

**TOWN OF SILT
RESOLUTION NO. 4
SERIES OF 2024**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SILT, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ACTIVITY ENTERPRISE, AUTHORIZING THE TOWN TO EXECUTE A CONTRACT AMENDMENT FOR ENGINEERING SERVICES BY DEWBERRY ENGINEERS INC. FOR CONSTRUCTION OF THE WATER TREATMENT PLANT

WHEREAS, The Town of Silt (the "Town"), has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, the Board of Trustees of the Town (the "Board") is the governing body of the Town and is acting herein on behalf of the Town's Water and Wastewater Activity Enterprise (the "Enterprise"); and

WHEREAS, on February 1, 2022, the Town and Dewberry Engineers, Inc. ("Dewberry") entered into a contract for professional engineering services for the Water Treatment Plant (the "WTP") Master Plan; and

WHEREAS, on November 15, 2022, the Board approved a contract with Dewberry for design services related to the construction of the new WTP; and

WHEREAS, the Town desires to enter into a contract Amendment with Dewberry to act as the Town's engineer and representative for engineering services during the construction phase of the WTP, which Amendment is attached hereto as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SILT, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ACTIVITY ENTERPRISE, THAT:

Section 1. The foregoing recitals are hereby incorporated as if set forth in full.

Section 2. The Board hereby authorizes the Town to enter into the Dewberry Contract Amendment between the Town of Silt and Dewberry to provide engineering representation during the construction phase for the completion of the Water Treatment Plant, as identified in **Exhibit A**.

Section 3. This Resolution shall take effect immediately upon its passage.

INTRODUCED, READ AND APPROVED at a regular meeting of the Board of Trustees of the Town of Silt, Colorado held on the 22nd day of January, 2024.

ATTEST:

TOWN OF SILT, ACTING BY AND THROUGH THE ENTERPRISE


Town Clerk Sheila M. McIntyre, CMC


Mayor Keith B. Richel



December 6, 2023

Town of Silt
Attn: Jeff Layman, Town Administrator
231 N. 7th Street
PO Box 70
Silt, Colorado 81652

RE: Town of Silt - Contract Amendment for Town of Silt WTP Engineering Services during Construction

Dear Mr. Layman,

Dewberry is pleased to submit this Contract Amendment to the Water Treatment Plant (WTP) Facility Plan for engineering services during construction at the Town of Silt WTP. This letter amendment includes the following:

- Project Understanding
- Scope of Work
- Engineering Fee
- Terms and Conditions
- Detailed Cost Breakdown (attached)

1. Project Understanding

The "**Project**" means the full and complete construction and replacement of the Silt WTP to replace the existing infrastructure and construct a new WTP in strict conformance with the Plans and Specifications as set forth in the 100% Design Specifications and 100% Design Drawings, which are incorporated herein by reference. Dewberry Engineers, Inc. (the "Engineer") shall provide engineering services during construction for the Project consistent with the interests of the Town of Silt (the "Town"), to perform duties outlined herein. A summary of the improvements to be completed pursuant to the Project is provided below:

- Site civil including grading, access roads, storm water control, utility design, piping, and irrigation system modifications
- Raw water strainer
- Ballasted coagulation/flocculation/sedimentation system with a capacity of 2 mgd
- Mixed media filtration system
- UV disinfection system
- Modification of existing chlorine disinfection system to meet regulatory requirements
- New chemical storage and dosing systems
- New building to house the new processes, chemicals, electrical, and a work/break room
- Modifications to the existing building
- New electrical, instrumentation, and control systems for the new equipment
- New emergency generator for WTP

2. Term

This Amendment is effective upon execution of the amendment and shall remain in effect until all obligations for the Project and the Scope of Work have been satisfactorily fulfilled (the "Term"). Engineer shall have a continuing obligation, after the Term, to comply with any provision of this agreement intended for the Town's protection or benefit, or that is intended to survive the completion, expiration or termination of this Agreement.

3. Amendment to the November 15, 2022 Contract Amendment for Design Engineering Services

This shall amend the November 15, 2022 Contract Amendment to the WTP Facility Plan for the Design and Engineering Services, which set forth the scope of work between Dewberry and the Town of Silt for the design of improvements for the new Silt WTP to replace the existing infrastructure, incorporate a new coagulation/ballasted flocculation/sedimentation process, treatment iron/manganese, improve resiliency, and accommodate projected 20 year population growth. The Parties now seek to update the Project Understanding section of that Contract to confirm the design of the WTP includes compliance that 1) the WTP's treatment process for manganese removal shall be designed to comply with the secondary EPA standard in compliance with the Town's special funding for Iron and Manganese removals and 2) the WTP will be designed to meet the Total Organic Compounds ("TOC") removal requirements of the Disinfection Byproducts Rule and with a chlorine disinfection system with better control to minimize the overdosing of chlorine. Minimizing finished water TOC and maintaining a lower chlorine residual both have been shown to reduce disinfection byproduct formation potential.

The Project Understanding is hereby amended to state as follows:

PROJECT UNDERSTANDING

Our scope of work includes the improvements and assumptions listed below (summarized from WTP Facility Plan). The projected 20 year peak day demand for the Town of Silt is 1.2 million gallons per day (mgd). To accommodate that with a level of resiliency, the new WTP will include 2 modular 1 mgd treatment trains and will be easily expandable to 3 trains. The WTP will be designed to be modular in nature with each treatment train having a capacity of 1 mgd. Additionally, a 0.5 million gallon bolted steel water tank will be designed on the Town's existing tank site. The project will be delivered via alternative delivery (e.g. Construction Manager at Risk-CMaR) and all cost estimating, constructability reviews, and development of anticipated construction schedules will be performed by the CMaR Contractor. This scope of our design work includes the following:

- Site civil including grading, paving, storm water control, utility design, piping, and irrigation system modifications.
- Raw water pumping modifications (new pump and controls)
- New ballasted coagulation/flocculation/sedimentation system with a capacity of 2 mgd designed to accommodate the expected wide range in raw water turbidity and water quality from the Colorado River. This system (in combination with the coagulant feed system) is designed to remove TOC in compliance with the Disinfection Byproducts Rule.
- New mixed media filtration system that also removes iron/manganese designed to the EPA's Safe Water Drinking Act and subsequent amendments and CDPHE criteria. The treatment system designed to these standards and operated correctly should meet the secondary maximum contaminant level for manganese designated by the EPA.
- New mixed media filtration system that also removes iron/manganese.
- Incorporation of new UV disinfection system
- Modification of existing chlorine disinfection system to meet regulatory requirements
- Design of a treatment system that is compliant with criteria in the EPA's Safe Water Drinking Act and subsequent amendments and CDPHE criteria and receives CDPHE Certification.

The treatment system designed to these standards and operated correctly should meet the primary drinking water standards and TOC removal requirements designated by the EPA.

- New finished water distribution system pump(s)
- Modification of the existing building
 - o New NaOCl storage and delivery system
 - o New Alum storage and delivery system
 - o New sodium bicarbonate storage and delivery system
- Two new buildings (potentially both new processes in one building) to house the new processes
- All electrical and control system infrastructure will strive for energy efficiency. All motors will be premium efficient.
- SCADA system design.
- Public awareness campaign (with extended project team- rate study, Town of Silt, Tony, EA)
- Design of onsite stormwater system modifications.
- New emergency generator for WTP
- Reuse of the existing residuals storage pond for residuals handling and coordination with CDPHE in regards to effluent discharge permit requirements. The design team will design a backwash pump station to recycle 10% of water from residuals pond to minimize discharge from pond. The team will work with CDPHE to determine effluent discharge permit requirements from the pond and collaborate with the Town on solutions to unexpected effluent discharge permit requirements.

4. Scope of Work

This amendment is for engineering services during construction for the improvements listed above for the Project. These services include project management and coordination, onsite construction coordinator/inspector, progress report preparation, material and equipment submittal reviews, attendance at progress meetings, processing change order requests, responding to requests for information, preparation of record drawings, specialty inspections, review of progress payments, startup assistance and training, WTP operation and maintenance manual preparation, final inspection, and punch list preparation as further described below.

4.1 Task 8 - Construction Phase Project Management and Coordination

Plan and coordinate engineering activities, assign and supervise project staff, monitor budgets, administer engineering subcontracts, and prepare monthly invoices. Maintain projects files with equipment and material reviews, requests for information, change order requests, and other pertinent construction related information. Attend preconstruction conference meeting in person and biweekly construction progress meetings and other meetings in person or via teleconference (40 meetings, 5 in person and 35 virtual). Furnish the Town of Silt with monthly progress reports describing the status of completed, ongoing, and upcoming work and pertinent information related to submittals, RFIs, change orders, or schedule. Assist with final inspection and prepare punch list (2 in person visits, included with the meetings above). Submit notification to CDPHE regarding the completion of construction activities.

4.2 Task 9 - Construction Coordinator/Inspector

Provide part time (assumed an average of 3 days a week) Construction Coordinator/Inspector at the construction site to provide observation and oversight of construction activities. Observe construction work to verify Contractor compliance with contract specifications and design intent. Notify the Contractor and Town of unsatisfactory, faulty, or defective work or materials and required corrections, testing or inspection. Notify Town in advance of scheduled major tests, inspections, or the beginning of phases of work. Monitor construction progress and document work performed in construction observation reports for each day onsite. Receive shop drawings, samples, and manufacturers or laboratory test reports from Contractor and coordinate with Project Manager and office engineers for their review and filing. Monitor activities at the construction site between Contractor and their subcontractors. Coordinate between Contractor and utility representatives, Town inspectors, fire department, CDPHE, and other parties for

inspections. Assist engineering staff with evaluating Contractor's RFIs and suggestions for modifications to the work and report them with recommendations to the Town. Verify Contractor's monthly estimates of materials delivered and work complete and assist with review of progress payments to the Contractor. Work with the Project Manager and other engineering staff to recommend necessary actions by the Town including authorization of change orders, schedule modifications, and payments to the Contractor.

4.3 Task 10 - Requests for Information (RFIs)

Receive and respond to written information requests from the Contractor regarding clarification of design and unknown or changed site conditions. Interpret Contract Documents in a manner consistent with or reasonably inferable from the overall intent of the project design.

4.4 Task 11 - Equipment and Material Reviews

Review and approve equipment, materials, test reports, manufacturer's product data, and other similar information submitted by the Contractor for substantial conformance with the Contract Documents. Evaluate warranties and performance guarantees associated with proposed equipment and materials. Evaluate and approve results of independent inspections and tests including specified laboratory or manufacturer's tests. Evaluate and approve required certificates of inspection, testing or approval provided by a manufacturer, fabricator, supplier or distributor of materials or equipment incorporated in the work. Observe manufacturer's factory tests of equipment when deemed necessary and prudent by Engineer. Observe equipment tests conducted at the construction site by manufacturers' representatives to verify performance.

4.5 Task 12 - Progress Payment and Change Order Review

Task 12.1 - Progress Payment Review. Review monthly progress payment applications from the Contractor. Compare progress payment to actual work performed and materials used. Note any discrepancies and discuss and resolve with the Contractor. Confirm all pay applications are certified, including subcontractors.

Task 12.2 - Change Order Review. Review Contractor's requests for change order for compliance to requirements listed in the Contract Documents. Evaluate additions, deletions, or revisions to the work, cost adjustments, and schedule impacts necessitated by unknown or changed conditions. Assess the validity and cost of change orders, time extensions, and claims. If needed, prepare supplementary sketches, drawings, written descriptions, and other documentation to detail design modifications and support change order requests. Engineer may initiate change orders where required to clarify or modify the design to suit field conditions. Make a recommendation to the Town regarding each change order request.

4.6 Task 13 - Specialty Inspections

Provide inspections by personnel with specialized education, expertise, and experience with specific engineering disciplines or systems. Special inspections include the following:

- Civil: Grading, paving, site drainage structures, erosion control
- Structural: Foundations, grade beams, concrete reinforcing, masonry, structural steel, and waterproofing
- Process Mechanical: Process equipment, alignment, capacity tests, vibration and noise, field applied coatings
- Electrical: Motor control centers, switchgear, transformers, panels, duct banks, conduit and cable, communications systems, and lighting
- Treatment Process: Operation and performance

This task includes an inspection at the end of the warranty period to ensure all equipment and materials are acceptable and meeting the warranty requirements listed in the specifications.

4.7 Task 15 - WTP Operation and Maintenance Manual Preparation

Create an Operation and Maintenance (O&M) Manual for the WTP to include all new and existing items that are a part of the WTP. The O&M manual will provide the following:

- A discussion of the theoretical basis of design and functional relationships and dependencies between different units or systems
- Design criteria for each major component of each system including capacity, voltage and phase, horsepower, pressure rating, and similar data
- Step by step procedures for startup and shutdown of each major process, normal operating parameters, operation during emergency conditions, and troubleshooting guidelines to evaluate operational problems

A hard copy and a digital PDF copy of the O&M manual will be provided to the Town. Additional copies shall be submitted to the Colorado Department of Public Health and Environment (CDPHE) for review and approval.

4.8 Task 16 - Startup Assistance

Prepare a written plan to startup equipment and processes in an orderly, logical sequence. Assist the Town staff with initial operation and provide recommendations to optimize process control. On-site assistance during startup includes review of startup procedures and initial operation to establish stable, reliable, and efficient treatment performance. Following startup, evaluate plant performance test results and provide recommendations to the Town of Silt to improve operation or enhance efficiency.

4.9 Task 17 - Record Drawings

Prepare record drawings showing actual as-constructed conditions based upon field records compiled by the Contractor during construction. Engineer shall not be responsible for the accuracy of survey information, nor for any errors or omissions in the construction records furnished by the Contractor. Provide one set of full-size and one set of half-size reproducible record drawings to the Town. Provide electronic versions of the record drawings to the Town in CAD and PDF format.

5. Assumptions

The following assumptions were used to price the ESDCs:

- Construction Coordinator/Inspector services for Task 9 assumed a construction duration of 18 months averaging of 3 days per week onsite.
- Task 13 Specialty Inspections assumes 20 specialty inspections for an average of 4 hours per inspection.
- Task 17 Architectural Services During Construction assumed 4 site visits and 24 coordination meetings.
- We have assumed the construction period is 80 weeks from January 1, 2024 to July 11, 2025
- This scope of work does not include the cost for obtaining building permits or other permits needed for the facilities.

6. Cost of Services, Max Price

All costs for the Project (including without limitation, the costs of the management, administration, materials, labor, work, subcontractors, transportation, facilities, licenses, permits, insurance, premiums, deductibles, any fees, etc., and profit, etc.) will be billed on a hourly basis; provided, however, that the

Project and this Contract are subject to the maximum price not to exceed **\$1,183,540** (the "Max Price"). In accordance with C.R.S. § 24-91-103.6(2)(a), the amount of money appropriated by the Town of Silt for all costs of the Project is equal to or in excess of the Max Price. Engineer agrees and guarantees the actual final total costs charged by Engineer to the Town for its services for the Project, as set forth above, will not exceed the Max Price (subject to reductions/additions pursuant to duly executed Change Orders in accordance with C.R.S. § 24-91-103.6(2)(b)), and the Engineer shall bear the cost of and be responsible for all amounts incurred in complete performance of the Project that exceed the Max Price.

7. Amendments

No amendment, change, Change Order, or modification of this Contract will be valid or binding unless the same is in writing and signed by authorized representatives of the Parties and the Engineer is given written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision of the contract.

A summary by task is provided in the table below. A detailed breakdown of the level of effort and fee by task is provided in the attached Detailed Fee Schedule. The hourly rates have been increased from the original contract rates to account for inflation and market changes.

Task	Cost, \$
Task 8 - Construction Phase Project Management	162,450
Task 9 - Construction Coordinator/Inspector	355,200
Task 10 - RFIs	61,890
Task 11 - Submittal Reviews	100,090
Task 12 - Progress Payment and Change Order Review	74,340
Task 13 - Specialty Inspections	18,930
Task 14 - O&M Manual Preparation	39,980
Task 15 - Startup Assistance	29,700
Task 16 - Record Drawings	102,960
Task 17 - Architect SDCs	77,000
Task 18 - HVAC SDCs	21,000
Task 19 - Electrical SDCs	130,000
Task 20 - Landscape Architect SDCs	10,000
Total	1,183,540

Following are our hourly billing rates and reimbursable expenses; Tables 3 and 4, respectively.

Personnel Category	Hourly Billing Rate, \$
Principal	350
Engineer 9	305
Engineer 8	275
Engineer 7	250
Engineer 6	225
Engineer 5	195
Engineer 4	170
Engineer 3	155
Engineer 2	135

Personnel Category	Hourly Billing Rate, \$
Engineer 1	115
Designer 4	170
Designer 3	135
Designer 2	110
Administrative	150
Resident Engineer	185

Table 4 - Reimbursable Expenses

Project Phase	Rate
Auto Mileage	Approved IRS Rate
Per Diem Lodging	Approved GSA Rate
Per Diem Meals/Incidentals	Approved GSA Rate
Subconsultants	10% markup
Project related printing, couriering, mailing with external vendors, parking fees and tolls	At Cost
Computer time, faxing, in-house printing, supplies	No Charge

8. Authorization

This Letter Amendment authorizes Dewberry to amend the WTP Facility Plan contract and the November 15, 2022 Contract Amendment to provide engineering services during construction of the Project, and incorporates the revised Attachment B (standard terms and conditions) into the contract.

Dewberry Engineers Inc.

Town of Silt

Signature:



Signature:



Name: Patrick Radabaugh, PE

Name: Jeff Layman

Title: Associate Vice President, Chief Engineer

Title: Town Administrator

Date: 1/18/2024

Date: 1/24/24

Detailed Cost and Level of Effort		Engineering Services - Construction Phase																		
Task	Task Description	Task Budget	Engineering Services - Construction Phase																Task Budget	
			Design	Construction	Commissioning	Closeout	Post-Construction	Construction	Commissioning	Closeout	Post-Construction	Construction	Commissioning	Closeout	Post-Construction	Construction	Commissioning	Closeout		Post-Construction
			\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
8	Construction Phase Project Management																			
8.1	Project Management	\$ 79,200																		
8.2	Meetings and Coordination	\$ 83,750																		
	Subtotal Task 8	\$ 162,950	\$ -	\$ -	\$ -	\$ -	\$ 1,000	\$ 161,450	870	50	20	20	540	100	80	0	0	0	0	80
9	Construction Coordinator/Inspector																			
9.1	Construction Coordinator/Inspector	\$ 355,200																		
	Subtotal Task 9	\$ 355,200	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 355,200	1,920	0	0	0	0	0	0	0	1,920	0	0	0
10	RFIs																			
10.1	RFIs	\$ 61,800																		
	Subtotal Task 10	\$ 61,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 61,800	334	10	30	50	40	80	170	40	0	0	24	0
11	Submittal Reviews																			
11.1	Submittal Reviews	\$ 100,000																		
	Subtotal Task 11	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ 99,500	850	10	60	120	60	170	240	0	0	24	16	0
12	Progress Payment and Change Order Review																			
12.1	Progress Payment Review	\$ 19,140																		
12.2	Change Order Review	\$ 55,200																		
	Subtotal Task 12	\$ 74,340	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 55,200	340	20	20	40	40	80	0	0	0	0	40	0
13	Specialty Inspections																			
13.1	Specialty Inspections	\$ 18,930																		
	Subtotal Task 13	\$ 18,930	\$ -	\$ -	\$ -	\$ -	\$ 2,500	\$ 16,430	82	10	24	0	24	24	0	0	0	0	0	0
14	G&M Manual Preparation																			
14.1	G&M Manual Preparation	\$ 39,980																		
	Subtotal Task 14	\$ 39,980	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ 39,480	260	16	0	0	24	60	120	0	0	20	20	0
15	Startup Assistance																			
15.1	Startup Assistance	\$ 29,700																		
	Subtotal Task 15	\$ 29,700	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ 29,200	150	24	0	0	40	80	0	0	0	0	0	8
16	Record Drawings																			
16.1	Record Drawings	\$ 102,960																		
	Subtotal Task 16	\$ 102,960	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ 102,460	672	8	20	20	20	80	120	15	200	200	8	8
17	Architect SDCs																			
17.1	Architect SDCs	\$ 77,000																		
	Subtotal Task 17	\$ 77,000	\$ -	\$ -	\$ -	\$ 77,000	\$ -	\$ -	0	0	0	0	0	0	0	0	0	0	0	0
18	HVAC SDCs																			
18.1	HVAC SDCs	\$ 21,000	\$ 21,000																	
	Subtotal Task 18	\$ 21,000	\$ 21,000	\$ -	\$ -	\$ -	\$ -	\$ -	0	0	0	0	0	0	0	0	0	0	0	0
19	Electrical SDCs																			
19.1	Electrical SDCs	\$ 130,000																		
	Subtotal Task 19	\$ 130,000	\$ -	\$ -	\$ 130,000	\$ -	\$ -	\$ -	0	0	0	0	0	0	0	0	0	0	0	0
20	Landscape Architect SDCs																			
20.1	Landscape Architect SDCs	\$ 10,000																		
	Subtotal Task 20	\$ 10,000	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ -	0	0	0	0	0	0	0	0	0	0	0	0
	Construction Phase Services	\$ 1,183,540	\$ 21,000	\$ 10,000	\$ 130,000	\$ 77,000	\$ 5,500	\$ 940,040	5,461	150	182	250	224	564	432	1,930	341	280	60	60

**ATTACHMENT B
STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions ("STCs") are incorporated by reference into the foregoing agreement or proposal, along with any future modifications or amendments thereto made in accordance with Paragraph 23 below (the "Agreement") between Dewberry ("we" or "us" or "our") and its client ("you" or "your") for the performance of services as defined in our proposal ("Services"). These STCs are fully binding upon you, just as if they were fully set forth in the body of the Agreement, and shall supersede any term or provision elsewhere in the Agreement in conflict with these STCs.

1. **Period of Offer.** Unless we decide, in writing, to extend the period for acceptance by you of our proposal, you have 90 days from our proposal date to accept our proposal. We have the right to withdraw the proposal at any time before you accept. Delivery of a signed proposal—whether original or copy—to us constitutes your acceptance of the proposal, including attachments expressly incorporated into the proposal by reference. The proposal and incorporated attachments shall constitute the entire Agreement between you and us. If you request us to render Services before you deliver a signed proposal to us, and we render Services in accordance with the proposal, you agree that the proposal and these STCs constitute the Agreement between you and us even if you fail to return a signed proposal to us.
2. **Scope of Services.** For the fee set forth in the Agreement, you agree that we shall only be obligated to render the Services expressly described in the Agreement. Our Services shall not be construed as providing legal, accounting, or insurance services. Unless the Agreement expressly requires, in no event do we have any obligation or responsibility for:
 - a. The correctness or completeness of any document which was prepared by another entity.
 - b. The correctness or completeness of any drawing prepared by us, unless it was properly signed and sealed by a registered professional on our behalf.
 - c. Favorable or timely comment or action by any governmental entity on the submission of any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents of any nature whatsoever.
 - d. Taking into account off-site circumstances other than those clearly visible and actually known to us from on-site work.
 - e. The actual location (or characteristics) of any portion of a utility which is not entirely visible from the surface.
 - f. Site safety or construction quality, means, methods, or sequences.
 - g. The correctness of any geotechnical services performed by others, whether or not performed as our subcontractor.
 - h. The accuracy of earth work estimates and quantity take-offs, or the balance of earthwork cut and fill.
 - i. The accuracy of any opinions of construction cost, financial analyses, economic feasibility projections or schedules for the Project.Should shop drawing review be incorporated into the Services, we shall pass on the shop drawings with reasonable promptness. Our review of shop drawings will be general, for conformance with the design concept of the Project to which this Agreement relates ("Project") and compliance with the information given in the construction documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. Our review shall not be construed as permitting any departure from contract requirements nor as relieving your contractor of the sole and final responsibility for any error in details, dimensions or otherwise that may exist.
3. **Your Oral Decisions.** You, or any of your directors, officers, partners, members, managers, employees or agents having apparent authority from you, may orally: (a) make decisions relating to Services or the Agreement; (b) request a change in the scope of Services under the Agreement; or (c) request us to render additional Services under the Agreement, subject to our right to require you to submit the request in writing before your decision or request shall be considered to have been effectively made. You may, at any time, limit the authority of any or all persons to act orally on your behalf under this Paragraph 3, by giving us seven 7 days advance written notice.
4. **Proprietary Rights.** The drawings, specifications and other documents prepared by us under this Agreement are instruments of our service for use solely for the Project and, unless otherwise provided, we shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright and rights to any Dewberry trademarks. Upon payment in full for our Services, you shall be permitted to retain copies, including reproducible copies of our instruments of service for information and reference for the Project. Our instruments of service may be used by you or others on other projects for completion or modification of this Project by other professionals. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication inconsistent with our reserved rights. You shall defend, indemnify and hold us harmless, and release us, from any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of any use (including, without limitation, the means or media of transfer, possession, use, or alteration) of our instruments of service by (i) you, if such use is inconsistent with our reserved rights or this Paragraph 4, or (ii) any third party, regardless of the manner of use, if such third party received our instruments of service directly or indirectly from you (including if we or others have transmitted such instruments of service to the third party at your request or direction, for your benefit, or, and without limiting the foregoing, pursuant to a contractual obligation that is directly or indirectly derived (or flowed down) from a contract to which you have privity).
5. **Fees and Compensation.** If you request us to render services not specifically described in the Agreement, or, if we or anyone in our employ, is called upon to be deposited or to testify in a matter in which we are not a named party, that relates to the Project, you agree to compensate us for such services in accordance with the hourly rates as set forth on Attachment A of this Agreement or in any subsequently effective schedule, unless otherwise agreed in writing. If no compensation rate is set forth on Attachment A, or through written agreement between you and us, we shall be compensated for such services at our then current hourly rates. We may unilaterally increase our lump sum or unit billing rates on each anniversary of your acceptance of this Agreement by as much as five percent or the percentage increase in the CPI-W (U.S. Department of Labor Consumer Price Index-Washington), whichever is greater. Hourly rates are subject to periodic revision at our discretion.
6. **Period of Service.** The provisions of this Agreement and the compensation provided for under the Agreement have been established in anticipation of the orderly and continuous progress of the Project. Our obligation to render the Services will extend only for that period which may reasonably be required to complete the Services in an orderly and continuous manner, and we may then, at our sole option, terminate the Agreement.
7. **Reimbursable Expenses.** Unless the Agreement otherwise provides, you shall reimburse us, or our affiliates, for all expenses we incur to render the Services for you under this Agreement, plus fifteen percent. We may submit invoices for reimbursable expenses separately from invoices for Services.
8. **Payment Terms.** We may submit invoices at any time to you for Services and for reimbursable expenses incurred. Invoices are payable within 30 days of the invoice date, and you agree to pay a finance charge of 1.5% per month on any unpaid balance not received by us within 30 days of the invoice date. If you require payment via credit card, Dewberry will assess a 3% processing fee on the total amount invoiced. Invoices may be based either upon our estimate of the proportion of the total Services actually completed at the time of billing for lump sum or fixed fee services, or in the case of hourly services, upon rendering of the Services. If any invoice is not paid within 30 days of the invoice date, we shall have the right either to suspend the performance of our Services until all invoices more than 30 days past due are fully paid or to terminate the agreement and to initiate proceedings to recover amounts owed by you. Additionally, we shall have the right to withhold from you the possession or use of any drawings or documents prepared by us for you under this or any other agreement with you until all delinquent invoices are paid in full. You shall not offset payments of our invoices by any amounts due or claimed to be due for any reason. If you do not give us written notice disputing an invoice within 20 days of the invoice date, the invoice shall conclusively be deemed correct. All payments made by you should specify the invoice numbers being paid. If we receive payments that do not specify the invoices being paid, you agree that we may apply payments in our sole discretion. Time is of the essence of your payment obligations; and your failure to make full and timely payment shall be deemed a material breach.
9. **Information from You and Public Sources.** You shall furnish us all plans, drawings, surveys, deeds and other documents in your possession, or that come into your possession, which may be related to the Services, and shall inform us in writing about all special criteria or requirements related to the Services (together, "Information"). We may obtain deeds, plats, maps and any other information filed with or published by any governmental or quasi-governmental entity (together, "Public Information"). Unless we are engaged in writing as an additional service to independently verify such, we may rely upon Information and Public Information in rendering Services. We shall not be responsible for errors or omissions or additional costs arising out of our reliance on Information or Public Information. You agree to give prompt notice to us of any development or occurrence that affects the scope or timing of Services, or any defect in the final work submitted by us, or errors or omissions of others as they are discovered. We shall not be responsible for any adverse consequence arising in whole or in part from your failure to provide accurate or timely information, approvals and decisions, as required for the orderly progress of the Services.
10. **Plan Processing.** We may submit plans and related, or other, documents to public agencies for approval. However, it may be necessary, in order to serve your interests and needs, for us to perform special processing, such as attending meetings and conferences with different agencies, hand carrying plans or other documents from agency to agency, and other special services. These special services are not included in the basic fee and shall be performed as additional services on an hourly fee basis in accordance Paragraph 5 above.
11. **Meetings and Conferences.** To the extent the Agreement provides, we will attend meetings and conferences that you, or your representatives, reasonably require. Furthermore,



we will meet on an as-needed basis with public agencies that might be involved in the Project. Because we cannot forecast the scope and nature of these meetings and conferences, we will perform meeting and conference services on an hourly fee basis in accordance with our applicable hourly rate schedule.

12. **Your Claims.** You release us from, and waive, all claims of any nature for any and all errors or omissions by us related to our performance under this Agreement, or in the performance of any supplementary services related to this Agreement, unless you have strictly complied with all of the following procedures for asserting a claim, as to which procedures time is of the essence:
 - a. You shall give us written notice within 10 days of the date that you discover, or should, in the exercise of ordinary care, have discovered that you have, or may have, a claim against us. If you fail to give us written notice within such 10 days, then such claim shall forever be barred and extinguished.
 - b. If we accept the claim, we shall have a reasonable time to cure any error or omission and any damage. This shall be your sole remedy, and you must not have caused the error or omission, or any damage resulting from the error or omission, to be cured, if we are ready, willing and able to do so.
 - c. If we reject the claim, we shall give you written notice of our rejection within 30 days of our receipt of your notice of claim. You shall then have 60 days to give us an opinion from a recognized expert in the appropriate discipline, corroborating your claim that we committed an error or omission, and establishing that the error or omission arose from our failure to use the degree of care ordinarily used by professionals in that discipline in the jurisdiction local to the Project. If you fail to give us such an opinion from a recognized expert within 60 days from the date we send you notice of our rejection of the claim, then such claim shall forever be barred and extinguished.
 - d. We shall have 60 days from receipt of your expert's written opinion to reevaluate any claim asserted by you. If we again reject such claim, or if the 60-day period from receipt of the written opinion of your expert elapses without action by us, then you may have recourse to such other remedies as may be provided under this Agreement.
13. **Hazardous or Toxic Wastes or Substances, Pollution or Contamination.** You acknowledge that Services rendered under this Agreement may be affected by hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances. To induce us to enter into this Agreement, you agree to indemnify, defend and hold us harmless from and against any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, that relate, in any way, to both (a) hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances, and (b) the performance by us of our obligations under the Agreement, whether or not such performance by us is claimed to have been, or was, or may have been, negligent. Unless otherwise expressly set forth in this Agreement, we shall have no responsibility for searching for, or identifying, any hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances; but if we discover or suspect the presence of any such wastes, substances, pollution or contamination due to the presence of hazardous or toxic wastes or substances, then we, in our sole discretion, and at any time, may stop work under, or terminate, this Agreement, in which event we will have no further liability to you for performance under this Agreement, and you shall make the payments to us required by Paragraph 14 of the STCs.
14. **Termination.** Either party may terminate the Agreement upon 30 days notice. You shall immediately pay us for our Services rendered and expenses incurred through the termination date, including fees and expenses that we incur as a result of the termination.
15. **Payment of Other Professionals.** If this Agreement includes continuation of services begun by other architects, engineers, planners, surveyors, or other professionals, we may suspend our Services until you make arrangements satisfactory to such other professionals for payment. If satisfactory arrangements have not been made within a time determined by us to be reasonable, then we may in our sole discretion terminate this Agreement.
16. **Assignment and Third-Party Beneficiaries.** Neither party shall assign or transfer any rights, interests or claims arising under this Agreement without the written consent of the other, provided, however, that we are permitted to (i) employ independent consultants, associates, and subcontractors as we may deem necessary to render the Services, (ii) assign our right to receive compensation under this Agreement, and (iii) transfer the Agreement to an affiliate of ours, in our sole discretion, with written notice to you (an affiliate for purposes of this Paragraph 16 is defined as any other business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, us). This Agreement does not confer any benefit or right upon any person or entity other than the parties, except that our partners, members, managers, directors, officers, employees, agents and subcontractors shall have and be entitled to the protection afforded us under Paragraphs 9, 12, 13, 16, 20 and 22 of this Agreement.
17. **Applicable Law and Forum Selection.** The State of Colorado laws shall govern this Agreement in all respects, including matters of construction, validity, and performance. Except as provided in Paragraph 18, the parties agree that the state and federal courts of Denver, Colorado (together, "Courts") shall have exclusive jurisdiction over any controversy, including matters of construction, validity, and performance, arising out of this Agreement. The parties consent to the jurisdiction of the Courts and waive any objection either party might otherwise be entitled to assert regarding jurisdiction. The parties irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or related to this Agreement.
18. **Arbitration of Our Claims for Compensation.** Instead of proceeding in court, we, in our sole and absolute discretion, may submit any claim for compensation due us under this Agreement to arbitration in Denver, Colorado in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the arbitration award may be entered in any court having jurisdiction. We shall have the right to withdraw our demand for arbitration at any time before the arbitration hearing starts by giving written notice to the arbitrator or panel and you; and upon the giving of such notice by us, the arbitration shall terminate, no award shall be rendered, and we may then pursue our remedies in accordance with Paragraph 17 above.
19. **Severability.** If any part, term, or provision of this Agreement is held to be illegal or unenforceable, the validity and enforceability of the remaining parts, terms, and provisions of this Agreement shall not be affected, and each party's rights shall be construed and enforced as if the Agreement did not contain the illegal or unenforceable part, term, or provision.
20. **Limitations on Liability.** In recognition of the relative risks and benefits of the Project to you and us, you agree, that our liability for any loss, damages, property damages or bodily injury of or to you caused in whole or in part by us in the performance of this Agreement or any supplementary services in any way related to this Agreement, shall be limited in the aggregate to the amount of Five Million Dollars (\$5,000,000). The parties intend that the limitation on liability shall apply to all claims, whether sounding in tort, contract, warranty, or otherwise. You release, waive, and shall not seek contribution from, or indemnification by, us for any claims of any nature made against you by any other person who may suffer any loss, damages, property damages or bodily injury in any manner associated with our services, or any supplementary services in any way related to this Agreement. Notwithstanding anything to the contrary elsewhere in the Agreement, we shall not be liable to you, in any event or for any amount, for delays; or for consequential, special or incidental damages; or for punitive or exemplary damages; or for the cost to add an item or component that we omitted from the instruments of service due to our negligence, to the extent that item or component would have otherwise been necessary, or adds value or betterment, to the Project.
21. **Payment of Attorney's Fees.** The losing party shall pay the winning party's reasonable attorney's fees and expenses for the prosecution or defense of any cause of action, claim or demand arising under this Agreement in any court or in arbitration.
22. **Indemnification.** To the extent permitted by law, the parties agree to indemnify and hold each other harmless from and against any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of negligent acts or omissions or errors or omissions by us in the performance of this Agreement, or in the performance of any supplementary service in any way related to this Agreement, provided that neither party is required to indemnify and hold the other harmless under this Paragraph 22 in the event of sole negligence.
23. **Integration Clause.** The Agreement represents the entire agreement of the parties. No prior representations, statements, or inducements made by either us, you, or the respective agents of either, that is not contained in the Agreement shall enlarge, modify, alter, or otherwise vary the written terms of the Agreement unless they are made in writing and made a part of the Agreement by attachment, incorporated by reference in the Agreement or signed or initialed on behalf of both parties.
24. **Notice.** Any notices issued to us shall be sent to our project manager with a copy sent via email to Notices@dewberry.com or mailed to 8401 Arlington Blvd, Fairfax VA 220131, Attn: Legal Department.