

CONSULTANT Agreement  
Town of Saratoga Transportation Alternatives Master Plan  
OV Consulting  
April 24, 2023

**AGREEMENT FOR  
CONSULTANT SERVICES  
FOR**

**Town of Saratoga Transportation Alternatives Master Plan with  
Ordonez and Vogelsang, LLC dba OV Consulting**

THIS AGREEMENT is made as of **April 24, 2023** between **The Town of Saratoga** (OWNER) and **Ordonez and Vogelsang, LLC dba OV Consulting** (CONSULTANT).

CONSULTANT shall perform services in accordance with the terms and conditions of this Agreement as OWNER's independent consultant.

The conditions detailed in this contract between OWNER and CONSULTANT will apply to the work performed under this contract.

**ARTICLE I - LOCATION OF WORK**

The project area is located in The Town of Saratoga, Wyoming.

**ARTICLE II - SCOPE OF WORK**

The professional services that OWNER has employed CONSULTANT to perform under this Agreement are described in the attached Exhibit A.

**ARTICLE III - PERIOD OF SERVICE**

The Project is to be completed according to the schedule developed mutually between the project CONSULTANT team and OWNER staff and is shown in the attached scope of work (Exhibit A). CONSULTANT services shall begin on May 1, 2023 and be completed by April 30, 2024. The project schedule may be amended from time to time. CONSULTANT will not be responsible for delays beyond its control.

**ARTICLE IV - COMPENSATION**

OWNER will pay CONSULTANT for services actually performed, on a time and materials basis not to exceed a maximum amount. Staff rates and personnel shall be in accordance with Rate Sheets shown in the fee estimate included in Exhibit C to this Contract, but in no case shall the total amount billed by CONSULTANT over the duration of this contract exceed **\$200,000.00**, except by written amendment to this Agreement.

**ARTICLE V - METHOD OF PAYMENT**

CONSULTANT shall submit monthly progress reports detailing services rendered and deliverables completed through the statement period. The statements will be based upon the authorized services of CONSULTANT completed at the time of billing.

CONSULTANT will invoice OWNER monthly for services and expenses rendered during the billing period, and OWNER will pay CONSULTANT within thirty days after the time OWNER receives invoice from CONSULTANT.

#### **ARTICLE VI - COMMUNICATIONS**

It is understood by OWNER and CONSULTANT that successful progress under this Agreement requires frequent, concise and documented communication between their representatives.

CONSULTANT designates **Chris Vogelsang** as the representative who will give information to and receive information from OWNER. CONSULTANT may change its designated representative only with the prior written approval of OWNER.

OWNER designates **McCall Burau** as its representative. OWNER may change its designated representative from time to time.

#### **ARTICLE VII - GENERAL CONDITIONS**

- A. Termination. The obligation to provide further services under this Agreement may be terminated by CONSULTANT upon fifteen (15) days written notice to OWNER in the event of substantial failure by OWNER to perform in accordance with the terms hereof through no fault of CONSULTANT. This Agreement may be terminated by OWNER with or without cause or for convenience upon ten (10) days written notice to CONSULTANT. If termination is for cause, and CONSULTANT cures the cause within the ten-day period, then the termination notice shall be void. CONSULTANT shall be paid for all services rendered up to the effective date of termination.
- B. Reuse of Documents. All documents furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT'S services and may become the property of the OWNER. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others or for OWNER's additional design services for the Project or extensions thereof. CONSULTANT will not be responsible for the use or misuse of the documents by OWNER on any other project, or for any purpose or application for which they were not originally intended nor prepared. CONSULTANT may retain a copy of all documents for its records.
- C. Insurance. During the performance of the work defined by this Agreement, and for a period of two (2) years after completion of the work, the CONSULTANT, acting as an independent contractor, shall be solely responsible for procuring and keeping in full force and effect the minimum insurance coverages listed below:
  - (a) Commercial General Liability:  
\$1,000,000 each occurrence and \$1,000,000 general aggregate  
in combined single limit coverage for bodily injury and property damage
  - (b) Professional Liability:  
\$1,000,000 per claim and in the aggregate
  - (c) Automobile Liability:  
\$1,000,000 each occurrence in combined single limit coverage for bodily injury and property damage
  - (d) Workmen's Compensation:
    - 1. Workers' Compensation: Statutory limits required by law
    - 2. Employer's Liability: Statutory limits required by law

Each type of insurance procured by CONSULTANT shall provide coverage for all claims arising out of, or in connection with, any operations, work, or services negligently performed

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under this Agreement by CONSULTANT, his employees, CONSULTANT's agents, or representatives.

Certificates of Insurance for the above-described insurance shall be provided to OWNER upon request. Certificates of Insurance for Commercial General Liability shall name OWNER as additional insured. CONSULTANT agrees to notify OWNER thirty days prior to cancellation of any of the insurance coverage.

- E. Indemnification. CONSULTANT and OWNER mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorney's fees and costs of defense) arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, to the extent that each party is responsible for such damages and losses on a comparative basis of fault.
- F. Delegation of Duties. This Agreement is for the professional services of the CONSULTANT who shall not delegate any of its duties or responsibilities hereunder, save and except with the express written consent of OWNER, which may be withheld at sole discretion of OWNER.
- G. Controlling Law. This Agreement is to be governed by the laws of Wyoming.
- H. Successors and Assigns. OWNER and CONSULTANT are hereby bound, and the partners, successors, executors, administrators, and legal representatives of OWNER and CONSULTANT are hereby bound to the other party of this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither party shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, monies that may become due or monies that are due) without the written consent of the other party, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- I. Changes in Agreement. No changes shall be made in this Agreement except as are agreed to in writing by OWNER and CONSULTANT.
- J. Equal Employment Opportunity. CONSULTANT shall not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, natural origin or ancestry, handicapped, or age.
- K. Illegal Aliens – Public Contracts for Services. CRS 8-17.5-101 and 24-76.5-101. The CONSULTANT certifies that the CONSULTANT shall comply with the provisions of CRS 8- 17.5-101 et seq. The CONSULTANT shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a Subcontractor that fails to certify to the CONSULTANT that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The CONSULTANT

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represents, warrants, and agrees that it will comply with the requirements of CRS 8-17.5-102(2) (b). The CONSULTANT shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the CONSULTANT fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the CONSULTANT may terminate this contract for breach, and the CONSULTANT shall be liable for actual and consequential damage to the CONSULTANT. Except where exempted by federal law and except as provided by CRS 24-76.5-103(3), a CONSULTANT that receives federal or state funds under this contract must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS 24-76.5-103(4) if such individual applies for public benefits provided under this contract.

**ARTICLE VIII – ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER

CONSULTANT

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Address for Giving Notices:  
Town of Saratoga  
110 E. Spring Avenue  
Saratoga, WY 82331

Address for Giving Notices:  
Ordonez and Vogelsang, LLC  
1200 Bannock  
Denver, CO 80204

Attachments made a part of this Agreement:  
Exhibit A – Scope of Work  
Exhibit B – Project Schedule  
Exhibit C – Fee Schedule and Rate Sheets  
Exhibit D – Federal General Provisions

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**Exhibit A: Scope of Work**

## Scope of Work

### Project Administration

The Task involves project management duties and responsibilities. Under this Task OV Consulting will perform the following:

- Direct all project work including staff assignments, progress tracking, budget oversight and quality control
- Meet monthly with the Project Manager/Project Management Team
- Facilitate coordination meetings with the steering committee to report on project status, resolve issues and identify additional needs
- Prepare agendas, materials and take meeting notes
- Form and maintain stakeholder registry for communications and project involvement purposes
- Develop monthly invoices and written progress reports

#### **Deliverables:**

- Monthly PM meetings
- Bi-monthly Steering Committee meetings
- Agendas, meeting materials and meeting notes
- Stakeholder registry
- Monthly invoices and written progress reports

### Public Engagement

The Public engagement Task is discussed in detail in the “Meaningful Public Input and Innovative Engagement” section of this proposal.

#### **Deliverables:**

- Develop a steering committee of trail user, invested parties and stakeholders
- Develop a Public Involvement Plan that outlines strategies for meaningful public involvement to define Plan goals and objectives
- Facilitate Visioning workshops for Town officials and the public
- Coordinate materials, logos, events, milestones, etc. for public engagement
- Develop and run public meetings
- Provide website materials and content, up to three web based surveys, focus groups and stakeholder interviews in the way of providing multiple channel/platforms for public engagement
- Gather, synthesize and incorporate the input for proposed projects
- Prepare a summary of the outreach methods and responses to be included in the final Plan appendices
- Ensure the final Plan is a fair representation of the participation of the citizens and provides a measurement of support for the final Plan

### Existing Conditions Inventory

This task involves performing an inventory of the Town of Saratoga’s sidewalks including accessibility and quality. This inventory will be used to help determine priorities and budget for maintenance and upgrades in order to bring sidewalks and curb ramps into ADA compliance (Item #5 in section 2 of the RFP). We will also review previous plans and documents related to transportation in order to incorporate them into the planning process.

#### **Deliverables:**

- Inventory of existing Town sidewalks, including accessibility and quality.
- A system to determine the priorities and budget for maintenance and upgrades of the items in order to bring to ADA compliance.

### Visioning, Goals & Objectives

We will work with the community to develop concurrence on a Vision that this project can support. This will lead to the development of goals and objectives for the Plan to be vetted with the community as well. These elements will guide the Transportation Alternatives Master Plan development.

**Deliverable:**

- A cohesive Vision for developing sidewalks and trails in the Town of Saratoga while establishing a model for sustainable maintenance and fiscal support.

**Concept Development**

Once the Visioning process is complete, the Team will work to develop draft project ideas, alignments and concepts for review and refinement. This will involve evaluating a cohesive set of potential improvements that work together to meet the Vision, Goals and Objectives of the Plan.

**Deliverables:**

- Recommendations for discrete projects including alignments and widths
- Plan view map of potential concepts

**Concept Refinement and Illustrative Depictions**

We will review the location and targeted use of each segment of the alternatives plan and locational information, provide detailed material recommendations including maintenance recommendations in the form of labeled plans and supporting graphics (photo imagery, construction detail cross-sections and specifications). We will also develop and illustrate interpretive themes, user type and trail prototypes and prototypes for trailhead access points.

In addition, wayfinding and signage are critical components to transportation planning, and impart important information to diverse user groups regarding access and safety. These elements can be combined with interpretive educational exhibits and town identifiers to create trail and signage components that are cohesive and reflect the spirit and values of Saratoga. Existing and potential audiences—Saratoga residents, Saratoga decision-makers, regional users, and tourists—create a need for thoughtful, educational wayfinding. The overall goal for the Transportation Alternatives Master Plan is to develop awareness of the system and its value to the Saratoga community, to establish the civic support required to create community ownership, and for adequate future operating and capital funding. The specific objectives are:

- Create awareness of the Town of Saratoga Alternative Transportation System and the value it brings to the city and residents of Saratoga as their “backyard”
- Develop an awareness that each component is owned by the city/residents and is a unique part of the Saratoga community
- Create awareness of the role that each segment of the Transportation Alternatives Master Plan plays in the greater context of community connections and for quality of life, ecological protection, watershed value, and scenic backdrop
- Develop an identity: clear message, positioning, and visual cohesion
- Implement effective and targeted wayfinding to increase awareness among key audiences

This Task includes:

- Review final system framework and layout
- Prepare Draft Materials Plan: layout, locational information, material
- Assemble Supporting Graphics: Imagery, Cross Sections
- Identify Maintenance Requirements for each recommended material
- Review Draft Materials Plan with Town Staff
- Revisions, as necessary
- Identify educational requirements based on location: safety, directional, ecological, historical
- Develop conceptual wayfinding and signage palettes based on above requirements
- Create Locational Wayfinding and Signage Plan and Supporting Graphics
- Refinement, as necessary based on stakeholder comments, public comments, staff comments

**Deliverables:**

- Draft Materials Plan and Supporting Graphics that support the goal to establish a safe and cohesive look and feel for all Saratoga trail corridors.
- Final Materials Plan and Supporting Graphics
- Wayfinding and Signage Plan, Draft and Final including supporting graphics

## Recommendations, Implementation Strategy and Cost Estimate

We will utilize the outcomes of the Concept Refinement Task to develop specific recommendations, and implementation strategy with clear action steps and cost estimates. Key factors for the implementation strategy will be community input, project importance, project complexity, project readiness, project cost and project synergies with other projects in the Plan or by others such as WyDOT. The resulting implementation plan will give clear direction to the Town on next steps and will provide a roadmap for successful project development.

The process to develop a Maintenance and Management Model requires an understanding of current conditions and maintenance approaches. Our team will review Town of Saratoga data ranging from current maintenance policies to current and past budgets, including line-item details. We have included time for one-on-one interviews with critical town staff to gain insight and perspective into current operations as well as any gaps and needs not currently addressed or available. Recommendations will be developed that are based on Best Management Practices, and will include task management, maintenance standards, task performance frequency, criteria for third-party contracting, staffing and organizational structure, and anticipating impacts from new and/or future system amenities and assets. The final plan will include spreadsheets for use by town staff in the preparation of funding requests/needs. We will also develop Inspection Checklists for use by town staff to track maintenance tasks/needs.

This Task includes:

- Assemble existing inventory data; identify data gaps; complete inventory as needed
- Quantify final recommendations: location, materials
- Prepare Maintenance Model Spreadsheet, Draft 1 for review/comment by Town Staff
- Revisions, as necessary
- Development Maintenance Plan based on feedback from Town Staff

### **Deliverables:**

- Maintenance and Management Plan, Draft 1 and Final Draft
- Implementation Plan including project phasing and costs for development
- Cost estimates for total implementation of the Master Plan including engineering and professional services costs, construction and materials costs
- 5- year Action Plan for Town planning and budgeting purposes
- Outline of potential partnerships with WyDOT regarding improvements along HWY 130

## Draft and Final Transportation Alternatives Master Plan

We will produce a draft Transportation Alternatives Master Plan for Town review and input. Comments and suggestions received will be incorporated into a Final Transportation Alternatives Master Plan that is ready for adoption by the Town Council.

### **Deliverable:**

- Draft and Final Transportation Alternatives Master Plan

## Town Council Adoption

We plan to interface with the Town Council up to four times at the key planning process milestones so that they are involved and knowledgeable about the process and any comments or suggestions they may have can be incorporated into the Plan as it develops. This will facilitate a successful Plan adoption process. We will support the Town Council adoption process by presenting the Final Plan to the Town Council and responding to questions and input.

### **Deliverable:**

- Presentation to Town Council at adoption



The minimum desired process and outcomes for this Project were detailed in Section 2 of the RFP. Our proposed Plan Development Approach will deliver all the required minimum items plus other value add items we have described in this section. In order to be clear where each of the minimum required items is included, we have developed the table below showing the required elements listed in section 2 of the RFP and the corresponding number and which Task of our proposed Plan Development Approach includes each item.

Item #	Description	Included In Proposed Plan Development Approach Task
1	A cohesive vision for developing sidewalks and trails in the Town of Saratoga while establishing a model for maintenance and fiscal support	<ul style="list-style-type: none"> <li>• Visioning, Goals &amp; Objectives;</li> <li>• Recommendations, Implementation Strategy &amp; Cost Estimate</li> </ul>
2	Recommendations for discrete projects, phases, costs for development	<ul style="list-style-type: none"> <li>• Concept Development;</li> <li>• Concept Refinement &amp; Illustrative Depictions;</li> <li>• Recommendations, Implementation Strategy &amp; Cost Estimate</li> </ul>
3	Articulating strategies for implementing the plan with clear action steps	<ul style="list-style-type: none"> <li>• Recommendations, Implementation Strategy &amp; Cost Estimate</li> </ul>
4	Estimating an annual budget amount to sustain a pathways and trails program at the future levels of infrastructure as recommended in the Plan and suggesting management models for pathways program.	<ul style="list-style-type: none"> <li>• Recommendations, Implementation Strategy &amp; Cost Estimate</li> </ul>
5	Inventory of existing Town sidewalks including accessibility and quality. Provide a system to determine the priorities and budget for maintenance and upgrades of the items to bring into ADA compliance.	<ul style="list-style-type: none"> <li>• Existing Conditions Inventory</li> </ul>
6	Recommend surface types, materials, widths, etc. to establish a safe and cohesive look and feel for all Saratoga trail corridors. Illustrative prototypes encouraged.	<ul style="list-style-type: none"> <li>• Concept Refinement and Illustrative Depictions</li> </ul>
7	Illustrative path depictions including interpretive theme, user type and trail prototypes, prototypes for trailhead access points, and wayfinding signage hierarchy.	<ul style="list-style-type: none"> <li>• Concept Refinement and Illustrative Depictions</li> </ul>
8	Review existing funding sources, research potential new revenue streams and provide a 5-year action plan to direct the Town moving forward. Include potential partnerships with scheduled WYDOT improvements on HWY 130.	<ul style="list-style-type: none"> <li>• Recommendations, Implementation Strategy &amp; Cost Estimate</li> </ul>
9	Provide a cost estimate for the total implementation of the Master Plan including engineering and professional service costs, construction and material costs, etc.	<ul style="list-style-type: none"> <li>• Recommendations, Implementation Strategy &amp; Cost Estimate</li> </ul>
10	Production of Transportation Alternatives Master Plan for the Town of Saratoga including an ADA Transition Plan.	<ul style="list-style-type: none"> <li>• Draft and Final Transportation Alternatives Master Plan</li> </ul>

# Meaningful Public Input and Innovative Engagement

The Town of Saratoga Transportation Alternatives Master Plan project will require a thoughtful, multi-layered engagement strategy that effectively identifies the priorities of Saratoga’s tight-knit community. Anchoring the Master Plan in the wishes of those who call Saratoga home is essential for building a future mobility network that supports residents while welcoming visitors from across the landscape. The OV/CPG Team brings the right combination of technical expertise and community understanding to foster a successful and collaborative engagement process. Our Team’s extensive in-person and online experience with engaging different stakeholders has led us to identifying three essential components of a successful outreach strategy for Saratoga: the formation of a Steering Committee, Public Engagement, and collaboration with Town Council.

## Steering Committee

Central to a successful master plan will be the formation of a Steering Committee. OV/CPG will work with the City of Saratoga to identify Steering Committee members including trail users, interested residents or businesses, key civic stakeholders and relevant Public Agency participants. This representative group is proposed to meet bi-monthly and will be essential to the visioning process, development of goals and objectives, identifying concepts and solutions, and creating support for final implementation recommendations. The Team will work directly with Steering Committee members towards agreed upon solutions.



OV Consulting ~ Steering Committee Meeting

## Public Engagement

The project team will work with the City Project Manager to define a Public Involvement Plan that aligns Town of Saratoga Transportation Alternatives Master Plan objectives with the appropriate levels and tools for outreach. This Plan will include both synchronous, in-person touch points and asynchronous, web-based input opportunities. The

OV Team has extensive experience in developing adaptable public engagement programs that serve unique community needs.

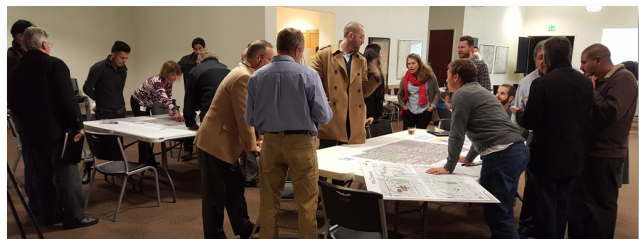
Public Meetings and supporting online engagement tools will occur throughout the process and will be organized in a way to address the various outreach needs throughout the Plan’s development. This Team brings the breadth of communication expertise and understanding of project work to manage this concurrent range of activities.

## In-person Community Input

For Saratoga, we anticipate 3 major in-person public touchpoints at key steps in the planning process:

1. Visioning and Goals/Objectives Workshop (Public and City Officials)
2. Concept Development and Refinement
3. Recommendations and Implementation

For each of these meetings, we will manage meeting logistics and administration, including notification, development of materials, running the meetings, and developing public input summaries at each milestone in the planning process. These meetings will be hosted in relevant, convenient locations such as the Platte River Community Center that encourage both planned and spontaneous participation to gather the most possible input. We will integrate that input in the planning process and proposed outcomes.



OV Consulting ~ Visioning Workshop

In addition, small focus groups can be developed as needed. We recognize the significance of small working group environments that allow us to discuss local needs and goals and to gain a more complete understanding of the communities we work in.

We value an open and transparent communication process and have special experience in managing varied opinions and interests that can arise when collecting community input. By garnering support throughout the process, OV Team can achieve buy-in for the final plan and recommendations.

## Web-Based Input Opportunities

Providing asynchronous, web-based channels that are both computer and mobile friendly for disseminating project information and gathering input is a key element of today's planning processes. We propose creating a project web page either at a separate, project specific URL or under the www.TownofSaratoga.org website to act as a consistent source of project information for the community. The information would be updated at relevant milestones in the planning process such as Visioning, Concept Development and Refinement, release of the Draft Transportation Alternatives Master Plan and the Final/Adopted Transportation Alternatives Master Plan.

In addition, we have had great success in encouraging additional input to the planning process that would not normally be received at in-person touchpoints through the creation and promotion of project specific surveys at key milestones in the planning process. For example, creating an online survey to feed into the Visioning process will allow folks that were not able to attend the in-person workshop to provide input to that step of the planning process. We would develop milestone based surveys that have both quantitative and qualitative questions so that key input can be received but also so that we can gauge and measure the community's support for the Plan or aspects of the Plan.

We have had great success in smaller communities by promoting the surveys and website in both traditional formats such as on the Town's webpage News section or in the local paper or community newsletters but also through non-traditional methods such as table tents in restaurants and flyers in key locations and at key community events that contain brief project info and QR codes that link directly to the web page or survey. This has also been effective in reaching a wider audience such as visitors or County residents that live outside the Town boundaries.

## Town Council

In coordination with the City Project Manager, the project team will support the development of materials, presentations, and updates to town Council at four key milestones including Vision, Goals and Objectives, Concept Design and Refinement, Recommendations and Implementation and Plan Adoption. Although not specifically called out in the RFP, presenting project information at several regularly scheduled Planning Commission meetings during the project is a good way to keep elected officials and community leaders informed and engaged with the project.


The OV Team brings extensive community engagement experience to this project, and will elevate existing community avenues through their Public Involvement Plan to develop a strong foundation of understanding of Saratoga's community that will directly inform Saratoga's Transportation Alternatives Master Plan.

**How did you get here?**


We're glad to see you – and curious about how you got here.  
Did you walk, ride or roll Downtown?

Tell us in a 7-question online survey by December 1st.  
Your answers will help influence future parking options along South Broadway and the Wellness District.

Thanks!



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As a champion for Downtown Englewood, EDDA is working to make Downtown economically vibrant, connected, safe and green.

EnglewoodDowntown.com  
Facebook.com/Englewood.downtown  
Instagram.com/Englewooddowntown

*OV Consulting ~ Table Tents for Survey Outreach in the Community*

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**Exhibit B: Project Schedule**

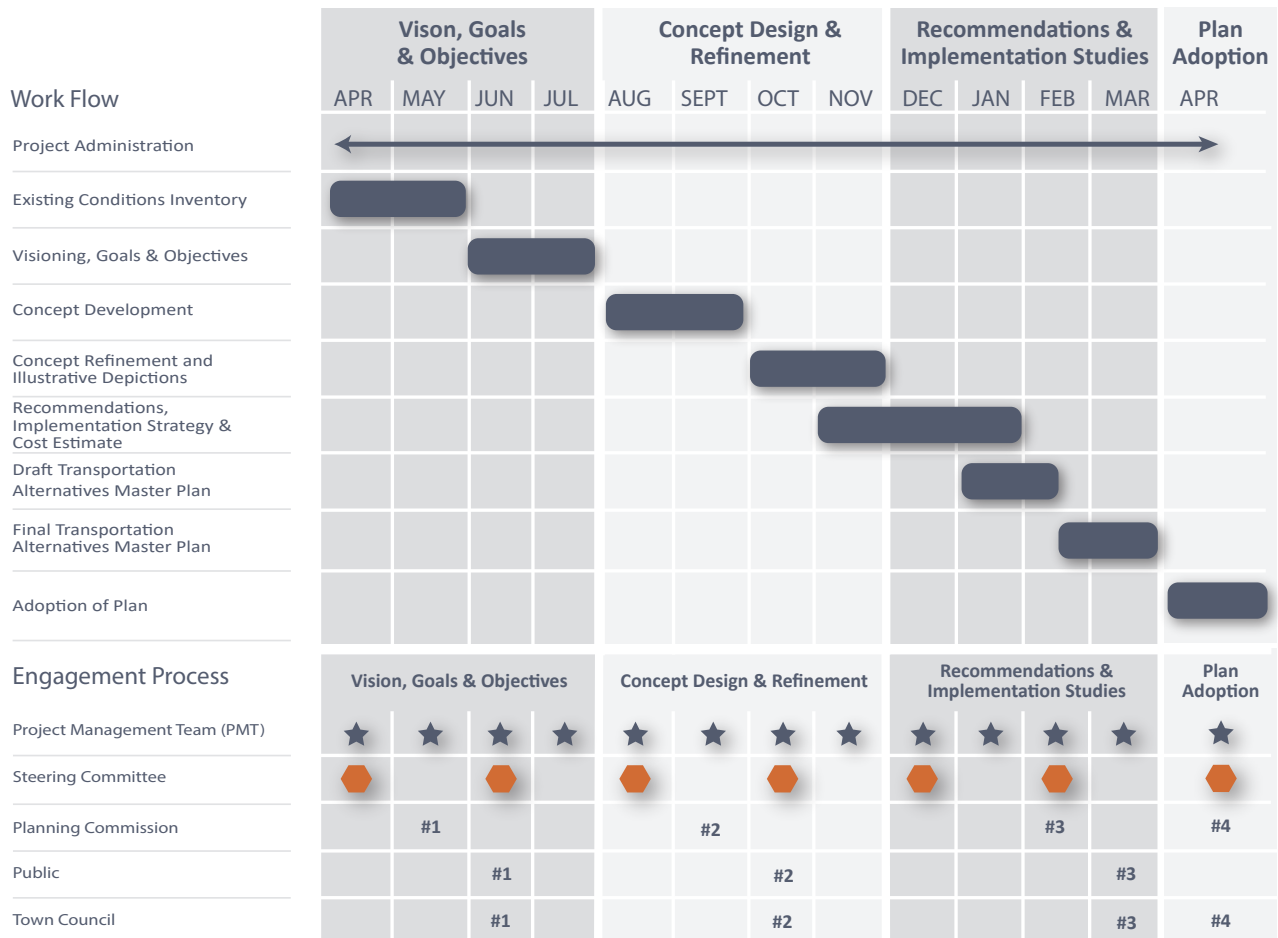
# Schedule

Our proposed project schedule below illustrates both the project planning process work flow and also key meetings and input points. We anticipate an approximately 12 month schedule with project kick-off happening in April of 2023 and Town Council adoption coming in April of 2024. The work flow portion of this schedule was discussed in the Understanding the Project section of our proposal and is laid out in order to facilitate good plan development and community input. The Meetings portion of the schedule ties to our “Meaningful Public Input and Innovative Engagement” strategies” discussed in that section of the proposal. Our schedule is based around key milestones in the Plan development process including:

- Visioning, Goals & Objectives
- Concept Design and Refinement
- Recommendations & Implementation Studies
- Plan Adoption

We believe that utilizing the Steering Committee as a driving force behind the schedule is important. Meetings with the Steering Committee, the Planning Commission, the Public and the Town Council are grouped around the key milestones and occur in sequence so the ideas and concepts are vetted appropriately as they are presented to each subsequent group.

Saratoga Transportation Alternatives Master Plan Project Schedule | 12 - Month Schedule



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**Exhibit C: Fee Schedule and Rate Sheets**

Town of Saratoga Transportation Alternatives Master Plan  
 Fee Estimate  
 OV Consulting  
 4/24/2023

Task	OV Consulting													Studio CPG					FEA			
	Name	Title/Classification	Rate/Hr	S. Moore Sr. Planner \$145	K. Ranger Engineer II \$140	K. Hill Planner I \$120	R. Shaw Planner I \$120	J. McCalland Planning Analyst \$95	B. Gregg Principal \$195	H. Noyes Project Manager \$165	B. Pille Sr. LA Manager \$125	A. Griffith Graphics Designer \$107	J. Lam Landscape Designer \$87	D. McOmie Project Advisor \$184	B. Merrill Program Manager \$150	Task Hours	Task Dollars					
Task 1: Project Administration	6	Project Management		6											4	22	\$3,660.00					
	24	Bi-weekly Team Meetings/Coordination (24 meetings)		8											18	104	\$16,872.00					
<b>Task 1 Subtotal</b>	<b>30</b>			<b>6</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>4</b>	<b>128</b>	<b>\$20,532.00</b>					
Task 2: Public Engagement	8	Public Engagement Plan														8	\$1,600.00					
	9	Steering Committee Meetings (bi-monthly/online)		4												7	\$4,150.00					
	16	Public Meetings		4												14	\$7,132.00					
	4	Surveys/Focus Groups/S stakeholders interviews		4												4	\$1,150.00					
	16	Website Updates/Materials		4												16	\$3,280.00					
<b>Task 2 Subtotal</b>	<b>41</b>			<b>32.5</b>	<b>73</b>	<b>73</b>	<b>68.5</b>	<b>24</b>	<b>4</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>267</b>	<b>\$39,672.00</b>					
Task 3: Existing Conditions Summary	4	Inventory Town Sidewalks														4	\$7,720.00					
	4	Prioritization Criteria- ADA Compliance														4	\$1,040.00					
	2	Existing Conditions Map														2	\$780.00					
<b>Task 3 Subtotal</b>	<b>4</b>			<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>46</b>	<b>\$6,540.00</b>					
Task 4: Visioning, Goals and Objectives	12	Develop and Refine Goals and Objectives		8												46	\$7,850.00					
	12	Task 4 Subtotal		8											0	46	\$7,850.00					
Task 5: Concept Development	24	Draft Recommendations for Discrete Projects		72												194	\$26,658.00					
	8	Final Recommendations for Discrete Projects		16												44	\$6,400.00					
<b>Task 5 Subtotal</b>	<b>32</b>			<b>88</b>	<b>0</b>	<b>10</b>	<b>26</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>26</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>234</b>	<b>\$33,058.00</b>						
Task 6: Concept Refinement and Illustrative Decisions	8	Draft Materials Plan and Supporting Graphics														170	\$12,136.00					
	12	Final Materials Plan and Supporting Graphics														28	\$3,150.00					
	4	Draft Wayfinding Signage Plan														8	\$2,250.00					
	2	Final Wayfinding Signage Plan														10	\$1,200.00					
<b>Task 6 Subtotal</b>	<b>0</b>			<b>6</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>50</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>175</b>	<b>\$19,155.00</b>						
Task 7: Recommendations, Implementation Strategy and Cost Estimates	18	Agency Partnership Opportunity Summary including WyDOT														18	\$2,390.00					
	18	Assembly/Analysis/Calibration and Management (CSP)														45	\$5,489.00					
	4	Draft Maintenance and Management Plan (based on Task 6 Final Concept)														12	\$1,250.00					
	4	Final Maintenance and Management Plan														20	\$2,200.00					
	2	Cost Estimates														50	\$7,120.00					
	4	5-Year Action Plan														26	\$4,080.00					
<b>Task 7 Subtotal</b>	<b>14</b>			<b>32</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>2</b>	<b>76</b>	<b>0</b>	<b>17</b>	<b>216</b>	<b>203</b>	<b>\$29,103.00</b>						
Task 8: Draft and Final Plan	16	Draft Transportation Alternatives Master Plan		24												174	\$23,018.00					
	2	Review Session w/ Town Staff		2												10	\$1,400.00					
	4	Final Transportation Alternatives Master Plan		8												72	\$9,000.00					
<b>Task 8 Subtotal</b>	<b>22</b>			<b>34</b>	<b>0</b>	<b>80</b>	<b>0</b>	<b>2</b>	<b>18</b>	<b>56</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>254</b>	<b>\$33,442.00</b>						
Task 9: Town Council Adoption	3	Town Council Adoption Hearing														21	\$2,808.00					
	3	Staff Hours														4	\$2,808.00					
<b>Task 9 Subtotal</b>	<b>158</b>			<b>6</b>	<b>299</b>	<b>80</b>	<b>244.5</b>	<b>24</b>	<b>45</b>	<b>28</b>	<b>254</b>	<b>16</b>	<b>175</b>	<b>52</b>	<b>1382</b>	<b>\$192,500.00</b>						
<b>Total Labor Dollars</b>	<b>\$31,600</b>		<b>\$11,300</b>	<b>\$870</b>	<b>\$41,860</b>	<b>\$0</b>	<b>\$29,340</b>	<b>\$2,280</b>	<b>\$8,775</b>	<b>\$4,620</b>	<b>\$31,750</b>	<b>\$1,712</b>	<b>\$15,225</b>	<b>\$9,568</b>	<b>\$3,600</b>	<b>Total Labor Dollars</b>	<b>\$197,500.00</b>					
OV \$117,250																						
Studio CPG \$62,082																						
FEA \$13,168																						

Printing \$	2,000.00
Mileage \$	2,500.00
Lodging \$	1,500.00
Per Diem Food \$	1,500.00
<b>Total Expenses \$</b>	<b>7,500.00</b>

**Total Project Fee (Labor + Expenses) \$ 200,000.00**



## OV Consulting 2023 Billing Rates

Name	Title/Classification	Rate/Hr.
Chris Vogelsang	Principal	\$200
Beth Vogelsang	Principal	\$200
Kevin Rangel	Engineer II	\$140
Shari Moore	Senior Planner	\$145
Kat Hill	Planner I	\$120
Reese Shaw	Planner I	\$120
Jean McClelland	Planning Analyst	\$95

### Reimbursable Expenses

- Vehicle Mileage: Current IRS Rate
- Direct Reimbursable Expenses: Direct Cost/No Mark-up (Postage, Outsourced Printing, 3rd Party Equipment Rental, Subconsultants, etc.)
- Lodging: Current CONUS Rate
- Meals: GSA CONUS Per Diem



**StudioCPG Rates Effective April 25, 2023**

**Billing Rates**

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Billy Gregg	Principal	\$195
Heather Noyes	Project Manager	\$165
Brian Pille	Senior Landscape Architect	\$125
Abigail Griffith	Senior Landscape Architect	\$125
Jennifer Lam	Landscape Designer	\$87

**Reimbursable Expenses**

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Vehicle Mileage:	Current IRS Rate
Direct Reimbursable Expenses: Postage, Outsourced Printing, 3rd Party Equipment Rental, Subconsultants	Direct Cost/No Mark-up
Lodging:	Current CONUS Rate
Meals:	GSA CONUS Per Diem



Mark Gordon  
Governor

# WYOMING Department of Transportation

"Provide a safe and effective transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



K. Luke Reiner  
Director

September 15, 2022

William Small, P.E., PMP  
President/Chief Executive Officer  
Facility Engineering Associates, P.C.  
1920 Thomas Avenue, Suite 330  
Cheyenne, WY 82001

## Pre-negotiation Rate Review Results

Dear Mr. Small:

Our Engineering Services staff recently reviewed your firm's current billing rates for an employee that was promoted. The purpose of this rate review letter is to document the approved rate for this employee. This review is possible since there are no active agreements between your firm and the Wyoming Department of Transportation (WYDOT) as of September 15, 2022. After an agreement has been executed, a change order would be required to implement new rates.

To clarify the outcome of the rate review, we offer the following for use as a guideline when preparing proposals on future WYDOT consulting contracts. Although the rates have not been audited, they have been calculated based on the same principles for allowability and reasonableness per 2 CFR 200.

1. The following billing rate for the promoted employee have been determined to be acceptable and agreed to by Facility Engineering Associates, P.C. This billing rate **must** also be used on any local agency project using WYDOT pass-through funding.

Daniel Besmer	Project Engineer	\$125.00/hour
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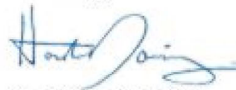
2. The following billing rates were approved on April 21, 2022 and are still in effect. These billing rates **must** also be used on any local agency project using WYDOT pass-through funding.

Rich Merrill	Program Manager	\$150.00/hour
Serena Varner	Project Engineer	\$125.00/hour
Janet Sund	Senior Cost Estimator	\$123.00/hour
Del McOmie	Project Advisor	\$184.00/hour
Brian Isleib	Senior Engineer/Technical Reviewer/QC	\$184.00/hour
Matt Kutzler	Technical Reviewer/QC	\$184.00/hour
Dan Watkins	Chief Engineer/QA	\$235.00/hour
Bill Small	Senior Advisor	\$306.00/hour

3. Additional employees will need to be evaluated on a case-by-case basis prior to using them on WYDOT projects. All billing rates will be evaluated based on the employee's base wage rate and not their position title.
4. Vehicle mileage will be allowed at the current IRS rate as a maximum in lieu of a cost pool.
5. Direct reimbursable expenses such as postage, outsourced copies, third party equipment rental and sub-consultant expenses will be allowed at cost.
6. Mark-ups on direct reimbursable expenses are not allowed.
7. Lodging will be allowed at current CONUS rates.
8. Meals will also be allowed at GSA CONUS per diem rates as long as the rates invoiced are the same rates as those paid to your employees.
9. Overtime rates may be applied to only those hours in excess of 40 hours per week and only if the entire work week is applicable to the WYDOT project. The overtime pay will need to be clearly identified in each contract and which employees will be allowed overtime pay.
10. Other miscellaneous materials will need to be specifically identified in your fee proposals and approved by WYDOT on a case-by-case basis.
11. Late charges are not allowed.
12. No other "tools of the trade" cost pools have been established and, therefore, may not be included as direct reimbursable expenses. Reference WYDOT's "Instructions for Providing Professional Consulting Services," page 9, which is available on our website at <http://www.dot.state.wy.us>, and by selecting "Business with WYDOT," "Consultants" and "Instructions for Providing Consultant Services."

Please feel free to contact me at (307) 777-4488 if you have any questions or concerns regarding this information.

Cordially,



Hank Doering, P.E.  
Engineering Services Engineer

hd

cc: Maria LaBorde, Internal Review Program Manager, WYDOT, Cheyenne  
Patricia L. Small, Payroll & Benefits Administrator, FEA, Fairfax

CONSULTANT Agreement  
Town of Saratoga Transportation Alternatives Master Plan  
OV Consulting  
April 24, 2023

**Exhibit D: Federal General Provisions**

**ATTACHMENT \_\_\_\_\_**

**FEDERAL GENERAL PROVISIONS**

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

**SECTION A. ASSUMPTION OF RISK**

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

**SECTION B. AUDITING AND ACCESS TO RECORDS**

The Town of Saratoga and its representatives shall have access to any books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Agreement.

**SECTION C. BREACH OF AGREEMENT**

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

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

**SECTION D. CERTIFICATION FOR LIMITATIONS ON LOBBYING ACTIVITIES**

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

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

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

#### SECTION E. COMPLIANCE WITH LAWS

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

#### SECTION F. CONFLICTS OF INTEREST

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

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

#### SECTION G. DETERMINATION OF ALLOWABLE COSTS

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

#### SECTION H. DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE

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

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

#### SECTION I. ENVIRONMENTAL POLICY ACTS

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

#### SECTION J. ERRORS AND OMISSIONS

The Consultant shall be responsible for assuring that professional services provided under this Agreement are accurate and without mistakes or omissions. The Consultant shall endeavor to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The Town of Saratoga shall notify the Consultant at the earliest possible time of the professional services which require corrective action and the Consultant, by mutual agreement with the Town of Saratoga and without additional compensation, shall correct those services. Failure by the Consultant to carry out these requirements may be considered, in the sole

discretion of the Town of Saratoga, a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

#### SECTION K. HUMAN TRAFFICKING

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

#### SECTION L. KICKBACKS

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

#### SECTION M. MANDATORY DISCLOSURES

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

#### SECTION N. MONITORING ACTIVITIES

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



## SECTION O. OWNERSHIP AND RETURN OF DOCUMENTS AND INFORMATION

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

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

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

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

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

## SECTION Q. PROFESSIONAL REGISTRATION

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

## SECTION R. PUBLICITY

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

to be performed under this Agreement, shall identify the Town of Saratoga, WYDOT and the federal funding agency as the sponsoring agencies and shall not be released without prior written approval of the Town of Saratoga.

#### SECTION S. SUSPENSION AND DEBARMENT

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

#### SECTION T. TERMINATION OF AGREEMENT

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

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

The Town of Saratoga shall notify the Consultant, in writing, of Agreement termination.

#### SECTION U. TITLE VI ASSURANCES FOR NON-DISCRIMINATION

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

**ATTACHMENT \_\_\_\_\_**

**BREACH OF AGREEMENT**  
(Administrative Written Procedures)

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

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

ATTACHMENT 1, FEDERAL GENERAL PROVISIONS

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

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

Contractual Remedy

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

## Legal Remedy

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

## Administrative Procedures, Sanctions, and Penalties

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

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

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

The threshold for a material breach of agreement requires that the Consultant has failed to perform Agreement Services and that the Town of Saratoga has or will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. Both represent a high threshold to assure an acceptable outcome and, as a result, the Town of Saratoga representative through monitoring activities must identify and document unresolved issues early in the Agreement, before either the Consultant or the Town of Saratoga has incurred

substantial cost or time. All unresolved issues should be promptly addressed, either reaching resolution, arriving at reasonable penalties/sanctions, or concluding breach of agreement with the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

Penalties and/or sanctions typically available to the Town of Saratoga would be structured as 1) compensatory damages, 2) specific performance, or 3) termination.

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

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

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