

**Airport Authority Special Meeting**  
**Thursday, September 24, 2020 8:15 AM**  
**Crete Library/Community Center**  
**1515 Forest Ave.**  
**Crete, NE 68333**

**1. Open Meeting**

- In accordance with Nebraska law, a copy of the Open Meetings Act can be found in the back of the Council Chambers.
- Items listed on the agenda may be considered in any order.

**2. Roll Call**

- Attendance of members will be recorded to determine the presence of a quorum for official actions.

**3. Petitions - Communications - Citizen Concerns**

- Citizen testimony may be limited to 3 minutes per person.
- Please do not repeat testimony that has already be heard.
- No action can be taken on matters presented under this title except to answer any questions or to refer the matter for further action.

**4. Items of Business**

- Action may be taken to discuss/limit discussion, to hear testimony in favor of or in opposition to, and to approve or disapprove any matter presented under this title.
  - A. Review and discuss the Fuel Depot, FBO, and Manager's agreements.
  - B. Set bid opening date and time for farm leases.
  - C. Discuss engineering negotiations for FY 2021 grant.

**5. Officers' Reports**

- Reports may be given by Officers, City Departments, Committees, or Authority members concerning the current operations of the Airport.
- No action can be taken on matters presented under this title except to answer any questions or to refer the matter for further action.

**6. Consent Agenda**

- All items listed on the consent agenda will be approved by one motion and vote. No separate discussion of these items will occur unless the Chair, an Authority member, or a citizen so requests. If such a request is made, the item will be moved out of the consent agenda and considered separately.
  - A. Approve Meeting Minutes
  - B. Accept the City Treasurer's Report
  - C. Approve the Payment of Claims Against the Airport Authority

**7. Adjournment**

- The Council may enter into closed session to discuss any matter on this agenda when it is determined that a closed session is clearly necessary for the protection of the public interest or the prevention of needless injury to the reputation of an individual (if such individual has not

requested a public meeting) or as otherwise allowed by law. Any closed session shall be limited to the subject matter for which the closed session was called. If the motion to close passes, then immediately prior to the closed session the Mayor shall restate on the record the limitation of the subject matter of the closed session.

- The City of Crete assures that no person shall on the grounds of race, color, national origin, age, disability, handicap or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of the City receiving Federal financial assistance. To report discrimination, contact the City Clerk's office.
- The complete agenda with attachments is available at [www.crete.ne.gov](http://www.crete.ne.gov).

**CITY OF CRETE, NEBRASKA AIRPORT AUTHORITY  
FIXED BASE OPERATOR LEASE AGREEMENT**

This Agreement is entered into between the Airport Authority of the City of Crete, Nebraska (“Authority”) and Elevate Air Services, LLC, 2429 County Road F, Crete, NE 68333, (“Operator”) upon the date of signature by both parties.

**RECITALS:**

- A. The Airport Authority of the City of Crete, Nebraska is a duly created authority under the Cities Airport Authorities Act (Neb. Rev. Stat. §§ 3-501 to 3-514) and has the power to enter into contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the Authority.
- B. The Operator seeks to use certain premises on the Crete Municipal Airport (“Airport”) for the operation of an aircraft maintenance and repair facility, aircraft chartering, aircraft sales and rental, and any associated activities.
- C. The Authority and Operator have discussed and agreed upon terms and conditions related to Operator’s use of the premises, and this written agreement is intended to and shall memorialize the entire agreement between the parties.

**AGREEMENT:**

Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

**PART I: TERMS AND CONDITIONS.**

**§1.01 Premises Provided; Premises Excluded.**

Operator shall be entitled to possess and use the approximately 80’ x 80’ hangar commonly referred to as FBO Hangar #2 and the two-story addition to FBO Hangar #2, commonly referred to as the FBO Hangar #2 Office Wing, that contains a lobby, two public restrooms, a mechanical room, four office spaces, and a multi-purpose room on the ground floor (“Premises”). A floor plan of the Premises indicating which areas are for FBO use is labeled Exhibit B and incorporated herein by reference. Operator shall also be entitled to the joint, nonexclusive use of the 30’ x 20’ shop/garage in the southwest corner of the ground floor of the FBO Hangar #2 Office Wing and shall share access of and to the Premises with the Airport Authority and any other lessees or tenants authorized by the Airport Authority.

The Premises does not include the two finished rooms on the second floor, the unfinished area on the second floor, the west twenty feet (20’) of the second floor, or any ramp area. These areas are reserved for the exclusive use of the Airport Authority or the City of Crete.

**§1.02 Payment for Premises and Method of Payment; Late Payments and Late Fees; Annual Renegotiation.**

Operator shall pay rent to the Airport Authority in the amount of **Two Hundred Dollars (\$200.00) per month**. All rents are due and payable the first day of each month. All payments shall be made by check, ACH deposit, or other appropriate payment mechanism as determined by the Airport Authority.

The Airport Authority may impose an additional late charge on all overdue rent payments in the amount of **Twenty-Five Dollars (\$25.00)** per month on all payments more than five (5) days past due. If Operator fails to pay any rents or other payments within fifteen (15) days after the same shall become due, the Airport Authority may declare Operator to be in substantial breach of this agreement.

The amount of rent under this agreement shall be renegotiated each September during the Lease Term. If, after a good faith effort, the parties are unable to reach a mutually satisfactory rate, this agreement shall immediately terminate, and any further rights, duties, or obligations under this agreement shall be null and void.

### **§1.03 Lease Term.**

The term of this lease will be three (3) years from October 1, 2020 (“Lease Term”); therefore, the termination date of this lease shall be September 30, 2023 (“Termination Date”).

### **§1.04 Use of Premises; Non-Exclusive Rights.**

Operator shall only be permitted to use the Premises for the operation of an aircraft maintenance and repair facility, aircraft chartering, aircraft sales and rental, and any associated activities.

Nothing in this agreement shall be construed to grant or authorize the granting of exclusive rights prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Airport Authority reserves the right to grant others the privilege and right of conducting any or all of the activities listed herein or any other activity of an aeronautical nature.

### **§1.05 Right of Ingress and Egress.**

Operator shall have at all times the right of reasonable ingress to and egress from the Premises, subject to Force Majeure Events, severe weather conditions, or physical impossibility. The Airport Authority reserves the right to enter upon the Premises at any reasonable time for the purpose of making any inspection it may deem appropriate.

### **§1.06 Repairs, Modifications, or Improvements.**

Operator shall immediately report to the Airport Authority any damage to or defects in the Premises. In the event any repairs or improvements need to be made, installed, or completed on the Premises, whether or not caused by or attributable to the actions or negligence of Operator, any and all such repairs or improvements are to be completed by the Airport Authority or a contractor of its choice. Any repairs needed to be made due to the actions, negligence, or omission of Operator shall be paid by Operator within fourteen (14) days after notification of such charges.

In no event shall Operator be allowed or permitted to make any repairs, modifications, or improvements to the Premises or to place or erect any signs or advertising materials upon the Premises without the prior written approval and consent of the Airport Authority.

The Airport Authority shall have the right to maintain, repair, develop, or improve the landing area and all publicly-owned facilities of the Airport without interference or hindrance by Operator and shall have the right to take any action it considers necessary to protect the aerial approaches to the Airport from obstruction.

### **§1.07 Utilities; Payment for Services Provided to Operator; Construction Liens.**

Operator shall pay for all utilities, including private telephone and internet, and all maintenance supplies used on the Premises, including but not limited to, lighting replacement and maintenance.

Operator agrees to promptly pay all sums of money in respect to labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to or on behalf of Operator in or about the Premises or for any aircraft stored on the Premises.

Operator hereby agrees that no construction, mechanic's, or materialman's liens shall be placed on or attached to the Premises. In the event any such lien shall be so placed on the Premises, Operator shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that Operator may contest any such lien after first posting a surety bond in favor of the Airport Authority in an amount sufficient to remove the lien pursuant to Nebraska law.

### **§1.08 Damage or Destruction of Premises.**

In the event of substantial damage to or a partial destruction of the Premises, the Airport Authority shall endeavor to repair the damage in a reasonable and timely fashion, provided the repairs can be made within sixty (60) days. Any damage or partial destruction shall neither annul nor void this lease; however, Operator shall be entitled to an equitable and/or pro rata reduction of rent while the repairs are being made. In the event the Airport Authority cannot make the repairs within the specified time or the repairs are impracticable or not cost-effective in light of the damage to the Premises, the lease shall be terminated, and any prepayment of rent shall be returned to Operator on an equitable and/or pro rata basis.

### **§1.09 Surrender of Premises and Removal of Personal Property.**

Operator agrees to peaceably surrender possession of the Premises at the end of the Lease Term in as good a condition as when possession was granted except for any ordinary wear and tear. Upon any default of the terms and conditions of this Lease, the Airport Authority may enter the Premises and remove all of Operator's property. Upon vacation of the Premises or termination of the Lease, Operator agrees to immediately remove all of its belongings, possessions, or materials from the Premises. If any such belongings, possessions, or materials are not so removed, the Airport Authority shall have the right to remove and dispose of such items at Operator's expense.

### **§1.10 Incorporation of Rules and Regulations.**

All parts, provisions, and definitions found in the Crete Municipal Airport Rules and Regulations shall be incorporated herein by reference, and all rights, duties, and responsibilities contained therein shall be fully binding on both parties as if wholly set out in this agreement.

## **PART II: BREACHES AND TERMINATION.**

### **§2.01 Early Termination.**

The Airport Authority may terminate the lease at any time without penalty by giving Operator at least thirty (30) days written notice.

This lease may also be terminated, in whole or in part, prior to the completion of the Lease Term if and when both parties agree that continuation is not feasible or would not produce beneficial results for either party. The parties must agree on the termination conditions, including the effective date of the termination, the portion (if in part) to be terminated, and any allocation of rent payments under the lease.

#### **§2.02 Non-performance or Other Breach by Operator.**

In the event of a substantial breach of the provisions of this lease, including but not limited to the non-payment of the rent required of Operator, the Airport Authority will be entitled to declare such substantial breach a default and to terminate the lease in whole or in part. The Airport Authority may allow Operator time to cure a breach of the lease; however, allowing Operator time to cure a breach does not waive the Airport Authority's right to terminate the lease for the same or different breach which may occur at a different time.

#### **§2.03 Force Majeure.**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the lease due to a natural disaster or other similar event outside the control of and not attributable to the fault or negligence of the party (“Force Majeure Event”).

A Force Majeure Event shall not constitute a breach of the lease. A party so affected shall immediately give notice to the other party of the Force Majeure Event. The Airport Authority may grant relief from the performance of the lease if Operator is prevented from performance by a Force Majeure Event. The burden of proof for the need of such relief shall rest with Operator. To obtain release based on a Force Majeure Event, Operator must file a written request for such relief with the Airport Authority.

#### **§2.04 Non-Waiver/Waivers in Writing.**

The Airport Authority's failure to insist upon the strict performance of any provision of this lease or to exercise any right based upon breach will not constitute a waiver of any rights under this lease. No custom or practice of the parties which varies from a term of this lease shall be a waiver of any party's right to demand exact compliance with the terms of this lease, and no conditions or provisions of this lease can be waived unless approved by the Airport Authority in writing.

### **PART III: SUPPLEMENTAL TERMS AND CONDITIONS.**

#### **§3.01 Designation of Officials to Execute Lease and Amendments.**

The Airport Authority or their designee is the official authorized to execute this lease and any amendments to this lease on behalf of the Airport Authority.

Operator's representative who is duly authorized by law to execute this lease, or their successor, is the official authorized to execute this lease and any amendments to this lease on behalf of Operator.

Either party may request amendments to this lease; however, amendments will not take effect until mutually agreed to, in writing, by both parties.

### **§3.02 Assignment of Interest.**

Operator may not assign or transfer any interest in this lease or the Premises without the prior, written authorization of the Airport Authority. If any assignment or transfer is authorized, Operator shall remain solely responsible for all obligations under this lease and for the conformance to the terms and conditions of this lease by any assignee or transferee. Any breach or default of this lease by any assignee or transferee shall be considered a breach or default of Operator.

### **§3.03 Relationship of the Parties.**

Nothing in this lease should be construed in any manner as creating or establishing a partnership, joint venture, or agency relationship between the parties, nor shall either party have the right, power, or authority to create any obligations or duty, express or implied, on behalf of the other party.

### **§3.04 Notice.**

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, postage prepaid and return receipt requested, to the parties at their respective addresses as may be specified in writing. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

### **§3.05 Non-Liability/Hold Harmless.**

The Airport Authority shall not be liable to Operator or its agents, representatives, invitees, guests, or employees for any personal injury, death, or damage to personal property caused by theft, burglary, fire, or any other cause occurring on or about the property.

Operator shall be responsible for and shall indemnify and hold the Airport Authority harmless from any and all claims, demands, or actions made by any person for any loss or damage sustained based upon or arising out of the negligent or willful acts or omissions of Operator, its agents, invitees, guests, or employees. Operator shall have no right to indemnification or contribution from the Airport Authority for any judgments rendered against it.

### **§3.06 Insurance; Taxes and Assessments.**

Operator shall obtain and maintain throughout the Lease Term a comprehensive general liability insurance policy and any workers' compensation or other insurance policies as required by law. The comprehensive general liability insurance policy shall cover any and all claims for bodily injury, death, or property loss or damage in an amount not less than One Million Dollars (\$1,000,000) combined single limit with Three Million Dollars (\$3,000,000) aggregate coverage for any single occurrence. Operator agrees to provide proof of such liability coverage to the Airport Authority at the commencement of the Lease Term and at any time upon request.

The City of Crete and the Airport Authority must be named a coinsured upon all policies, and the policies must include coverage of loss to the Airport Authority's property and the property of other lessees caused by the actions, negligence, or omissions of Operator and its agents, employees, invitees, successors, or assigns. Every certificate of insurance shall contain at least a thirty (30) day notice of cancellation.

Operator shall pay, prior to delinquency, and remain responsible for any and all personal taxes or assessments levied upon the property owned by Operator and kept or stored upon the Premises. The Airport Authority shall pay all real estate taxes as they become due and any and all assessments for the Premises.

**§3.07 Compliance with Law; Governing Law.**

Operator shall comply with all applicable federal, state, and local laws and Federal Aviation Administration Regulations pertaining to Operator’s use of the Premises and the Airport.

This lease shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of the State of Nebraska.

**§3.08 Entire Agreement; Binding Effect; Counterparts; Severability.**

This instrument and any documents incorporated herein by reference constitute the entire agreement of the parties, and any representations or promises not contained herein shall not be binding upon the parties.

This agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs, and legal representatives.

This agreement or any amendment to this agreement may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

Each section, paragraph, clause, sentence, and word of this agreement is intended to be severable. If any part of this lease or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other portions of this lease that can be given effect without the invalid part.

**ACCEPTANCE PROVISIONS.**

The parties acknowledge they have read and understand this lease, they agree to its provisions, and that it will be effective on the date when both parties have signed.

CITY OF CRETE AIRPORT AUTHORITY	ELEVATE AIR SERVICES, LLC
By: _____ (Signature)	By: _____ (Signature)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)

**CITY OF CRETE, NEBRASKA AIRPORT AUTHORITY  
AIRPORT MANAGER AGREEMENT**

This Agreement is entered into between the Airport Authority of the City of Crete, Nebraska (“Authority”) and Shaun Krzycki (“Airport Manager”) upon the date of signature by both parties.

**RECITALS:**

- A. The Airport Authority of the City of Crete, Nebraska is a duly created authority under the Cities Airport Authorities Act (Neb. Rev. Stat. §§ 3-501 to 3-514) and has the power to enter into contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the Authority.
- B. The Authority has identified a need to hire a manager to oversee the daily operations of the Crete Municipal Airport (“Airport”) in order to fully carry out the corporate purposes of the Authority, and after all due consideration, the Authority has chosen Airport Manager to fulfill this role.
- C. The Authority and Airport Manager have discussed and agreed upon duties to be performed by Airport Manager, and this written agreement is intended to and shall memorialize the entire agreement between the parties.

**AGREEMENT:**

Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

**PART I: TERMS AND CONDITIONS.**

**§1.01 Services Provided by Airport Manager.**

Airport Manager shall provide all services necessary for the continued operation of the Crete Municipal Airport, which shall include, but not be limited to:

- (1) General Duties.
  - (a) Plan, direct, and coordinate operations and maintenance of airport facilities in accordance with all governmental rules, regulations, and policies under the oversight of the Crete Airport Authority.
  - (b) Perform such other duties as may from time to time be assigned by the Authority for the proper and safe operation and maintenance of the Airport.
  - (c) Purchase and maintain such insurance policies as are generally required including liability insurance, workers compensation, etc. Liability insurance shall have coverage in an amount not less than \$1,000,000.00. The Airport Authority of Crete shall be an additional named insured on the policy and proof of insurance shall be provided annually to the Airport Authority.
  - (d) Attend all regular and special meetings of the Airport Authority. Regular meetings are held on the **2<sup>nd</sup> Thursday of every month at 8:15 a.m.**

(2) Administrative Activities of the Airport.

- (a) Provide supervision and assume responsibility for all activities of the Airport.
- (b) Oversee and manage the leasing of the hangars including, but not limited to, taking applications, helping with record keeping, maintaining current contact information for tenants, maintaining current insurance information for tenants, maintaining current aircraft information (make, model, year, serial number, tail number), inspecting contents of hangars for compliance with regulations and policies, and reporting any vacation of hangars by tenants.
- (c) Create records of complaints received and handle them in an efficient and timely manner.
- (d) Maintain such airport records as may be required by the Authority and by any other authorized governmental agency or agencies.
- (e) Enforce the Crete Airport Authority Airport Rules and Regulations, ordinances of the City of Crete, Nebraska, and state and federal regulations relative to the Airport.

(3) Manage Operational Activities of the Airport.

- (a) Ensure the lobby, restrooms, and public telephone are open and available to the general public during normal hours of operation: **Monday through Saturday from 8:00am to 5:00pm.**
- (b) Maintain and make available a mobile telephone number for 24-hour emergency service notification and response.
- (c) Maintain facilities in a clean, safe, and secure condition.
- (d) Maintain all buildings and equipment in proper repair, including the said premises, lobby, and restrooms.
- (e) Manage, inspect, and oversee fire and life safety procedures, operations, equipment, etc., including: completing and documenting regular, periodic, and annual inspections using the Fire and Life Safety Airport Inspection Checklist or equivalent; inspecting all areas of the airport for compliance with hazardous materials storage and handling requirements; maintaining and utilizing an emergency and hazard preparedness, operations, mitigation, and recovery handbook; inspecting all areas of the airport for emergency evacuation information including fire escape route maps, tornado shelter location maps, etc.; inspecting all areas of the airport for emergency and safety equipment identification markings; and ensuring all required emergency and safety procedures, operations, equipment, etc. that are required by the Crete Municipal Airport Rules and Regulations and all local, state, and federal regulations are in place and implemented.
- (f) Maintain the public roads, parking lots, runways, ramps, taxiways, hangar ramps, and drainage systems, including, but not limited to, keeping them clear of ice and snow and mowing the grass on the sod runway and along the sides and overrun areas at the end of both runways to a distance of fifteen feet (15') outside of lights and markers.
- (g) Keep the grass around buildings mowed and noxious weeds under control.
- (h) Inspect and report to the Authority any condition at the Airport which may require correction or alteration and immediately correct such conditions as are deemed by the Authority to be minor in nature and not requiring the special attention of a contractor or other type of specialist.

- (i) Operate, properly inspect, and make minor repairs and replacements to airport lighting systems and perform any necessary minor maintenance and repair to equipment and machinery owned by the Authority and operated by Airport Manager. All parts and supplies shall be furnished by the Authority.
- (j) Manage the public hangars located at the Airport, which shall include inspection of said hangars, making minor repairs as necessary, and reporting any need for major repairs.

#### **§1.02 Payment for Services Provided; Reimbursement; Annual Renegotiation.**

The Authority agrees to pay Airport Manager **Forty Thousand Dollars (\$40,000)** for services provided under this contract. In the event Airport Manager owes any amounts to the Authority, the parties may, by mutual agreement, agree that portions of the Airport Manager's compensation be used to repay any amounts then owed to the Authority.

Purchases of materials and supplies for emergency needs may be reimbursable upon submission of an expense form and receipts and approval of the Authority.

The payment for services provided under this agreement shall be renegotiated each September during the Contract Term. If, after a good faith effort, the parties are unable to reach a mutually satisfactory rate, this agreement shall immediately terminate, and any further rights, duties, or obligations under this agreement shall be null and void.

#### **§1.03 Contract Term; Effective Date.**

The term of this agreement shall be for a period of three (3) years from October 1, 2020 ("Contract Term"); therefore, the termination date shall be September 30, 2023 ("Termination Date").

The effective date of the contract, as determined by the date when both parties have signed, does not alter or limit the specified term of the contract, but rather, it simply signifies the date when both parties have formally reached written agreement.

#### **§1.04 Incorporation of Recitals.**

All paragraphs of the Recitals above are hereby incorporated as agreed provisions of this contract.

### **PART II: OTHER CONTRACTUAL CONDITIONS.**

#### **§2.01 Designation of Officials to Execute Agreement; Amendments.**

The Chairman of the Board or their designee is the official authorized to execute this agreement and any amendments to this agreement on behalf of the Authority.

Airport Manager or their representative who is duly authorized by law to execute this agreement is the official authorized to execute this agreement and any amendments to this agreement on behalf of Airport Manager.

Either party may request amendments to this lease; however, amendments will not take effect until mutually agreed to, in writing, by both parties.

## **§2.02 Assignment or Transfer.**

Airport Manager may not assign or transfer any interest in this agreement without the prior, written consent of the Authority.

## **§2.03 Rules and Regulations; Permits and Licenses; Insurance.**

Airport Manager agrees that the Authority has the right to adopt and enforce reasonable rules and regulations and that Airport Manager will faithfully observe and comply with all rules and regulations as may be promulgated by the Authority.

Airport Manager shall procure all permits, licenses, and approvals that may be necessary for the execution of this agreement.

Airport Manager shall purchase and maintain throughout the contract term any insurance required by the Authority and will, upon request, furnish evidence of such insurance coverage to the Authority.

## **§2.04 Conflict of Interest.**

Airport Manager covenants that it presently has no interest and will not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of the services required under this agreement.

## **§2.05 Early Termination.**

The Authority, in its sole discretion, may terminate the agreement for any reason upon thirty (30) days written notice to Airport Manager.

This agreement may be terminated, in whole or in part, prior to the completion of the contract term if and when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The parties must agree on the termination conditions, including the effective date of the termination, the portion (if in part) to be terminated, and any allocation of payments under the contract.

## **§2.06 Non-performance or Other Breach by Airport Manager.**

In the event of a substantial breach of the provisions of this agreement, including but not limited to the non-performance of the services required of Airport Manager or a failure to satisfactorily complete the services required by the established completion date, the Authority will be entitled to declare such substantial breach a default and will be entitled to withhold payments to Airport Manager and/or terminate the agreement in whole or in part. The Authority may allow Airport Manager time to cure a breach of the agreement; however, allowing Airport Manager time to cure a breach does not waive the Authority's right to terminate the contract for the same or different breach which may occur at a different time.

## **§2.07 Force Majeure.**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster or other similar event outside the control of and not attributable to the fault or negligence of the party ("Force Majeure Event").

A Force Majeure Event shall not constitute a breach of the contract. A party so affected shall immediately give notice to the other party of the Force Majeure Event. The Authority may grant relief from the performance of the contract if Airport Manager is prevented from performance by a Force Majeure Event. The burden of proof for the need of such relief shall rest with Airport Manager. To obtain release based on a Force Majeure Event, Airport Manager must file a written request for such relief with the Authority.

Labor disputes with employees will not be considered a Force Majeure Event and will not suspend performance requirements under this contract.

#### **§2.08 Waivers in Writing; Severability.**

No conditions or provisions of this agreement shall be waived unless approved by the Authority in writing.

If any term or condition of this agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other portions of this agreement that can be given effect without the invalid term or condition.

#### **§2.09 Confidentiality of Information Received.**

Airport Manager owes a normal professional and fiduciary duty of loyalty to the Authority with respect to matters for which it is compensated. Consequently, any information of which it becomes aware, either directly or indirectly, which touches and concerns substantial matters (meaning matters of importance, not trivial matters) to the Authority or to the City of Crete, Nebraska, must be treated as confidential. Such confidential information will not be disclosed to any party not associated with the Authority or the City of Crete, Nebraska without the express, written permission of the Authority, nor will such confidential information be used by Airport Manager for personal or corporate benefit.

This prohibition on disclosure and use will be in effect during the term of this contract and will survive the termination date for a period of two years thereafter.

#### **§2.10 Governing Law; Attorney Fees.**

This agreement shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of the State of Nebraska.

In the event of any litigation, appeal, or other legal action to enforce any provision of this agreement, Airport Manager agrees to pay all expenses of such action as permitted by law, including attorney's fees and costs, if the Authority or the City of Crete, Nebraska is the prevailing party.

#### **§2.11 Non-Liability/Hold Harmless.**

Airport Manager shall indemnify and hold the Authority and the City of Crete, Nebraska harmless from any and all claims or demands made by any person or any loss or damage sustained by any person as a direct result of the negligent or willful acts of Airport Manager, its employees, or agents in the performance of this agreement.

Airport Manager shall have no right to indemnification or contribution from the Authority or from the City of Crete, Nebraska for any judgments rendered against it.

**§2.12 Notice.**

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, postage prepaid and return receipt requested, to the parties at their respective addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

**§2.13 Recordkeeping and Access to Records.**

All records pertinent to the work undertaken as part of this agreement must be retained by Airport Manager until completion of the contract term and for a following period of at least five (5) years. The Authority and any other duly authorized official of the City of Crete, Nebraska must have full access to and the right to examine, audit, excerpt, or transcribe any of Airport Manager's records pertaining to this agreement.

**§2.14 Entire Agreement; Binding Effect; Counterparts.**

This instrument and any documents incorporated herein by reference constitute the entire agreement of the parties, and any representations or promises not contained herein shall not be binding upon the parties.

This agreement shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the parties.

This agreement or any amendment to this agreement may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

**ACCEPTANCE PROVISIONS**

The parties acknowledge they have read and understand this agreement, they agree to its provisions, and that it will be effective on the date when both parties have signed.

<b>AIRPORT AUTHORITY OF THE CITY OF CRETE, NEBRASKA</b>	<b>AIRPORT MANAGER</b>
By: _____ (Signature)	By: _____ (Signature)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)

# NEBRASKA

Good Life. Great Journey.

## DEPARTMENT OF TRANSPORTATION

September 17, 2020

Mr. Blaine Spanjer, Chairman  
Crete Airport Authority  
PO Box 86  
Crete, Nebraska 68333-0086



Pete Ricketts, Governor

Subject: Crete Municipal Airport  
Project No. 3-31-0022-014  
Engineering Agreement Negotiations

Dear Mr. Spanjer:

We are anticipating a FY2021 grant to install a new fuel system at your airport. The current step is to finalize the engineering agreement with your consultant, Olsson (OA).

The Division of Aeronautics (NDA) has reviewed the engineering agreement and prepared an independent fee estimate to assist you in your negotiations. The fee estimate uses salary and overhead rates provided by OA and is within the expected range when compared with other similar projects done at airports in Nebraska.

The next step is for the Authority to review and discuss the engineering agreement with OA. This is the Authority's opportunity to question, negotiate and modify the consultant agreement. A record of these negotiations **must** be kept in your files and provided to FAA. Enclosed is FAA's sample record of negotiations.

Upon completing your negotiations, please return the following:

- Record of Negotiations (**signed** copy)
- Proposed Engineering Agreement (**unsigned**)

If you have any questions, please contact me at the Division.

Sincerely,

Anna Lannin, P.E.  
Engineering Division Manager  
Division of Aeronautics  
Nebraska DOT

Kyle Schneweis, P.E., Director

### Department of Transportation

1500 Highway 2  
PO Box 94759  
Lincoln, NE 68509-4759

OFFICE 402-471-4567  
FAX 402-479-4325  
NDOT.ContactUs@nebraska.gov

[dot.nebraska.gov](http://dot.nebraska.gov)

### Aeronautics Division

3431 Aviation Road, Ste. 150  
PO Box 82088  
Lincoln, NE 68501  
OFFICE 402-471-2371  
FAX 402-471-2906

### Navigational Aids Office

Kearney Municipal Airport  
5065 Airport Road  
Kearney, NE 68847  
OFFICE 308-865-5696  
FAX 308-865-5697

Project: Install 100LL and Jet A fuel systems  
 Crete Municipal Airport; Crete, Nebraska  
 Project Number 3-31-0022-014

Consultant: Olsson

Date: 9/17/2020  
 Prepared By: AL

Project Scope:

	Prelim Phase Hours	Fin Des Phase Hours	Bid Phase Hours	Constr Phase Hours	Closeout Phase Hours	TOTAL HOURS	Direct Rate \$/hour	Direct Cost \$
Principal/Team Leader	0	2	0	3	0	5	\$80.24	\$401.20
Sr. Proj. Engineer	0	20	7	20	5	52	\$64.06	\$3,331.12
Proj. Eng.	0	72	12	75	10	169	\$56.42	\$9,534.98
Engineer/Civil II	0	14	2	8	0	24	\$73.94	\$1,774.56
Engineer/Civil I/Assist. Engr.	0	37	10	75	10	132	\$39.10	\$5,161.20
Technician/CADD	0	0	0	8	14	22	\$30.37	\$668.14
Surveyor/Party Chief	0	8	0	0	0	8	\$51.95	\$415.60
Surveyor/Sr. Tech.	0	65	4	30	12	111	\$31.56	\$3,503.16
Asst. Technician	0	42	0	0	0	42	\$28.08	\$1,179.36
Clerical/Team Ass't.	0	20	14	20	4	58	\$29.90	\$1,734.20
<b>SUBTOTAL HRS</b>	<b>0</b>	<b>280</b>	<b>49</b>	<b>239</b>	<b>55</b>	<b>623</b>		
<b>DIRECT COSTS</b>	<b>\$0</b>	<b>\$11,051</b>	<b>\$2,209</b>	<b>\$11,065</b>	<b>\$2,199</b>	<b>\$26,524</b>		<b>\$27,703.52</b>
184.12% Overhead (actual)	\$0	\$20,347	\$4,068	\$20,373	\$4,049	\$48,836		\$52,775
Lump Sum	\$0	\$0	\$0	\$0	\$0	\$0		\$0.00
<b>TOTAL LABOR</b>	<b>\$0</b>	<b>\$31,397</b>	<b>\$6,277</b>	<b>\$31,438</b>	<b>\$6,248</b>	<b>\$75,360</b>		<b>\$75,360.44</b>
Dir Non-Sal Expenses	\$0	\$250	\$400	\$800	\$250		CHECK	\$80,478.73
<b>TOTAL COSTS</b>	<b>\$0</b>	<b>\$31,647</b>	<b>\$6,677</b>	<b>\$32,238</b>	<b>\$6,498</b>			<b>\$77,060.44</b>
Fixed Fee (15%)	\$0	\$4,747	\$1,002	\$4,836	\$975			\$11,559.07
Subcon Costs (Soil & Pave Invest.)	\$0	\$2,900	\$0	\$5,720	\$0			\$8,620.00
<b>SUB-TOTALS</b>	<b>\$0</b>	<b>\$39,295</b>	<b>\$7,678</b>	<b>\$42,794</b>	<b>\$7,472</b>	<b>GRAND TOTAL =</b>		<b>\$97,239.51</b>
							CHECK	\$97,239.51

**APPENDIX F. RECORD OF NEGOTIATIONS SAMPLE****ARCHITECTURAL AND ENGINEERING SERVICES**

DATE:

Job Title

Location:

Anticipated A.I.P. Grant:

1. The consulting firm of XYZ was selected on January 21, 20XX, from those consultants who submitted their qualifications. A scope of work and detailed independent cost estimate in the amount of \$44,364 for the design phase and \$54,956 for the construction phase were prepared by the Sponsor on February 21 and submitted to the ADO on February 23.
2. The scope of work and request for fee proposal were sent to XYZ Consultants on February 23.
3. The meeting was held on February 27 with the Sponsor, consultant, and FAA to ensure the consultant had a thorough understanding of the scope of work.
4. The consultant submitted their fee proposal for the work on March 2, broken down as follows:
  - Design Phase \$58,224
  - Construction Phase \$66,345
5. A detailed cost analysis comparing the detailed independent estimate with the consultant's fee proposal was done on March 6 and negotiation objectives were established.
6. The Sponsor's negotiator, Mr. A called Mr. X of XYZ Consultants on March 7 to discuss the fee proposal. It was agreed that the construction duration of 60 days was adequate. The consultant was told that their overhead rate appeared high and asked to submit a detailed statement of overhead expenses for the previous year to verify their rate. Also the man hours for the principal and project manager seemed excessive. It was also noted that both a resident engineer and an inspector were not needed on the construction site fulltime. The surveying manhours during construction were also excessive. The consultant agreed to revise their fee proposal and resubmit it to the Sponsor.
7. The consultant submitted a revised fee proposal for the work on March 9, broken down as follows:
  - Design Phase \$51,286
  - Construction Phase \$59,432
8. The detailed cost analysis was revised on March 12 to reflect the consultant's revised fee proposal.
9. The Sponsor's negotiator met with Mr. X of XYZ Consultants at the Sponsor's office on March 13. Ineligible costs for entertainment and interest expense were deleted from the consultant's overhead and an acceptable overhead rate of 134 percent was agreed upon. A combined time of 60 man hours for the principal and project manager were agreed upon allowing 15 for the principal and 45 for the project manager. The consultant's figures of 302

civil work hours, 120 electrical work hours, and 410 drafting work hours were accepted. The consultant agreed to have a full time inspector on the job with a resident engineer also on the job one third of the time. The construction surveying work hours were reduced to 32 hours of a three-man crew. The consultant agreed to make the discussed changes and submit a final fee proposal.

10. The consultant submitted a final fee proposal for the work on March 14, broken down as follows:
  - Design Phase \$47,324
  - Construction Phase \$56,658
11. The final fee proposal is considered reasonable by the Sponsor. A contract has been prepared for the agreement between the Sponsor and consultant. The scope of work, draft contract, Sponsor's independent cost estimate, consultant's fee proposals with revisions and detailed cost analysis are attached to this record of negotiation and hereby submitted to the ADO for a reasonableness of cost determination.
12. The negotiations were conducted in good faith to ensure the fees are fair and reasonable. The procedures outlined in AC 150/5100-14 have been followed.

Sponsor's Signature



## **CONSULTANT AGREEMENT**

Airport Improvement Program (AIP) Project No. 3-31-0022-014  
Olsson Project No. 020-2055

### **CRETE MUNICIPAL AIRPORT**

#### **PROJECT DESCRIPTION (the "Project")**

Above Ground Fuel Tank (100LL) & Above Ground Fuel Tank (Jet A) with pumps, Hoses, Associated Electrical Improvements, Fuel Area lighting, and Credit Card Reader, including site preparation with concrete footings and pad for new tanks.

THIS AGREEMENT is made and entered into by and between the consulting firm of Olsson, Inc. of Lincoln, Nebraska hereinafter called "Olsson" and the Crete Airport Authority of Crete, Nebraska, hereinafter called the "Sponsor" or "Client".

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

#### **SECTION 1: GENERAL**

The Sponsor agrees to engage Olsson to provide the services described in Sections 2 through 5 (Olsson's "Scope of Services") for the Project.

Chris Corr, P.E. will represent Olsson as Project Manager in the performance of this Agreement. No one else will be assigned to act in this capacity without the Sponsor's prior written approval. The Project Manager shall be responsible for coordinating all activities necessary to complete the Project.

Olsson will provide equipment and personnel necessary to complete the Scope of Services, except as otherwise provided. Olsson shall be responsible for the quality, accuracy and coordination of the design, drawings, reports, surveys, and other items furnished by Olsson as part of this Agreement.

Olsson agrees to provide its Scope of Services in a timely, competent, and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope. This Agreement creates no other representation, warranty, or guarantee, express or implied.

Sponsor warrants that it has the authority to authorize Olsson to enter onto the Project property and any adjacent property as necessary for Olsson to perform its Scope of Services.

## SECTION 2: DESIGN PHASE

- a. Project management and coordination. Coordinate with the Sponsor, the Nebraska Department of Transportation (NDOT) and Federal Aviation Administration (FAA) to provide information on developments and decisions that are made concerning the project.
- b. Conduct a project kickoff meeting with the Sponsor, via teleconference NDOT and FAA in accordance with AIP Sponsor Guide No. 910 *Pre-design Conference*. Olsson shall prepare a summary of the meeting that highlights critical project issues.
- c. Finalize design criteria in accordance with FAA Advisory Circulars ARC, TDG. Submit a preliminary fuel layout and brief explanation of layout. Coordinate with FAA and NDOT to ensure acceptance.
- d. Olsson will review previous geotechnical reports and borings completed on the field for other previous AIP projects. Upon the review of these reports within the general vicinity of the project area Olsson will provide a memo with recommendations for this project. No additional soil borings or any tests will be completed as part of this project.
- e. Conduct field assessment of the existing site ("Field Assessment"). One project engineer and one technician shall conduct the on-site investigation. Take photographs of the project area and any typical distresses observed. Such Field Assessment is limited to visual observation of the site as it exists at the time of the observation. Field Assessment does not constitute exhaustive investigation and does not constitute any warranty or guarantee of any type that the site is suitable for the Project. Olsson is not responsible for identifying any concealed or latent defects that may be present at the site. Sponsor shall furnish the best obtainable information of which it is aware or could reasonably be aware of, as to surface and subsurface conditions through the exercise of reasonable diligence.
- f. Conduct topographic survey, including topography, pavement elevations and location, and other existing features as needed. All surveys will be tied to NAVD 88 control points. **The survey will not be in accordance with FAA Advisory Circular 150/5300-18B.**
- g. Evaluate the existing electrical system, including one separate site visit by an electrical engineer. Prepare preliminary and final design of new electrical system / mechanical system for the proposed fuel system.
- h. Coordinate with utility company's including electrical and phone/internet that have lines throughout the project site and determine their requirements.
- i. Complete Fuel System Layout configuration in accordance with taxiway and apron safety area requirements.
- j. Develop preliminary Construction Safety & Phasing Plan (CSPP)
- k. Prepare detailed plans, specifications, contract documents, Construction Safety & Phasing Plan (CSPP) and engineer's design report. Olsson shall use FAA Advisory Circular (AC) 150/5370-10, *Standards for Specifying Construction of Airports* and shall follow the AIP Sponsor Guides listed below (current as of the date that Olsson executed the Agreement).
  - (1) Guide No. 920 – Engineering Report
  - (2) Guide No. 930 – Plans and Specifications
  - (3) Guide No. 940 – Regional Approved Modifications to AC 150/5370-10
  - (4) Guide No. 950 – Sponsor Modifications of FAA Standards
  - (5) Guide No. 960 – Operation Safety on Airports

- l. Prepare and submit electronically FAA Forms 7460-1 for Airspace Reviews of the fuel facility and of the Construction Safety & Phasing Plan (CSPP) staging/storage area boundaries, haul/access routes and construction limit boundaries for each phase. Submittals will include detailed exhibits.
- m. Submit building plans to the State Fire Marshal for review.
- n. Complete Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with the Nebraska Department of Environmental and Energy. Submit all necessary permitting and documentation for the new system.
- o. Perform Quality Control review of the above documents by a senior airport engineer, prior to submittal to Sponsor, NDOT and FAA.
- p. Submit plans, specifications, contract documents and engineer's design report (see table below) for review within 90 days of the date that the Sponsor executed this Agreement / receipt of all review comments. In addition, an electronic copy will be provided to the sponsor, NDOT, and FAA.

<b>90% SUBMITTAL</b>			
	<b>Contract Documents &amp; Specifications</b>	<b>Engineer's Design Report</b>	<b>Plans</b>
Sponsor	1 Set	1 Set	1 – Half size
NDOT	1 Set	1 Set	1 – Half size
FAA	2 Sets	2 Sets	1 – Half Size 2 – Full Size
Nebraska Fire Marshall	1 Set	N/A	1 – Full Size
Nebraska DEE	1 Set	1 Set	1 – Full Size

- q. Conduct a plan-in-hand review meeting on-site with the Sponsor.
- r. Revise and submit plans, specifications, contract documents and engineer's design report within 14 days of receipt of comments from the Sponsor, NDOT and FAA. Provide a written response to each comment. PDF copies will be provided to all parties of each document.

<b>FINAL SUBMITTAL</b>				
	<b>Contract Documents &amp; Specifications</b>	<b>Engineer's Design Report</b>	<b>Plans</b>	<b>Response to Comments</b>
Sponsor	1 Set	1 Set	1 – Half Size 1 – Full Size	1 Copy
NDOT	1 Set	1 Set	1 – Half size	1 Copy
FAA	1 Set	1 Set	1 – Half Size	1 Copy
Nebraska Fire Marshall	1 Set	N/A	1 – Full Size	1 Copy

Olsson will affix the seal of a registered Professional Engineer licensed to practice in the State of Nebraska to the construction plans and specification/contract bound volume. The original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement are instruments of service and shall remain Olsson's property. Reproducible copies of drawings and copies of other pertinent data will be made available to the sponsor upon request. Copies of disks containing all drawings will be furnished to the sponsor for their use. Olsson will provide, without cost to the Sponsor and approving agencies, the necessary number of copies for review and approval.

### **SECTION 3: BIDDING PHASE**

Upon receipt of the FAA's and Sponsor's authorization, Olsson will provide the following services to assist the Sponsor in advertising and securing bids.

- a. Provide sufficient copies of the approved plans and specifications to the Sponsor, plan rooms and [www.QuestCDN.com](http://www.QuestCDN.com) for advertising and bidding. Copies of the documents will be furnished to prospective bidders at a cost fixed by Olsson. Olsson shall perform in accordance with AIP Sponsor Guide No. 1010 *Bidding*.
- b. Mail and/or email Notices to potential bidders and plan rooms. Contact contractors as needed to promote general interest in the project. Maintain a plan holders list.
- c. No pre-bid conference will be required.
- d. Answer questions raised during the bidding process.
- e. Issue addenda as required.
- f. Attend the bid opening at the Sponsor's location.
- g. Tabulate and analyze bid results.
- h. Review bidders' qualifications. Evaluate bidders' compliance with Buy American Certification and DBE participation requirements.
- i. Furnish a written recommendation to the Sponsor regarding the award of the construction contract. The recommendation will include:
  1. Bid date
  2. Summarized bid table
  3. Evaluation of unit price extensions and total base bid, including an error check
  4. Addendums and acknowledgements
  5. Additional insured cost if any
  6. DBE utilization, DBE letter of intent, DBE goal, and good faith effort (GFE) (if any) review for compliance with Sponsor's DBE program requirements
  7. Buy American compliance
  8. Confirmation of bidder's signature on proposal form
  9. Bid guarantee
  10. Pre-qualification requirements
  11. Pre-bid meeting (if any)
  12. Review of qualifications
  13. Debarment list verification
  14. Recommendation to award

- j. Conduct one meeting to present bids to the Sponsor.
- k. Assist the Sponsor with the submission of documents necessary to obtain construction contract approval in accordance with AIP Sponsor Guide No. 1020 *Contract Award*, except that the Sponsor Certification will be prepared and submitted by the NDOT.
- l. After FAA's and Sponsor's approvals, prepare all executed contract documents necessary for the project including bonds, insurance, contracts, drawings, etc. Bind the contract documents with the specifications and provide one bound set each to FAA, NDOT, Sponsor, and Contractor. **Provide an electronic copy of the construction contract to the FAA, NDOT and Sponsor.**

This phase will be considered complete when the executed construction contracts have been approved by the Sponsor, NDOT and FAA. Re-advertising, if necessary, will be negotiated under an amendment to this Agreement.

#### **SECTION 4: CONSTRUCTION PHASE**

(INCLUDES OBSERVATION)

based on 200 calendar days (construction contract time)

Olsson will not begin work on this Phase until a Notice to Proceed is received from the Sponsor. Both parties understand that this work is subject to the availability of FAA funds.

- a. Project Administration. Provide general consultation and technical assistance to the Sponsor during all construction phases. Coordinate with the Sponsor, NDOT and FAA to ensure all parties have timely information on developments and decisions that are made concerning the project. Provide 5 sets of plans and specifications to the Construction Contractor for their use.
- b. Prepare and submit Quarterly Performance Reports.
- c. Assign a Project Engineer to the project who will periodically perform Construction Observation of the work in progress. It is estimated that the Project Engineer will make {6 site visits: Approximately every other week, plus 1 visit prior to pouring footing, 1 visit for placement of the fuel tanks, and 1 visit for testing of tank and card reader.
- d. Due to the project size a Notice of Intent for Authorization to Discharge Stormwater Runoff from Construction Activities (NDPES permit) and Storm Water Pollution Prevention Plan (SWPPP) is **not required**. The project size is less than 1 acre of disturbance.
- e. Review shop and all materials data submitted by construction contractors for general compliance with design concepts and Buy American provisions. Olsson's review of such information is not a guarantee of suitability, does not relieve the Contractor of any of its responsibilities and the Contractor shall remain solely responsible and liable for the quality and completion of the Project in compliance with contract documents.
- f. Conduct a preconstruction conference per AIP Sponsor Guide No. 1040 *Preconstruction Conference*. Submit a formal report of the conference discussions.
- g. Olsson Provide horizontal and vertical survey control per the construction plans. Construction staking will be required by contractor.

- h. Upon receipt of NDOT, FAA and Sponsor authorization, issue the Notice to Proceed to the Construction Contractor. NDOT and FAA authorization will not be issued until all conditions are met in accordance with AIP Sponsor Guide No. 1050 *Notice to Proceed*.
- i. Provide part-time on-site Construction Observation in accordance with AIP Sponsor Guide No. 1030 *Construction Observation*, {except that a Construction Observation Program will not be prepared.} and Guide No. 1070 *Inspections: Development Projects*. +
 

{Observer will be on-site for excavation, site grading, all concrete placement including footings, pad and sidewalks, setting of fuel tank system, installation of card reader, final grading and seeding and other miscellaneous items necessary to ensure the completion of the fuel system in accordance of the plans and specs. It is assumed that there will be roughly 25 Days of fulltime onsite observation for the project.
- j. Provide construction testing. See Exhibit C1 for a list of the anticipated tests and services. Estimated quantities of tests were based on the estimated construction quantities
  - (1) Excavation / Embankment
    - i. Subgrade preparation beneath paved areas. Approximately 5-10 Tests.
  - (2) Base Course
    - i. Test material beneath footing / paved area. Approximately 5-10 Tests.
  - (3) Concrete Pavement
    - i. Complete concrete testing for footing and exterior paving surrounding the fuel system.
- k. Conduct 1 site visits by geotechnical engineer.
- l. Submit weekly FAA Form 5370-1 "Construction Progress and Inspection Reports" and testing reports to the Sponsor, NDOT and FAA.
- m. Provide a weekly photo log with the Construction Reports for each week that the contractor is on-site from the start of construction until substantial completion.
- n. Monitor compliance with Davis-Bacon requirements, DBE requirements, and E.E.O requirements per AIP Sponsor Guide No. *Labor Provisions: Development Projects* and Guide No. 1073 *Monitoring Labor and Civil Rights Requirements Development Projects*. Provide Davis-Bacon compliance documentation to Sponsor during the project close-out.
- o. Prepare and negotiate construction contract modifications, change orders and supplemental agreements, per AIP Sponsor Guide No. 1080 *Contract Modifications*.
- p. Review amounts owed to construction contractors and prepare progress estimate forms certified by construction contractor(s).
- q. Arrange and conduct final walk-through with Sponsor and Construction Contractor. Prepare punch list and monitor completion of punch list items.
- r. Arrange and attend final inspection.
- s. No as-built survey will be completed as part of this project.

## SECTION 5: CLOSE OUT

Upon completion of construction, the Consultant agrees to provide the following items, in accordance with FAA/ACE AIP Guide No. 1610 - Development Project Closeout. The Consultant agrees to complete this phase within 90 days of final acceptance. If the Contractor does not provide their documentation (wage rate reports, DBE final utilization, etc.) within this time limit, this will be so noted in the close-out documents.

- (1) Sponsor Certification for Final Acceptance – not included; prepared by NDOT
- (2) Final Outlay Report (SF-271) – not included; prepared by NDOT
- (3) Final Federal Financial Report (SF-425) – not included; prepared by NDOT
- (4) Final Project Cost Summary – not included; prepared by NDOT
- (5) Summary of DBE Utilization – to be included in the Final Construction Report
- (6) Final Construction Report, including summary of test results – one printed copy each to Sponsor, NDOT, and FAA. Each entity will also receive an electronic copy.
- (7) As-built Drawings – provide one full-sized set to NDOT; include half-sized set in Final Report and provide in pdf format.
- (8) As-built Airport Layout Plan – one full-size preliminary set for FAA review; four full-size sets for Sponsor signature upon receipt of FAA comments
- (9) {5010 Updates – Will be updated to indicate available fuel types.
- (10) Airport Chart / Diagram Modifications – N/A
- (11) Part 139 Sign and Marking Plan updates – N/A

## SECTION 6: NOT USED

**Additional Services may be added by Amendment.**

## SECTION 7: FEES AND CHARGES

The Sponsor shall pay Olsson for the services described in this Agreement as follows:

**Section 2: Design Phase.** Payment for the items included in Section 2, Design Phase, shall be the lump sum of \$55,200.00 shown on Exhibit A, attached and made a part hereto. Payment shall be due monthly based on the percentage of work completed, except that 15% of the payment will be withheld until the plans and specifications are approved.

**Section 3: Bidding Phase.** Payment for the items included in Section 3, Bidding Phase shall be the lump sum of \$6,800 shown on Exhibit B attached and made a part hereto. Payment shall be due monthly based on the percentage of work completed, except that 15% of the payment will be withheld until all executed contract documents are received by the Sponsor, NDOT and FAA.

**Section 4: Construction Phase.** Payment for the items included in Section 4, Construction Phase shall be made based on direct salary, overhead costs and reimbursable expenses incurred plus a fixed payment of \$4,452.35 and subcontract costs, which are estimated on Exhibit C attached and made a part hereto.

The total charges for Section 4 will not be greater than the "Not-to-Exceed" (NTE) amount of \$42,700, if 1) the construction work is completed within the construction contract aggregate time allowance; and 2) the scope of work as set forth in Sections 2 and 4 is not exceeded. If either of these two events occur, the "Not-to-Exceed" amount may be increased by an amendment to this Agreement.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed payment with the final invoice adjusted to include the remaining unpaid balance of the fixed payment.

Exhibit C and C1 contains estimated quantities and unit prices. Actual hours, rates, charges, and reimbursable expenses may vary. The labor and general administration overhead percentage is fixed and will not vary, unless revised by an amendment. The overhead percentage is supported by a statement of overhead expenses certified by Olsson's auditor or a governmental auditor. The fixed payment will not change, unless revised by an amendment to this Agreement.

**Section 5: Close-Out Phase.** Payment for the items included in Section 5, Close-Out Phase, shall be the lump sum of \$6,900, shown on Exhibit D, attached and made a part hereto. Payment shall be due monthly based on the percentage of work completed. Olsson will not submit an invoice for the final 10% of the Close-Out Phase until the closeout documents are approved by NDOT and FAA.

**Adjustments to Fees and Charges.** If additional services are requested by the Sponsor during the course of this Agreement, an amendment will be negotiated to cover the added scope, fees, and charges. If circumstances beyond the control of Olsson require more than 18 months from the date that Olsson executed the Agreement to complete the work specified herein, an amendment to this Agreement will be negotiated to cover the increase in Olsson's standard rates for services yet to be provided. All amendments are subject to the same approvals as this Agreement.

**CERTIFICATION FOR PROJECT PLANS AND SPECIFICATIONS.** Olsson certifies that:

1. The plans and specifications will be developed in accordance with all applicable Federal standards and requirements and there will be no deviation from or modification to standards set forth in the advisory circulars without prior FAA approval;
2. The specifications for equipment will not be proprietary or written so as to restrict competition;
3. The development included in the plans is depicted on an airport layout plan approved by FAA;
4. Development which is ineligible for AIP funding will be omitted from the plans and specifications or will be depicted in a separate section;
5. Process control and acceptance tests required for the project by standards contained in Advisory Circular 150/5370-10 will be included in the project specifications;
6. A value engineering clause will not be incorporated into the contract without FAA concurrence;
7. The plans and specifications will incorporate applicable requirements and recommendations set forth in the Federally approved environmental finding;
8. For construction activities within or near aircraft operational areas, the requirements contained in the latest (as of bid date) Advisory Circular 150/5370-2 will be discussed with FAA and incorporated into the specifications and a safety or phasing plan will be prepared with FAA's concurrence.

**APPROVALS.** It is understood and agreed that this Agreement and any amendments are subject to approval by NDOT and FAA before any state or federal funds are obligated.

**FEDERAL AND OLSSON'S GENERAL PROVISIONS.** The Sponsor and Olsson acknowledge that they have reviewed the Federal Contract Provisions Attachment, Olsson's General Provisions and any Exhibits attached hereto, which are expressly made a part of and incorporated into this Agreement by this reference. In the event of a conflict or inconsistency between this Agreement and the General Provisions regarding the services to be performed by Olsson, the requirements of the General Provisions shall take precedence.

**EQUAL OPPORTUNITY EMPLOYER.** Olsson and Sub-Consultant shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, with copies to be filed with the Nebraska Department of Transportation and the Federal Aviation Administration.

OLSSON, INC.  
P.O. Box 84608  
Lincoln, NE 68501

\_\_\_\_\_

Executed by Olsson on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

By signing below, you acknowledge that you have full authority to bind the Sponsor to the terms of the Agreement. If you accept the terms set forth herein, please sign.

CRETE AIRPORT AUTHORITY  
P.O. Box 86  
243 East 13th Street  
Crete, NE 68333-0086

ATTEST

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Title

Executed by the Sponsor on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**EXHIBIT C**

**CONSTRUCTION PHASE SERVICES**  
**Crete Municipal Airport 3-31-0022-014**  
Based on estimated 200 Calendar Days

1.	<u>Direct Salary Costs</u>			
		<u>Hours</u>	<u>Direct Salary</u> <u>Rate/Hour</u>	<u>Total</u> <u>Costs (\$)</u>
	<u>Title</u>			
	Team Leader	0.0	\$80.24	\$0.00
	Sr. Project Engineer	2.0	\$64.06	\$128.13
	Project Engineer	40.0	\$56.42	\$2,256.80
	Elec. or Mech. Engineer	4.0	\$73.94	\$295.78
	Assistant Engineer	64.3	\$39.10	\$2,513.83
	Registered Surveyor	0.0	\$51.95	\$0.00
	Sr. Technician	12.0	\$31.56	\$378.77
	Assoc. Technician	128.0	\$30.37	\$3,887.10
	Asst. Technician	0.0	\$28.08	\$0.00
	Sr. Clerical	33.0	\$29.90	\$986.70
				<hr/>
			Total Direct Salary Costs:	\$10,447.10
2.	<u>Labor and General &amp; Administrative Overhead</u>			
	Percentage of Direct Salary Costs*	184.12%		\$19,235.21
3.	<u>Fixed Fee: 15% of Item 1 &amp; 2</u>			\$4,452.35
4.	<u>Direct Nonsalary Expenses</u>			
	Travel	2275 Miles @	\$0.85 / Mile =	\$1,933.75
	Per Diem	33 Days @	\$15 / Day =	\$495.00
	Copies & Prints			\$200.00
	Supplies, Misc.			\$200.00
	Testing - See Exhibit C1			\$5,720.00
				<hr/>
			Total Expenses:	\$8,548.75
5.	Subtotal of Items 1 - 4			\$42,683.41
6.	Subcontract costs			\$0.00
7.	Not-to-Exceed Total (Items 5 & 6)			\$42,683.41
			Rounded:	\$42,700.00

Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's or, the state's auditor, or a Federal government auditor.

## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.575/mile*
Suburban's and Pick-Up	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$85.00/day
Aircraft (Personal)	\$118/hour*
Rental Vehicle	Actual Cost
Other Travel or Lodging Cost	Actual Cost or Per Diem
Meals	Actual Cost or Per Diem
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost
Telephone and Fax Transmissions	Actual Cost
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost
Copies of Deeds, Easements or other Project Related Documents	Actual Cost
Fees for Applications or Permits	Actual Cost
Sub-Consultants	Actual Cost
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

**EXHIBIT A**

**DESIGN PHASE  
Crete Municipal Airport 3-31-0022-014**

1. Direct Salary Costs

<u>Title</u>	<u>Total Direct Salary Hours</u>	<u>Rate/Hour</u>	<u>Total Costs (\$)</u>
Team Leader	0.0	\$77.15	\$0.00
Sr. Project Engineer	40.0	\$61.60	\$2,464.00
Project Engineer	110.0	\$54.25	\$5,967.50
Elec. or Mech. Engineer	18.0	\$71.10	\$1,279.80
Assistant Engineer	56.0	\$37.60	\$2,105.60
Registered Surveyor	4.0	\$49.95	\$199.80
Sr. Technician	50.0	\$30.35	\$1,517.50
Assoc. Technician	4.0	\$29.20	\$116.80
Asst. Technician	80.0	\$27.00	\$2,160.00
Sr. Clerical	18.0	\$28.75	\$517.50

Total Direct Salary Costs: \$16,328.50

2. Labor and General & Administrative Overhead

Percentage of Direct Salary Costs\*\* 184.12% \$30,064.03

3. Fixed Fee: 15% of Items 1 & 2

\$6,958.88

4. Direct Nonsalary Expenses

Travel	4 Days @	\$85 / Day =	\$340.00
Per Diem	0 Days @	\$25 / Day =	\$0.00
Copies & Prints			\$1,110.00
Supplies, Misc.			\$400.00

Total Expenses: \$1,850.00

5. Subtotal of Items 1 - 4

\$55,201.41

6. Subcontract costs

\$0.00

7. Lump Sum Amount - Total Items 5 & 6

\$55,201.41

Rounded: \$55,200.00

\*\* For Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's auditor, the state's auditor, or a Federal government auditor.

**EXHIBIT B**

**BIDDING PHASE  
Crete Municipal Airport 3-31-0022-014**

1. Direct Salary Costs

<u>Title</u>	<u>Hours</u>	<u>Direct Salary Rate/Hour</u>	<u>Total Costs (\$)</u>
Team Leader	0.0	\$80.24	\$0.00
Sr. Project Engineer	0.0	\$64.06	\$0.00
Project Engineer	15.0	\$56.42	\$846.30
Elec. or Mech. Engineer	0.0	\$73.94	\$0.00
Assistant Engineer	9.0	\$39.10	\$351.94
Registered Surveyor	0.0	\$51.95	\$0.00
Sr. Technician	0.0	\$31.56	\$0.00
Assoc. Technician	4.0	\$30.37	\$121.47
Asst. Technician	0.0	\$28.08	\$0.00
Sr. Clerical	17.0	\$29.90	<u>\$508.30</u>

Total Direct Salary Costs: \$1,828.01

2. Labor and General & Administrative Overhead

Percentage of Direct Salary Costs\* 184.12% \$3,365.73

3. Fixed Fee: 15% of Item 1 & 2

\$779.06

4. Direct Nonsalary Expenses

Travel	1 Days @	\$85 / Day =	\$85.00
Per Diem	0 Days @	\$175 / Day =	\$50.00
Copies & Prints			\$608.00
Supplies, Misc.			<u>\$60.00</u>

Total Expenses: \$803.00

5. Subtotal of Items 1 - 4

\$6,775.80

6. Subcontract costs

\$0.00

7. Lump Sum Amount - Total Items 5 & 6

\$6,775.80

Rounded: \$6,800.00

**EXHIBIT C**

**CONSTRUCTION PHASE SERVICES  
Crete Municipal Airport 3-31-0022-014  
Based on estimated 200 Calendar Days**

1.	<u>Direct Salary Costs</u>		Direct Salary	Total
		<u>Hours</u>	<u>Rate/Hour</u>	<u>Costs (\$)</u>
	<u>Title</u>			
	Team Leader	0.0	\$80.24	\$0.00
	Sr. Project Engineer	2.0	\$64.06	\$128.13
	Project Engineer	40.0	\$56.42	\$2,256.80
	Elec. or Mech. Engineer	4.0	\$73.94	\$295.78
	Assistant Engineer	64.3	\$39.10	\$2,513.83
	Registered Surveyor	0.0	\$51.95	\$0.00
	Sr. Technician	12.0	\$31.56	\$378.77
	Assoc. Technician	128.0	\$30.37	\$3,887.10
	Asst. Technician	0.0	\$28.08	\$0.00
	Sr. Clerical	33.0	\$29.90	<u>\$986.70</u>
			Total Direct Salary Costs:	\$10,447.10
2.	<u>Labor and General &amp; Administrative Overhead</u>			
	Percentage of Direct Salary Costs*	184.12%		\$19,235.21
3.	<u>Fixed Fee: 15% of Item 1 &amp; 2</u>			\$4,452.35
4.	<u>Direct Nonsalary Expenses</u>			
	Travel	2275 Miles @	\$0.85 / Mile =	\$1,933.75
	Per Diem	33 Days @	\$15 / Day =	\$495.00
	Copies & Prints			\$200.00
	Supplies, Misc.			\$200.00
	Testing - See Exhibit C1			<u>\$5,720.00</u>
			Total Expenses:	\$8,548.75
5.	Subtotal of Items 1 - 4			<u>\$42,683.41</u>
6.	Subcontract costs			\$0.00
7.	Not-to-Exceed Total (Items 5 & 6)			\$42,683.41
			Rounded:	\$42,700.00

Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's or, the state's auditor, or a Federal government auditor.

**EXHIBIT C1**

**ESTIMATE OF  
CONSTRUCTION TESTING COSTS  
Crete Municipal Airport 3-31-0022-014**

LABORATORY:

Olsson, Inc.  
601 P Street  
Lincoln, NE

LIST ALL ANTICIPATED COSTS

<u>SERVICE OR TEST</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Estimated Total Cost</u>
Moisture / Density (4" Mold)	1	\$150.00	\$150.00
Moisture / Density (6" Mold)	1	\$175.00	\$175.00
Nuclear Density Test	20	\$27.00	\$540.00
Mechanical Sieve Analysis	1	\$150.00	\$150.00
Concrete Compressive Strength	15	\$15.00	\$225.00
Concrete cylinder (Store & Cure)	5	\$15.00	\$75.00
Concrete Length Determination	5	\$17.50	\$87.50
Cylinder Molds	15	\$2.50	\$37.50
Concrete Test Set	5	\$120.00	\$600.00
Equipment Rental	1	\$500.00	\$500.00
Technician	20	\$60.00	\$1,200.00
Professional Engineer Review	4	\$120.00	\$480.00
Trip Charge	6	\$250.00	\$1,500.00
			<u><u>\$5,720.00</u></u>

Testing is not a guarantee that all work and materials meet the contract requirements and does not does not relieve the Contractor of any of its responsibilities. The Contractor shall remain solely responsible and liable for the quality and completion of the Project in compliance with contract documents.

**EXHIBIT D**

**CLOSE OUT PHASE SERVICES  
Crete Municipal Airport 3-31-0022-014**

1.	<u>Direct Salary Costs</u>			
		<u>Hours</u>	<u>Direct Salary Rate/Hour</u>	<u>Total Costs (\$)</u>
	<u>Title</u>			
	Team Leader	0.0	\$80.24	\$0.00
	Sr. Project Engineer	0.0	\$64.06	\$0.00
	Project Engineer	8.0	\$56.42	\$451.36
	Elec. or Mech. Engineer	0.0	\$73.94	\$0.00
	Assistant Engineer	14.0	\$39.10	\$547.46
	Registered Surveyor	0.0	\$51.95	\$0.00
	Sr. Technician	16.0	\$31.56	\$505.02
	Assoc. Technician	8.0	\$30.37	\$242.94
	Asst. Technician	0.0	\$28.08	\$0.00
	Sr. Clerical	9.0	\$29.90	<u>\$269.10</u>
			Total Direct Salary Costs:	\$2,015.88
2.	<u>Labor and General &amp; Administrative Overhead</u>			
	Percentage of Direct Salary Costs*	184.12%		\$3,711.65
3.	<u>Fixed Fee: 15% of Item 1 &amp; 2</u>			\$859.13
4.	<u>Direct Nonsalary Expenses</u>			
	Travel		\$0.00	
	Per Diem		\$0.00	
	Copies & Prints		\$320.00	
	Supplies, Phone		<u>\$0.00</u>	
			Total Expenses:	\$320.00
5.	Subtotal of Items 1 - 4			\$6,906.66
6.	Subcontract costs			\$0.00
7.	Lump Sum Amount (Items 5 & 6)			\$6,906.66
			Rounded:	\$6,900.00

\* For Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's auditor, the state's auditor, or a Federal government auditor.

## FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO “CONTRACTOR”, “PRIME CONTRACTOR”, “BIDDER”, “OFFEROR”, AND “APPLICANT” SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO “SUBCONTRACTOR”, “SUB-TIER CONTRACTOR” OR “LOWER TIER CONTRACTOR” SHALL PERTAIN TO ANY SUBCONSULTANT UNDER CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO “SPONSOR” AND “OWNER” SHALL PERTAIN TO THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING CONTRACTS WITH THE A/E.

### ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38

The contractor must maintain an acceptable cost accounting system. The contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

### CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

### CIVIL RIGHTS – TITLE VI ASSURANCE

Reference: 49 USC § 47123 and FAA Order 1400.11

#### A) Title VI Solicitation Notice

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **B) Title VI Clauses for Compliance with Nondiscrimination Requirements**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- 1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4) **Information and Reports:** The contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

### **C) Title VI List of Pertinent Nondiscrimination Authorities**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **DISADVANTAGED BUSINESS ENTERPRISE**

Reference: 49 CFR part 26

**Contract Assurance (§ 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

## **ENERGY CONSERVATION REQUIREMENTS**

Reference: 2 CFR § 200, Appendix II (H)

Contractor and each subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

## **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

Reference: 29 USC § 201, et seq.

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

Reference: 20 CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **RIGHT TO INVENTIONS**

Reference: 2 CFR § 200 Appendix II (F) and 37 CFR §401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

## **SEISMIC SAFETY**

Reference: 49 CFR part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

## **TAX DELINQUENCY AND FELONCY CONVICTION**

Reference: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) and DOT Order 4200.6

**Certification** - The applicant represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**Certification** - The applicant represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

## TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104 and 49 CFR part 30

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- a) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- b) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- c) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **VETERAN'S PREFERENCE**

Reference: 49 USC § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

### **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$3,500**

#### **DISTRACTED DRIVING**

Reference: Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

### **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000**

#### **TERMINATION OF CONTRACT**

Reference: 2 CFR § 200 Appendix II (B)

##### **Termination for Convenience**

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

##### **Termination by Default**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating

the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
  - 1) Perform the services within the time specified in this contract or by Owner approved extension;
  - 2) Make adequate progress so as to endanger satisfactory performance of the Project;
  - 3) Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:
  - 1) Defaults on its obligations under this Agreement;
  - 2) Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  - 3) Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000**

### **DEBARMENT AND SUSPENSION**

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1) Checking the System for Award Management at website: <https://www.sam.gov>.
- 2) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- 3) Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

## **PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000**

### **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

Reference: 2 CFR § 200 Appendix II (E)

#### 1) Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

#### 2) Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

#### 3) Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any

other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4) Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

**LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II (J); and 49 CFR part 20, Appendix A

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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## **ROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000**

### **BREACH OF CONTRACT TERMS**

Reference: 2 CFR § 200 Appendix II (A)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

### **CLEAN AIR AND WATER POLLUTION CONTROL**

Reference: 2 CFR § 200 Appendix II (G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated DATE between Crete Airport Authority, Crete, Nebraska ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

### **6.3 Certification of Merit**

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Opinion of Probable Cost**

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

#### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

#### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

#### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

#### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

#### **7.8 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

#### **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

## **7.12 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

## **7.13 Assignment**

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to 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.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, 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. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

## **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

## **7.15 Limitation on Damages**

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

## **7.16 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

July 3, 2019

Mr. Mike Hodge  
Olsson Associates  
601 P Street  
Lincoln, Nebraska 68508

RE: Overhead Expense Factor

Dear Mike:

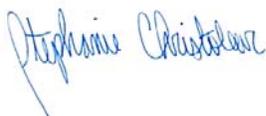
In response to your request, we have provided a recap of the computed amount of overhead expenses incurred in 2018 based on the audited Schedules of Indirect Costs and Costs with Adjustments as of and for the year ended December 31, 2018. Summarized below is your FAR Combined Overhead Rate that is detailed in the audit:

Combined FAR Overhead Rate (Including Computer Expenses) – 184.12%

Total fringe benefits	34,447,042
Total general and administrative expenses	48,456,372
Computer expenses (as described in Note 5) of the Schedules)	<u>7,831,643</u>
	90,735,057
Less computer expenses already included in general and administrative expenses	<u>(711,914)</u>
	90,023,143
Divided by direct labor	48,893,588
	\$ 1.8412

In summary, for every \$1.00 of direct labor paid, there is \$1.84 in overhead expenses attributable to that labor.

Sincerely,



Stephanie L. Christolear  
Director

SLC/RFT/amw