

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of **November 1, 2021** ("Effective Date") between Town of Bayfield, Colorado ("Owner") and KLJ Engineering LLC ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: CDOT Project No.: TAP M300-001, MTF M065-008, Project Code: 23709, 24004, Bayfield Shared Use Path (SUP) Improvements Project ("Project").

Engineer's services under this Agreement are generally identified as follows: See Exhibit A for scope of services ("Services").

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").
- B. Engineer shall complete its Services within the following specific time period: **6 months from the Effective Date**. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in

writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment—Time & Materials not to exceed*

- A. Owner shall pay Engineer for Services as follows:
 - 1. A not to exceed amount of **\$89,742.34**.
 - 2. In addition to the not to exceed amount, reimbursement for the following expenses: **None**
- B. The amount billed monthly for Engineer's Services will be based upon Engineer's actual time (hours), expenses, and materials charged to the project during the billing period and in accordance with Exhibit B, Budget Estimate. Mileage, plan copies and other incidental expenses are not typically charged to the Owner without prior written authorization.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1. Additional services must be approved in writing, by Owner, before Engineer performs said services.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.
 - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
 - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the

extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply

with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 - 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 - 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in

any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.

- I. Neither Party shall be considered to be in default of this Agreement if delays in or failure of performance are due to forces beyond the reasonable control of the nonperforming Party, the effect of which the nonperforming Party could not avoid by the exercise of reasonable diligence. Such forces include, but are not limited to: fire, acts of God, flood, earthquake, storm, lightning, tornados, epidemic, war, riot, civil disturbance, sabotage, strike, work slowdown, or other labor disturbances, judicial restraint, action or inaction of any Government entity in either its sovereign or contractual capacity, quarantine restrictions, freight embargoes, delays in long lead time items and severe weather. Any changes to the terms of this agreement impacted by a Force Majeure event shall be documented in an Amendment to the Agreement.
- J. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- K. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- L. This Agreement is to be governed by the law of the state in which the Project is located.
- M. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.
- N. Engineer 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.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Definitions

- B. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.


Attachments: Exhibit A – Engineering Services
Exhibit B – Montana DOT Audited Overhead Rate Approval
Exhibit C – Budget Spread Sheet
Exhibit D – Design Schedule

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Town of Bayfield, Colorado

Engineer: KLJ Engineering LLC

By: _____
Print name: _____
Title: _____
Date Signed: _____

By:  _____
Print name: Mark Anderson
Title: Senior Vice President, EPW
Date Signed: _____

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

KLJ Engineering LLC
4585 Coleman Street
Bismarck ND 58503
Legal Notices to: legal@kljeng.com

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated Nov. 1, 2021.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 30% Design Phase

A. After execution of the Professional Services Agreement and upon written authorization (Notice to Proceed) from Owner, Engineer shall:

1. Host kick-off meeting with Owner to discuss project objectives, expectations, schedule, scope, questions, concerns, and to address any changes in the design or construction scope and related fee impacts.
2. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary (30%) drawings, outline specifications, and written descriptions of the Project. This work will be performed using the most current CDOT M&S Standard Plans, CDOT Standard Specifications for Road and Bridge Construction, CDOT Roadway Design Guide Chapter 14 Bicycle and Pedestrian Facilities, and related FHWA and ADA design guidelines.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.7.b below. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Basic Services are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
7. Additional Services, obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other

construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

8. Perform or provide the following other 30% Design Phase tasks or deliverables:

- a. Process CDOT Form 128, Categorical Exclusion Determination showing clearance activities or other appropriate clearance document.
- b. Obtain existing utility information. Specifically, Engineer will perform Quality Level D investigation in areas of existing shared use path infrastructure.
- c. Verify existing drainage patterns and will remain un-inhibited by proposed improvements. Excluded is any hydrologic and hydraulic drainage analysis, reporting, and design.
- d. Survey, including topography, verification of adjacent ROW and property boundaries using existing recorded plats and existing monumentation, visible surface utilities such as storm inlets, water valves, phone pedestals, power poles, etc. Survey will be performed using GPS and UAV (drone) photogrammetry equipment & methods. Coordinate base will be Colorado State Plane South Zone and NAVD 1988 (2011). Excluded is any survey services to provide right-of-way and easement acquisition, legal document preparation, recovery of missing or damaged property corner and aliquot section corners, construction staking.
- e. Consult with the Owner to establish an agreed upon structural section specification and typical section detail for the path. Geotechnical services are excluded due to the non-traffic and light loading service level of the shared use path.
- f. Consult with the Owner to minimize or eliminate the need for any retaining wall structure. Excluded is any structural services for design of retaining walls higher than four feet from the path surface to the top of the highest wall element.
- g. Prepare Preliminary plans showing proposed alignments and typical path section, existing conditions, ADA at street crossings, and existing rights-of-way plan.
- h. Develop a preliminary opinion of probable Construction Cost.

9. Furnish one (1) electronic review copy of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other 30% Design Phase deliverables to Owner in general conformance with the attached schedule. Within 21 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

- B. Engineer's services under the 30% Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

1.

A1.02 90% Design Phase

- A. After acceptance by Owner of the preceding Design documents, opinion of probable Construction Cost as determined in the preceding Design Phase, and any other preceding Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Proceed to the 90% Design Phase that includes final drawings, specifications and documents, opinion of probable Construction Cost, and any other 90% Design Phase deliverables in response to Owner's and Public's comments, as appropriate, and furnish to Owner one (1) emailed electronic copy of the revised 90% Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables in general conformance with the design schedule.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the 90% Final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble Final bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other 90% Design Phase tasks or deliverables:
 - a. Final progress set (90%) of Drawings and Specifications
 - b. Revised or updated opinion of probable Construction Cost
 - c. Final progress set of bid and construction documents

10. Furnish for review by Owner, its legal counsel, and other advisors, one (1) emailed electronic copy of the final Drawings and Specifications, and any other Final Design Phase deliverables, within 90 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 21 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
- B. Engineer's services under the 90% Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, and any other 90% Design Phase deliverables.
 - C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.03 100% Final Design Phase

- A. After acceptance by Owner of the 90% Design Phase Drawings and Specifications, Bid and Construction Contract documents, and the most recent opinion of probable Construction Cost as determined in the 90% Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 1. Proceed to the 100% Final Design Phase that includes final drawings, specifications and documents, opinion of probable Construction Cost, and any other 100% Design Phase deliverables in response to Owner's and Public's comments, as appropriate, and furnish to Owner one (1) emailed electronic copy of the revised 100% Final Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables in general conformance with the design schedule.
 2. Perform or provide the following 100% Final Design Phase tasks or deliverables:
 - a. Produce 100% Final (Issued for Construction) Drawings and Specifications, Bid and Contract Documents for Owner's use to advertise and solicit Invitations to Bid from construction contractors.
 - b. Final opinion of probable Construction Cost
- B. Engineer's services under the 100% Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, Bid and Construction Contract Documents, and any other 100% Final Design Phase deliverables.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in a separate amendment to this Agreement.
 1. Right of way acquisition and related property line surveys, and plats. Preparation of associated supporting legal documents.
 2. Services to conduct traffic studies and conduct analysis of traffic data.

3. Preparation of a Stormwater Pollution Prevention Plan and related CDPHE Discharge Permit.
4. Preparation of traffic control plans (i.e. Methods for Handling Traffic)
5. Geotechnical Services related to structural section design of pathway pavement section.
6. Providing Subsurface Utility Engineering (SUE) services except as specifically outlined in A1.01.A.7.b.
7. Bid, Construction and Post Construction Phase services.
8. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
9. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
10. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
11. Services resulting from Owner's request to evaluate additional Project Scoping Phase alternative solutions beyond those agreed to in Paragraphs A1.01.A.1 and 2.
12. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
13. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
14. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;

- d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
- 15. Furnishing services of Consultants for other than Basic Services.
 - 16. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - 17. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
 - 18. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 - 19. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 - 20. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph A1.04.
 - 21. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
 - 22. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
 - 23. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 - 24. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
 - 25. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
 - 26. Preparation of operation, maintenance, and staffing manuals.

27. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
28. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
29. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
30. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
31. Overtime work requiring higher than regular rates.
32. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
33. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
34. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

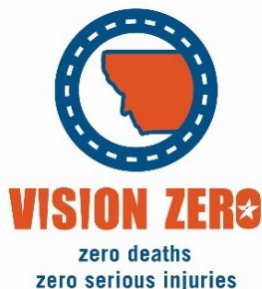


EXHIBIT B

Montana Department of Transportation

2701 Prospect
PO Box 201001
Helena MT 59620-1001

Greg Gianforte, Governor
Malcolm "Mack" Long, Director

July 23, 2021

Grant Leffler
KLJ
4585 Coleman Street
Bismarck, ND 58503-0431


Our Audit Services has reviewed the documentation supporting the **KLJ** audited overhead rate for compliance with criteria contained in the Federal Acquisition Regulations (FAR), Subpart 31.2. Your overhead rate of 1.8489 is accepted based on documentation for your fiscal year ending December 31, 2020. This rate is valid for any contracts executed through December 31, 2021 or within six months thereafter UNLESS, in the interim, MDT accepts a new rate.

For existing contracts, project-specific agreements determine the appropriate rate and effective date to be utilized for negotiation and billing. The rate identified herein is subject to adjustment upon receipt of additional information.

This is your pre-notification notice pursuant to 23 CFR 172.11(d), a record of the accepted indirect cost rate(s) will be logged with the Federal Highway Administration's Audit Exchange where it may be viewed by auditors from other State Highway Agencies.

If you have any questions, please contact me at (406) 444-7292.

Sincerely,

 Digitally signed by Ryan
Dahlke
Date: 2021.07.27
15:53:12 -06'00'

Ryan Dahlke, P.E.
Consultant Design Engineer

RJD/slt

e-copy: Brenda Crawford, MDT Audit Services
Kelly Williams, MDT Consultant Design Bureau
cc: Sheryl Tangen, MDT Consultant Design Bureau

Fee = \$33,948.002.42% of CV

KLJ Project Name:	Bayfield Shared Use Path Imp
KLJ Project Number:	2104-01400

Project Budget



Job Classification:		Senior Project Manager	Senior Engineer	Engineer	Engineer in Training II	Professional Land Surveyor	1-Person Survey Crew	Project Assistant II										
Task Code	Description	Cooper, Dean	Kenney, Marc	Civil - Sundberg, Ryan R	TBD	Hearon, Eric L	TBD	TBD	DIRECT LABOR Subtotal	Expenses (person x days)	Reimbursable Rate	REIMBURSABLE EXPENSE ¹ Total	Subconsultant Bill	KLJ's % Markup Subconsultant's Name	Subconsultant Fee	DIRECT EXPENSE ²	Bal to: Lump Sum or Agreed Fee	TASK TOTAL
1	Project Management	\$ 76.00	\$ 58.00	\$ 45.00	\$ 35.00	\$ 42.00	\$ 50.00	\$ 30.00			\$ 150.00							
	Kickoff Meeting (1)	4		2					\$ 394.00	1		\$ 150.00			\$ -			\$ 544.00
	Monthly Progress Meetings (5)	5		5					\$ 605.00			\$ -			\$ -			\$ 605.00
	Monthly Invoicing (5 months)	5						16	\$ 860.00			\$ -			\$ -			\$ 860.00
	General project coord. w/ team	48							\$ 3,648.00			\$ -			\$ -			\$ 3,648.00
		62		7				16	\$ 5,507.00	1		\$ 150.00	\$ -		\$ -	\$ -	\$ -	\$ 5,657.00

2	Data Collection & Analysis	\$ 76.00	\$ 58.00	\$ 45.00	\$ 35.00	\$ 42.00	\$ 50.00	\$ 30.00			\$ 150.00							
	Boundary/ROW Research	4				24			\$ 1,312.00			\$ -			\$ -			\$ 1,312.00
	Field work for control, survey, topo, drone flight	8					32		\$ 2,208.00	2		\$ 300.00			\$ -			\$ 2,508.00
	Base map of existing conditions & ROW	4			24				\$ 1,144.00			\$ -			\$ -			\$ 1,144.00
		16			24	24	32		\$ 4,664.00	2		\$ 300.00	\$ -		\$ -	\$ -	\$ -	\$ 4,964.00

3	Design	\$ 76.00	\$ 58.00	\$ 45.00	\$ 35.00	\$ 42.00	\$ 50.00	\$ 30.00			\$ 150.00							
	30%	4		40	95				\$ 5,429.00			\$ -			\$ -			\$ 5,429.00
	QA/QC internal review		8						\$ 464.00			\$ -			\$ -			\$ 464.00
	90%	4		40	80				\$ 4,904.00			\$ -			\$ -			\$ 4,904.00
	QA/QC internal review		16						\$ 928.00			\$ -			\$ -			\$ 928.00
	Final plans, bid documents, & opion of const. cost	8		24	36				\$ 2,948.00			\$ -			\$ -			\$ 2,948.00
	QA/QC internal review	8	12						\$ 1,304.00			\$ -			\$ -			\$ 1,304.00
		24	36	104	211				\$ 15,977.00			\$ -	\$ -		\$ -	\$ -	\$ -	\$ 15,977.00

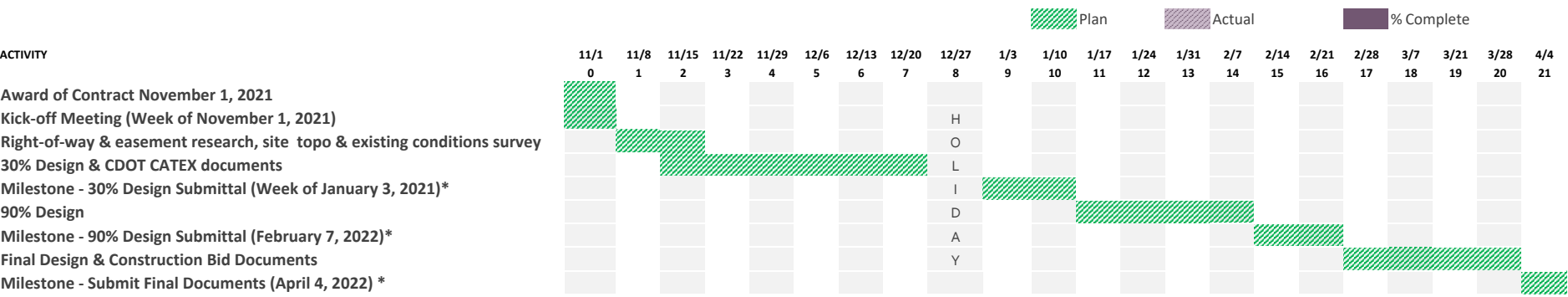
4	Environmental	\$ 76.00	\$ 58.00	\$ 45.00	\$ 35.00	\$ 42.00	\$ 50.00	\$ 30.00			\$ 150.00			5.0%				
	ERO Resources Corp - Catergorical Exclusion including field work & CDOT								\$ -			\$ -	\$ 7,000.00		\$ 7,350.00			\$ 7,350.00
									\$ -			\$ -			\$ -			\$ -
									\$ -			\$ -			\$ -			\$ -
									\$ -			\$ -	\$ 7,000.00		\$ 7,350.00	\$ -	\$ -	\$ 7,350.00

102	36	111	235	24	32	16	556	3					
\$ 26,148.00								\$ 450.00	\$ 7,350.00	\$ -	\$ -	\$ 33,948.00	

¹ To be billed at actual with an \$150 maximum (Meals \$35- Lodging \$115)
² Includes: equipment, rental/subscriptions, mileage... etc.

Summary of Costs: MDT			
Direct Labor			\$ 26,148.00
Indirect Costs -	184.89%		\$ 48,345.04
Subtotal			\$ 74,493.04
On bill rate	Fixed Fee -	10.00%	\$ 7,449.30
Raw labor cost	COF -		\$ -
Direct Expenses			\$ -
Subconsultants			\$ 7,350.00
Reimbursables			\$ 450.00
Balance to Lump Sum or Agreed Fee			\$ -
Total Estimated Engineering Costs			\$ 89,742.34

Town of Bayfield Shared Use Path Design Schedule



* Submittal review period allows for 2-week review by all stakeholders

EXHIBIT D