Wyoming will govern the validity of this AGREEMENT, its interpretation and performance, and remedies for contract breach or any other claims related to this AGREEMENT.

**4: ASSIGNMENT**

Neither party to this AGREEMENT shall assign its duties and obligations hereunder without the prior written consent of the other party.

**5: NOTICES**

Any notice given hereunder shall be deemed served when hand-delivered in writing to an officer or other duly appointed representative of the party to whom the notice is directed, or is sent by registered or certified mail to the business address identified above.

**6: SEVERABILITY**

- A. CLIENT and AGS have entered into this AGREEMENT of their own free will, to communicate to one another mutual understandings and responsibilities. Any element of this AGREEMENT later held to violate the law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- B. However, CLIENT and AGS will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

**7: STANDARD OF PERFORMANCE**

The standard of care for all professional engineering, consulting and related services performed or furnished by AGS and its employees under this AGREEMENT will be the care and skill ordinarily used by members of AGS's profession practicing under the same or similar circumstances at the same time and in the same locality. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise in connection with AGS's services.

**8: COMPLIANCE WITH CODES AND STANDARDS**

AGS's professional services shall be consistent with sound engineering practices and shall incorporate those publicly announced federal, state, and local laws, regulations, codes and standards that are applicable at the time AGS rendered their services. In the event of a change in laws, regulations, etc., of which AGS becomes aware and believes affects their work for CLIENT, AGS shall inform CLIENT of the change and its impact on work already done or to be done, fees and costs involved, and scheduling. If either CLIENT or AGS believes the change requires a renegotiation of this AGREEMENT, both CLIENT and AGS agree to bargain promptly and in good faith, to permit AGS to continue to meet CLIENT's needs. If a renegotiated contract cannot be agreed to, CLIENT agrees AGS has an absolute right to terminate this AGREEMENT.

**9: OWNERSHIP OF INSTRUMENTS OF SERVICE**

- A. All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by AGS as instruments of service shall remain the property of AGS. AGS shall retain these records for a period of 6 (six) months following submission of their report, during which period they will be made available to CLIENT at all reasonable times. If CLIENT wishes AGS to retain documents for a longer period of time, CLIENT shall so specify in advance, in writing, and shall pay in a timely manner all charges agreed to for AGS's maintenance of such documents beyond the time period otherwise prevailing. CLIENT recognizes that no such documents should be subject to unauthorized reuse, that is, reuse without written authorization of AGS to do so.
- B. The CLIENT agrees that all documents and other work furnished to the CLIENT or their agents, which are not paid for, will be returned upon demand and will not be used by the CLIENT for any purpose whatsoever.
- C. AGS will return to the CLIENT within thirty (30) days of completion of the work, all documents provided by the CLIENT.

**10: INFORMATION PROVIDED BY OTHERS**

- A. AGS shall indicate to CLIENT the information needed for rendering of services hereunder, and CLIENT shall provide to AGS such information as is available to CLIENT. CLIENT recognizes that it is impossible for AGS to assure the sufficiency of such information, either because it is impossible to do so, or because of errors or omissions which may have occurred in assembling the information.
- B. Accordingly, CLIENT waives any claim against AGS, and agrees to defend, indemnify and hold AGS harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to AGS by CLIENT.
- C. Further, CLIENT agrees to compensate AGS for any time spent or expenses incurred by AGS in defense of any such claim, with such compensation to be based upon AGS's prevailing fee schedule and expense reimbursement policy.

**11: OPINIONS OF PROBABLE COST (COST ESTIMATES)**

Any opinion of probable project cost or probable construction cost provided by AGS are made on the basis of information available to AGS on the basis of AGS's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since AGS has no control over the cost of labor, materials, equipment or services furnished by others, or over the contract(s) methods of determining prices, or over competitive bidding or market conditions, AGS does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost AGS prepares.

**12: JOBSITE SAFETY**

- A. Insofar as jobsite safety is concerned, AGS is responsible solely for their own and their employees' activities on the jobsite, but this shall not be construed to relieve AGS and/or CLIENT or any construction contractors from their responsibilities for maintaining a safe jobsite.
- B. Neither the professional activities of AGS, nor the presence of AGS or their employees and subcontractors, shall be construed to imply AGS has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the jobsite.
- C. CLIENT agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the CLIENT and/or OWNER's AGREEMENT with the General Contractor. CLIENT also warrants that AGS shall be made an additional insured under the General Contractor's general liability insurance policy.

**13: HAZARDOUS MATERIALS**

Owner represents to AGS that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, CLIENT represents that to the best of its knowledge it has disclosed to AGS the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that AGS's scope of services does not include services related in any way to hazardous materials. In the event AGS or any other party encounters undisclosed hazardous materials, AGS shall have the obligation to notify CLIENT and, to the extent required by law of regulation, the appropriate governmental officials, and AGS may at its option and without liability for delay, consequential or any other damages to CLIENT, suspend performance of services on that portion of the project affected by hazardous materials until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. CLIENT acknowledges that AGS is performing professional services for CLIENT and that AGS is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with AGS's services under this AGREEMENT. If AGS's services hereunder cannot be performed because of the existence of

hazardous materials, AGS shall be entitled to terminate this AGREEMENT for cause on 30 days written notice. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AGS, its officers, directors, partners, employees, and sub-consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such costs, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

**14: BILLING AND PAYMENT**

- A. CLIENT recognizes that time is of the essence with respect to payment of AGS's invoices, and that timely payment is a material part of the consideration of this AGREEMENT.
- B. CLIENT shall pay AGS for services performed in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth herein. Invoices will be submitted by AGS from time to time but no more frequently than every two weeks, and shall be due and payable within thirty (30) calendar days of invoice date. If CLIENT objects to all or any portion of an invoice, CLIENT shall so notify AGS within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice, if any, not in dispute.
- C. CLIENT shall pay an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by AGS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount. Payment of invoices is in no case subject to unilateral discounting or set-offs by CLIENT.
- D. Application of the percentage rate indicated above as a consequence of CLIENT's late payments does not constitute any willingness on AGS's part to finance CLIENT's operation, and no such willingness should be inferred. If CLIENT fails to pay undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, AGS, may at any time, without waiving any other claim against CLIENT and without thereby incurring any liability to CLIENT, suspend this AGREEMENT (as provided for in SECTION 19, SUSPENSION) or terminate this AGREEMENT (as provided for in SECTION 20, TERMINATION).

**15: LEGAL RIGHT OF ENTRY**

CLIENT shall provide for AGS's right to enter from time to time property owned by CLIENT and/or other(s) in order for AGS to fulfill the scope of services indicated hereunder. CLIENT understands that use of equipment may unavoidably cause some damage to the surface the correction of which is not part of this AGREEMENT.

**16: UTILITY LOCATION**

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for the location of public underground utilities. In addition, CLIENT shall notify AGS of the presence and location of any underground utilities located on the CLIENT's property which are not the responsibility of public utilities. AGS shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The CLIENT agrees to waive any claim against AGS and will indemnify and hold AGS harmless from any claim of liability, injury or loss caused by or allegedly caused by AGS's damaging of underground utilities that are not properly marked or are not called to AGS's attention prior to beginning the underground sampling/testing.

**17: CHANGED CONDITIONS**

- A. CLIENT has relied on AGS's judgment in establishing the scope of work and fee for this project, given the project's nature and risks. CLIENT shall therefore rely on AGS's judgment as to the continued adequacy of this AGREEMENT in light of occurrences or discoveries that were not originally contemplated by or known to AGS.
- B. Should AGS call for contract renegotiation, AGS shall identify the changed conditions which in AGS's professional judgment make such renegotiation necessary, and AGS and CLIENT shall promptly and in good faith enter into renegotiation of this AGREEMENT to help permit AGS to continue to meet CLIENT's needs. If renegotiated terms cannot be agreed to, CLIENT agrees that AGS has an absolute right to terminate this AGREEMENT.

**18: DELAYS**

- A. In the event that AGS's field or technical work is interrupted due to causes beyond their control, AGS shall be compensated for the labor, equipment and other costs AGS incurs in order to maintain their workforce for CLIENT's benefit during the interruption, or – at CLIENT's option – the various costs AGS incurs for demobilization and subsequent remobilization. Compensation to AGS shall be based upon AGS's prevailing fee schedule and expense reimbursement policy.

- B. Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been anticipated or prevented. For purposes of this AGREEMENT, acts of God and other circumstances include, but are not necessarily limited to, unusual weather, floods, epidemics, war, riots, strikes, lockouts or other industrial disturbances, protest demonstrations, unanticipated site conditions, or inability despite reasonable diligence to supply personnel, equipment or material to the project. Should such acts occur, CLIENT and AGS shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible.
- C. Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days shall, at the option of either party, make this AGREEMENT subject to renegotiation or termination.
- 19: SUSPENSION**
- A. Upon seven (7) calendar days' written notice to AGS, CLIENT may suspend AGS's work. If payment of AGS's invoices are not maintained on a thirty (30) calendar day current basis by CLIENT, AGS may by seven (7) calendar days' written notice to CLIENT suspend further work until payment is restored to a current basis.
- B. Suspension for any reason exceeding forty-five (45) calendar days shall, at AGS's option, make this AGREEMENT subject to renegotiation or termination as provided for elsewhere in this AGREEMENT.
- C. Any suspension shall extend the time schedule for performance in a manner that is satisfactory to both CLIENT and AGS, and AGS shall be compensated for services performed and charges incurred prior to the suspension date, plus suspension charges. Suspension charges may include, but shall not be limited to, services and costs associated with putting analyses and documents in order, rescheduling and reassigning personnel and/or equipment and issuing necessary or customary notices to appropriate government agencies. Compensation to AGS shall be based upon AGS's prevailing fee schedule and expense reimbursement policy.
- 20: TERMINATION**
- A. CLIENT or AGS may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs AGS incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice.
- B. Irrespective of which party shall effect termination or the cause therefore, CLIENT shall within thirty (30) calendar days of termination remunerate AGS for services rendered and costs incurred, in accordance with AGS's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination as well as those associated with termination itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred up to the time of termination, as well as those associated with termination and post-termination activities, such as demobilization, decontaminating and/or disposing of equipment, disposal and replacement of contaminated consumables, and so on.
- 21: INSURANCE**
- A. AGS declares that it and its agents, staff and consultants employed by it is and are protected by worker's compensation insurance and that AGS has such coverage under public liability and property damage insurance policies which AGS deems to be adequate.
- B. Certificates for all such policies of insurance shall be provided to CLIENT upon request in writing. Within the limits and conditions of such insurance, AGS agrees to indemnify and save CLIENT harmless from and against any loss, damage, or liability arising from any negligent acts by AGS, its agents, staff, and consultants employed by it. AGS shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance.
- D. AGS shall not be responsible for any loss, damage, or liability arising from any acts by CLIENT, its agents, staff, and other consultants employed by it.
- 22: CONSEQUENTIAL DAMAGES**
- CLIENT shall not be liable to AGS and AGS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the CLIENT or AGS, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**23: LIMITATION OF LIABILITY**

- A. CLIENT agrees to limit AGS's liability to the CLIENT and all construction contractors and subcontractors on the project arising from AGS's professional acts, errors or omissions, any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of AGS's services or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery such that the total aggregate liability of AGS to all those names shall not exceed \$3,500 or AGS's total fee for the services rendered on this project, whichever is greater.
- B. The CLIENT further agrees to require of the contractor and their subcontractors an identical limitation of AGS's liability for damages suffered by the contractor or subcontractor arising from AGS's professional acts, errors or omissions, any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of AGS's services or this AGREEMENT regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. Neither the contractor nor any of their subcontractors assumes any liability for damages to others which may arise on account of AGS's professional acts, errors or omissions.

**24: CONFLICTS**

In the event of a conflict between the main text of this AGREEMENT (Sections 1 through 31, inclusive) and any APPENDIX thereof, provisions of the main text shall govern. In the event of any conflict between the AGREEMENT and any ADDENDA thereto, the ADDENDA shall govern. In the event of a conflict between any two ADDENDA, the ADDENDA of most recent date shall govern.

**25: DISPUTE RESOLUTION**

- A. In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, experts witness fees and other documented expenses as well as the value of time spent by the prevailing party and those in their employ in researching the issues in question, discussing matters with attorneys and others, preparing for depositions, responding to interrogatories and so on. The value of time spent and the expenses incurred shall, on AGS's part, be computer based upon AGS's prevailing fee schedule and expense reimbursement policy.
- B. If any controversy or claim arises out of or relates to this contract, or breach thereof, and if said dispute cannot be settled through negotiation, the parties hereby agree that this AGREEMENT shall be governed by Wyoming Law and that venue for any dispute resolution, including all actions at law, shall be in Natrona County, Wyoming.

**26: LITIGATION SUPPORT**

In the event AGS is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which AGS is not a party, CLIENT shall reimburse AGS for reasonable costs in responding and compensate AGS at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

**27: CURING A BREACH**

In the event either party believes that the other has committed a material breach of this AGREEMENT, the party maintaining such a belief shall issue a termination notice to the other, identifying the facts as perceived, and both parties shall bargain in good faith to cure the causes for termination as stated in the termination notice. If such a cure can be affected prior to the date by which termination otherwise would be effective, both parties shall commit their understanding to writing, and termination shall not become effective. If, in curing an actual or alleged breach, either party shall waive any rights otherwise inuring to him by virtue of this AGREEMENT, such waiver shall not be construed to, in any way, affect future application of the provision involved or any other provision.

**28: DEFECTS IN SERVICE**

CLIENT and CLIENT's personnel, contractors and subcontractors shall promptly report to AGS, any defects or suspected defects in AGS's work, in order that AGS may take prompt, effective measures which in AGS's opinion will minimize the consequences of a defect in service.

**29: PERMITS AND APPROVALS**

AGS shall assist CLIENT in applying for those permits and approvals typically required by law for projects similar to the one for which AGS's services are being engaged. This assistance relates to completing and submitting forms as to the results of certain work included in the scope of services. AGS will also provide additional services as requested, these to include conducting special tests, performance of special research studies, preparation of special documentation, development and delivery of testimony, and so on. CLIENT and AGS agree to discuss the scope of these additional services and the fees and expenses involved before AGS performs them on CLIENT's behalf.

**30: EQUAL EMPLOYMENT AND NONDISCRIMINATION**

In connection with the services under this Agreement, AGS agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for Individuals based on color, religion, sex, or national origin, or disabled veteran,

recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

**31: PROJECT REPRESENTATIVES**

CLIENT shall furnish representatives who shall make decisions on CLIENT's behalf when requested to do so by AGS. The following designated CLIENT representatives shall be available on an on-call basis as required by AGS, and shall be called in the order listed herein. In the event the first-list representative cannot be contacted, the one listed second shall be called, and so on, until contact is made.

CLIENT'S Contacts:

Matt Williams, P.E. (WLC)

Telephone: 307-266-2524

\_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

CLIENT warrants that, when any changes affecting this listing are made, CLIENT shall furnish a revised listing to AGS.

AGS'S Contacts:

Ben Hauser, P.E., G.I.T.

Telephone: (307) 439-5439

\_\_\_\_\_

Telephone: (307) 267-4569

\_\_\_\_\_

Telephone: \_\_\_\_\_

AGS designates Ben Hauser, P.E., G.I.T. as Project Manager.

**32: TERM OF AGREEMENT**

The term of this AGREEMENT shall commence on November 12, 2020 and end on December 31, 2022. AGS shall not commence work or services under this AGREEMENT until the CLIENT executes and delivers a copy of this AGREEMENT to AGS.

AGS: Advanced Geotechnical Solutions, Inc.

CLIENT: Town of Mills

Signature 

Signature \_\_\_\_\_

Print Name Ben Hauser, P.E., G.I.T.

Print Name \_\_\_\_\_

Title Principal

Title \_\_\_\_\_

Date November 12, 2020

Date \_\_\_\_\_

ATTACHMENTS:

Attachment A: Proposal for Preliminary Subsurface Exploration and Geotechnical Engineering dated November 12, 2020.

\_\_\_\_\_