

Agenda Item No: CA-i

Meeting Date: March 13, 2023

Subject: Approval of Resolution 23-22, approving an Agreement in an amount not to exceed \$5,000, to Sanderson Stewart to survey and provide legal descriptions for proposed ROW on the property situated in the W/2NW/4 of Section 1, Township 1 North Range 68 West, Weld County, Colorado, further described as Parcel Number 146701200045 owned by Anadarko E&P Onshore LLC.

Background: The City of Dacono is in negotiations to acquire 60' ROW for construction of a new road crossing the Anadarko Parcel No. 146701200045.

This survey is necessary to obtain a legal description of the proposed ROW for future filings.

The proposed ROW will allow an access point to York St. for the proposed Ridgeland neighborhood development.

Recommended Action: Staff is recommending approval of Resolution 23-22.

RESOLUTION NO. 23-22

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES
AGREEMENT WITH SANDERSON STEWART FOR
SURVEY SERVICES**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,
COLORADO:**

Section 1. The Professional Services Agreement by and between the City of Dacono and Sanderson Stewart is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

Section 2. The Mayor is hereby authorized to execute the Agreement. The City Council further authorizes the Mayor to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor and City Attorney's Office determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 13th day of March, 2023.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

**AN AGREEMENT BY AND BETWEEN THE CITY OF DACONO,
AND SANDERSON STEWART FOR SURVEY SERVICES**

1.0 PARTIES

The parties to this Agreement are the City of Dacono, a Colorado home rule municipal corporation, hereinafter referred to as the “City,” and Sanderson Stewart, hereinafter referred to as the “Consultant.”

2.0 RECITALS AND PURPOSE

- 2.1 The City desires to engage the Consultant for the purpose of providing Survey Services related to Legal Descriptions & Proposed ROW.
- 2.2 The Consultant represents that it has the background, experience, equipment and facilities necessary to provide the City with the services.

3.0 SCOPE OF SERVICES

The Consultant agrees to provide the City with the specific professional services as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

4.0 COMPENSATION

- 4.1 The City shall pay the Consultant for services under this agreement the amounts set forth in Exhibit “B” attached hereto and incorporated herein by this reference. Such amounts shall be inclusive of all costs of whatsoever nature associated with the Consultant’s efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No hourly rates or other charges shall exceed those identified in Exhibit “B,” except as may be authorized by the City in advance. The scope of services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

4.2 The Consultant shall submit monthly a detailed invoice to the City describing the professional services rendered. The invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the month, the hours worked by employee, and the hourly rate charged for that work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

5.1 The City designates **BOBBY REDD**, as the responsible City staff member(s) to provide direction to the Consultant during the conduct of the project. The Consultant shall comply with the directions given by the designated staff members.

5.2 The Consultant designates _____ as its project manager. The City may rely upon the guidance, opinions, and recommendations provided by the Consultant and its representatives. Should any of the representatives be replaced, particularly _____, and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.

6.0 TERM

The Consultant's services under this Agreement shall commence on ***March 13, 2023*** and be valid for ***six (6) months***.

7.0 INSURANCE

7.1 The Consultant agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.1.1 Consultant shall procure and maintain, and shall cause each Sub-consultant of the Consultant to procure and maintain or insure the activity of Consultant's Sub-consultants in Consultant's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- 7.1.1.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.
- 7.1.1.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultants, products, and completed operations. The policy shall contain a severability of interests provision.
- 7.1.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
- 7.1.1.4 Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000)
- 7.1.2 The policies required above, except for the Workers' Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.
- 7.1.3 Certificates of insurance shall be completed by the Consultant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the

City. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words “endeavor to” appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

- 7.1.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the Owner.
- 7.1.5 The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, ' 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent act, omission, or other fault of the Consultant or any sub-consultant of the Consultant, or any officer, employee, or agent of the Consultant or any sub-consultant, or any other person for whom Consultant is responsible. The Consultant shall, at its sole expense, timely investigate and respond to the City regarding any such liability, claims and demands. To the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Consultant or the Consultant’s agents, representatives, sub-consultants, or suppliers, Consultant shall be solely responsible to bear all costs and expenses, including court costs and attorney fees, for any such injury, loss, or damage, or portion thereof, caused by or claimed to be caused by Consultant’s negligent acts, errors, or omissions relating to the professional work or services in the performance of this Agreement. The Consultant's indemnification and defense obligations shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City or any other party that is not a sub-consultant or other person for whom Consultant is responsible. The extent of the Consultant’s obligation to defend, indemnify, or hold harmless the City shall be determined only after the Consultant’s liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the

City and the Consultant; however, the Consultant's duty to investigate and respond to the City regarding any claims or demands shall immediately arise upon the receipt by the City or Consultant of any claims or demands.

9.0 QUALITY OF WORK

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of professional services of a similar nature in the Denver metropolitan area.

10.0 INDEPENDENT CONTRACTOR

Consultant and any persons employed by Consultant for the performance of work hereunder shall be independent Consultants and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Consultant as to details of doing work or to exercise a measure of control over the work mean that Consultant shall follow the direction of the City as to end results of the work only. **As an independent contractor, Consultant is not entitled to workers' compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Consultant is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.**

11.0 ASSIGNMENT

Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

13.0 TERMINATION

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth in Exhibit B, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 ENFORCEMENT

15.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

15.2 Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Weld County in connection with any dispute arising out of or in any matter connected with this Agreement.

16.0 COMPLIANCE WITH LAWS

Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

17.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

18.0 EQUAL OPPORTUNITY EMPLOYER

18.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training,

including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

- 18.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

19.0 PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

- 19.1 Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract.
- 19.2 Consultant will participate in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Consultant is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.
- 19.3 If Consultant obtains actual knowledge that a sub-consultant performing work under this contract for services knowingly employs or contracts with an illegal alien, Consultant shall:
- a. Notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the sub-consultant if within three days of receiving the notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.
- 19.4 Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 19.5 If Consultant violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, City may terminate the contract for breach of contract. If the contract is so terminated, the Consultant shall be liable for actual and consequential damages to the City.

DATED: _____, 20__

CITY OF DACONO,

By: _____
Mayor

Attest: _____
City Clerk

CONSULTANT:

By: _____

Name: _____

Title: _____

WITNESS:

By: _____

Name: _____

Title: _____

Exhibit “A”

Exhibit “B”

[Scope of Services & Fee Schedule]
(combined)

February 15, 2023

Mr. Bobby Redd
City of Dacono
125 Forrest Street
Dacono, CO 80514
Email: bredd@cityofdacono.com

Reference: Agreement for Surveying Services
Legal Descriptions for Proposed ROW

Dear Mr. Redd:

The following is a proposal for Sanderson Stewart to provide certain services in connection with your project, which is generally described as follows:

**Legal descriptions for a proposed right-of-way across
Legacy Park Subdivision in Dacono, CO**

If this proposal is acceptable to you, please execute this agreement where noted. This agreement, along with the attached Terms and Conditions sets forth the terms of the contract between City of Dacono (hereinafter “Client”) and Sanderson Stewart. The attached Terms and Conditions are expressly incorporated into and made part of the contract between Client and Sanderson Stewart.

Project Overview

The objective of this project is to prepare legal descriptions and exhibits for a proposed right-of-way connecting the existing east end of Legacy Drive to a proposed subdivision approximately 900’ to the east.

Basic Services

Sanderson Stewart will provide the following services as part of its basic services:

Field Survey and Records Research

- Research county records to determine the record owners and get the vesting deeds of the adjoining parcels.
- Establish survey control adequate to complete the survey.
- Find and survey enough boundary control evidence to determine the position of the adjoining parcel boundaries.
-

Initials

- Prepare a drawing in PDF format that shows the existing boundary lines and ownership information of the adjoining parcels, the existing right-of-way of Legacy Drive, and the proposed right-of-way with bearings and distances labeled.
- Horizontal Datum will be modified NAD83 (2011) Colorado North State Plane Coordinates with an applied scale factor to achieve ground level distances.

Legal Descriptions and Exhibits

- Write legal descriptions of 3 parcels that are to be acquired for right-of-way.
- Prepare exhibits that show each parcel graphically to accompany the legal descriptions.
- Sign and stamp the legal descriptions with the seal of the professional land surveyor in responsible charge of the survey.
- Provide the signed and stamped legal descriptions in PDF format to the City of Dacono.

Services not set forth above as basic services are specifically excluded from the scope of Sanderson Stewart's services. Sanderson Stewart assumes no responsibility to perform any services not specifically listed as basic services.

Additional services are not included in the basic services. If the Client and Sanderson Stewart agree in writing via an amendment to this agreement, Sanderson Stewart will provide additional services as requested by the Client.

Notwithstanding the foregoing, Sanderson Stewart shall have the right, but not the obligation, to provide, without advance authorization from the Client, other services made necessary by the default of the Client. Sanderson Stewart shall provide written notice of the provision of such services as soon as reasonably possible.

Project Schedule

Once Sanderson Stewart receives Client's authorization to proceed, Sanderson Stewart shall prepare and submit to the Client a schedule for the performance of Sanderson Stewart's services. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character, or size of the project requested by the Client, or for delays or other causes beyond Sanderson Stewart's reasonable control.

The Client and Sanderson Stewart are aware that many factors outside Sanderson Stewart's control may affect Sanderson Stewart's ability to complete the services to be provided under this agreement. Sanderson Stewart will perform these services with reasonable diligence and expediency consistent with sound professional practices.

General Assumptions, Exclusions and Additional Services

1. Sanderson Stewart will have unlimited access to the subject property.
2. Survey of utilities, improvements, and drainage is not included in this scope of services but can be provided as additional services if requested.
3. Construction staking is not included in this scope of services but can be provided as an additional service if requested.
4. Existing easements will not be determined or shown on deliverables as part of this scope of services but can be provided as an additional service if requested.
5. Fees for any unforeseen applications, filings or permitting, fees required by governing agencies, or any other fees not specifically defined herein are not included in our fees and shall be paid by Client.
6. Any task directive given to Sanderson Stewart from Client by phone, email, or any other means of communication that is not part of the above Scope of Services shall be considered notice to proceed with that particular task and will be performed as an additional service.

Fees and Billing Arrangements

Invoice and Billing: Sanderson Stewart will bill for its services on a lump sum basis with a total cost of **\$4,200.00**. For an **additional fee of \$600**, Sanderson Stewart will stake the edges of the proposed right-of-way with 4' wood stakes at 100' intervals. Please let me know if you would like this additional service.

Sanderson Stewart shall submit invoices to the Client for work accomplished during each calendar month. The Client agrees that the monthly invoice from Sanderson Stewart is correct, conclusive, and binding on the Client unless the Client, within 20 working days from the date of receipt of such invoice, notifies Sanderson Stewart in writing of alleged inaccuracies, discrepancies, errors in the invoice, or the need for additional backup.

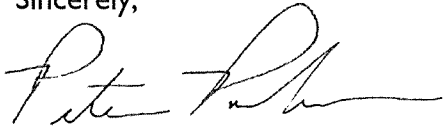
Entire Agreement: This agreement, including the attached Terms and Conditions incorporated into and made part of this contract, constitutes the entire agreement between Sanderson Stewart and Client. It supersedes all prior communications, understandings and agreements, whether oral or written. It shall become effective after being signed and dated by both parties; and, upon each page being initialed by Sanderson Stewart. Any amendment or modification to this contract must be written and executed by both Sanderson Stewart and Client.

Mr. Bobby Redd
February 15, 2023
Page 4

Conclusion


Mr. Redd, we look forward to working with you on this project. Feel free to call me at 970-549-0630 if you have any questions regarding this proposal. Otherwise, if it meets your approval, simply mail or email this signed and dated agreement to our office at 425 West Mulberry St., Suite 201, Fort Collins, CO 80521 or ppaulus@sandersonstewart.com. Thank you.

Sincerely,



Pete Paulus, PLS, CFedS
Senior Professional Land Surveyor

I hereby authorize SANDERSON STEWART to proceed as described above and, by my signature, acknowledge and agree to the Terms and Conditions attached to and made part of this contract. Moreover, an electronic or faxed copy of my signature shall be as effective as any original:

By  _____
Client Title Date
Public Works Director 3/7/2023

By _____
Sanderson Stewart Title Date

PEP/mz
Enc.
O:2023_CityofDacono_LegacyParkSub_Survey_prpsl_021523

Initials

TERMS AND CONDITIONS

INTEREST, SUSPENSION, AND COLLECTION COSTS: Any invoice not paid within 30 days of date of invoice shall bear interest at 1.5 percent per month on the unpaid balance. If CLIENT fails to make payment within 45 days of the date of any invoice, SANDERSON STEWART shall have the right, but not the obligation, to suspend work and withhold deliverables until payment in full, including interest, is received. SANDERSON STEWART shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. If SANDERSON STEWART resumes services after payment by CLIENT, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for SANDERSON STEWART to resume performance.

If an invoice remains unpaid for more than 90 days, SANDERSON STEWART shall have the right, but not the obligation, to initiate collection procedures. If the CLIENT fails to make payment when due and SANDERSON STEWART incurs any costs in order to collect sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to SANDERSON STEWART. Collection costs shall include, but are not limited to, legal fees, collection agency fees and expenses, court costs, collection bonds, and reasonable staff costs for SANDERSON STEWART's staff for time spent in efforts to collect. This obligation of CLIENT to pay SANDERSON STEWART's collection costs shall survive the term of this Agreement or any termination by either party.

It is understood and agreed that SANDERSON STEWART's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Supplemental Agreement may be negotiated between the CLIENT and SANDERSON STEWART describing the services desired and providing a basis for compensation to SANDERSON STEWART.

TERMINATION OF SERVICES FOR NON-PAYMENT: If the CLIENT fails to make payment to SANDERSON STEWART in accordance with this Agreement, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by SANDERSON STEWART.

SET-OFFS, BACK CHARGES, AND DISCOUNTS: Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by SANDERSON STEWART. Payment to SANDERSON STEWART for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

INFORMATION PROVIDED BY CLIENT OR OTHERS: CLIENT agrees to provide to SANDERSON STEWART all available information necessary to perform duties as outlined in the attached scope of services. The CLIENT shall furnish, at CLIENT'S expense, all information, requirements, reports, data, surveys, and instructions required. SANDERSON STEWART is entitled to rely on the accuracy and completeness of all such information provided.

CLIENT shall furnish right-of-way entry onto the project site for SANDERSON STEWART to perform necessary field measurements or studies.

OWNERSHIP OF INSTRUMENTS OF SERVICE: All reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by SANDERSON STEWART as instruments of service shall remain the property of SANDERSON STEWART. SANDERSON STEWART retains all common law, statutory and other reserved rights, including the copyright to all instruments of service. If any instruments of service must be filed with governmental agencies, SANDERSON STEWART will furnish copies to the CLIENT upon request. The CLIENT will not reuse or modify the instruments of service without SANDERSON STEWART's prior written authorization. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless SANDERSON STEWART, its officers, directors, employees, and agents, from and against any and all damages, claims, liabilities, costs, or suits, including reasonable attorney's fees and defense costs, arising from, allegedly arising from, or in any way connected with, the unauthorized reuse or modification of any instrument of service by any person or entity other than SANDERSON STEWART.

ELECTRONIC FILES: SANDERSON STEWART may furnish drawings, reports, or data on electronic media generated and furnished by SANDERSON STEWART. The CLIENT understands and agrees that all such electronic files are instruments of service of SANDERSON STEWART, that SANDERSON STEWART shall be deemed the author, and shall retain all common law, statutory law, and other rights, including copyrights. The CLIENT agrees not to reuse these electronic files, in whole or in part, for any other purpose other than for the project. The CLIENT agrees not to transfer these electronic files to others without the prior written consent of SANDERSON STEWART. The CLIENT further agrees to waive all claims against SANDERSON STEWART resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than SANDERSON STEWART.

The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by SANDERSON STEWART and electronic files, the signed or sealed hard-copy construction documents shall govern.

Additionally, the CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless SANDERSON STEWART, its officers, directors, employees, and agents, against all damages, liabilities, claims, or suits, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than SANDERSON STEWART, or from any reuse of the electronic files without the prior written consent of SANDERSON STEWART.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by SANDERSON STEWART; and SANDERSON STEWART makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. SANDERSON STEWART shall not be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of electronic files.

OPINIONS OF PROBABLE COST: CLIENT hereby acknowledges that SANDERSON STEWART cannot warrant that any opinions of probable cost provided by SANDERSON STEWART will not vary from actual costs incurred by the CLIENT. The CLIENT understands that SANDERSON STEWART has no control over the cost or availability of labor, equipment, materials, or over market conditions or the Contractor's method of pricing. SANDERSON STEWART makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from SANDERSON STEWART's opinion of probable cost.

LIMIT OF LIABILITY: In recognition of the relative risks and benefits of the project to both the CLIENT and SANDERSON STEWART, the risks have been allocated such that the CLIENT agrees to limit the liability of SANDERSON STEWART to the CLIENT for any and all claims, cause or

combination of causes, including attorney's fees, costs, and expert witness fees so that that the total aggregate liability of SANDERSON STEWART to CLIENT shall not exceed \$50,000.00 or SANDERSON STEWART's total fees for services on this project, whichever is greater. It is intended that this limitation apply to any and all claims, liability or causes of action, however alleged or arising.

CONSTRUCTION SERVICES: If, under this Agreement, professional services are provided during the construction phase of the project, SANDERSON STEWART shall not be responsible for or have control over means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; nor shall SANDERSON STEWART be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for the Contractor's failure to comply with the applicable laws, ordinances, rules, or regulations. These rights and responsibilities are solely those of the Contractor.

SANDERSON STEWART shall not be responsible for any acts or omissions of the Contractor, subcontractor, or any person or entity performing any portion of the work. SANDERSON STEWART does not guarantee or warrant the performance of any Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable codes, laws, rules or regulations.

JOB SITE SAFETY: Neither the professional activities of SANDERSON STEWART, nor the presence of SANDERSON STEWART at the construction/project site, shall relieve the general contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the contract documents and to comply with any health or safety precautions required by any regulatory agencies. SANDERSON STEWART does not have authority to control any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the contractor and subcontractors are solely responsible for job site safety and warrants that this intent shall be carried out in the CLIENT's contract with the general contractor. The CLIENT also agrees that CLIENT and SANDERSON STEWART shall be indemnified by the general contractor for any such claims, and shall be made additionally insured under the general contractor's insurance policies.

RECOMMENDATIONS BY SANDERSON STEWART: Sanderson Stewart may provide advice and/or recommendations to the CLIENT during Sanderson Stewart's provision of services for the CLIENT's project. If the CLIENT declines to follow the advice and/or recommendations provided by Sanderson Stewart, the CLIENT agrees that Sanderson Stewart shall not have any liability for adverse consequences or damages resulting from the CLIENT's failure to follow the advice and/or recommendations of Sanderson Stewart. Additionally, the parties agree that the CLIENT's failure to follow advice and/or recommendations of Sanderson Stewart may be cause for Sanderson Stewart to immediately terminate this Agreement at Sanderson Stewart's sole discretion.

PERMITTING: SANDERSON STEWART shall assist the CLIENT in applying for permits and approvals where required by law. In cases where the scope of services requires SANDERSON STEWART to submit, on behalf of the CLIENT, a permit application and/or approval by a third party to this contract, SANDERSON STEWART does not make any warranties, guarantees, or representations as to the success of SANDERSON STEWART's effort on behalf of the CLIENT. Payment for services rendered by SANDERSON STEWART is not contingent upon the successful acquisition of these permits.

NO ASSIGNMENT WITHOUT CONSENT: Neither party may assign this Agreement without the written agreement of the other party.

TERMINATION: In the event of termination of this Agreement by either party, the CLIENT shall, within 15 days of termination, pay SANDERSON STEWART for all services rendered and reimbursable costs incurred by SANDERSON STEWART up to the date of termination.

The CLIENT may terminate this Agreement for convenience and without cause upon 21 calendar days' written notice.

Either party may terminate this Agreement for cause upon 10 calendar days' written notice for the following reasons:

1. Substantial failure by either party to perform in accordance with this Agreement;
2. Assignment of this agreement without the written consent of the other party;
3. Suspension of the project or SANDERSON STEWART's services for more than 60 calendar days, consecutive or aggregate;
4. Material changes in the conditions under which this Agreement was executed, the Scope of Services, the nature of the project, or the failure of the parties to reach an agreement on compensation and/or schedule adjustments necessitated by such changes.

In the event of a termination not the fault of SANDERSON STEWART, the Client shall pay SANDERSON STEWART, in addition to payment for services rendered and reimbursable expenses incurred, all expenses incurred by SANDERSON STEWART in connection with the orderly termination of this Agreement, including, but not limited to, demobilization, reassignment of personnel, associated overhead costs, and all other expenses resulting from the termination.

CONSEQUENTIAL DAMAGES: Notwithstanding any other provision in this Agreement, neither the CLIENT nor SANDERSON STEWART, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.

DISPUTE RESOLUTION, VENUE, AND CHOICE OF LAW: Any claim arising out of or related to this Agreement (except for Collection Procedures employed by SANDERSON STEWART and those waived or barred as provided elsewhere in this Agreement), shall be subject to mediation as a condition precedent to arbitration or to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their claims by mediation. Either party may file a request for mediation. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or by court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Billings, Montana. Any agreements reached in mediation shall be enforceable as settlement agreements by any court having jurisdiction.

Venue for any arbitration or litigation arising out of this Contract shall be in the Thirteenth Judicial District, Yellowstone County, Montana. This Agreement shall be governed by, and interpreted under, the law of the State of Montana.

ENTIRE AGREEMENT: This Agreement is the entire agreement between SANDERSON STEWART and CLIENT. It supersedes all prior communications, understandings, and agreements, whether oral or written. Any amendment or modification to this Agreement must be written and executed by both SANDERSON STEWART and CLIENT.