

NOTICE OF AGENDA

Notice is hereby given that the City Council of the City of Wellington will hold a regular City Council Meeting on Wednesday, October 09, 2019 at the Wellington City Hall, located at 150 West Main Street, Wellington, Utah. Meeting shall begin promptly at 6:00 pm and the agenda shall be as follows:

1. Public Comment Period
2. Pledge of Allegiance, Roll Call, and Approval of Previous City Council Minutes
3. Resolution 2019-10 – A Resolution Certifying Wellington City to Obtain a Grant from the United States Department of Agriculture (USDA) Rural Development for Assistance with a New Public Safety Vehicle for the Wellington City Fire Department
4. Wellington City Sewer Improvement Project PER & ER – Review and Approval
5. Clint's Mobile Service & Towing – Exempt Home Occupation Request at 220 East Rail Road Ave. Zoned R-1-7.
6. Betty Rich – Sewer Line Adjustments
7. Matrix Cheer – Gymnasium Room Rental Request
8. Vouchers and Warrants
9. Councilmember Reports
10. Price River Water Improvement Board Updates
11. Adjourn

Posted this 7th day of October, 2019

-s Glenna Nelson

City Recorder



In compliance with the Americans with Disabilities Act, persons needing auxiliary services for this meeting should call Glenna 435-637-5213 at least 24 hours prior to the meeting. A copy of this notice was emailed to the ETVNews, a newspaper of general circulation within Carbon County, and to Radio Station KOAL/KARB.

RESOLUTION 2019-10

A RESOLUTION CERTIFYING WELLINGTON CITY TO OBTAIN A GRANT FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) RURAL DEVELOPMENT FOR ASSISTANCE WITH A NEW PUBLIC SAFETY VEHICLE FOR THE WELLINGTON CITY FIRE DEPARTMENT

WHEREAS, Wellington City plans to submit application to obtain a grant for assistance in purchasing a public safety vehicle for the Wellington City Fire Department,

WHEREAS, the USDA requires Wellington City Council to authorize and empower Wellington City to take all necessary or appropriate action as described in the attached document,

NOW THEREFORE, be it resolved by the City Council of Wellington City, Carbon County, Utah certifies that Wellington City is authorized to move forward with submitting a USDA Grant Application to receive assistance with purchasing a new public safety vehicle.

Motion for the adoption of this resolution was made by Council Member _____ and was seconded by Council Member _____ and carried by a vote as follows:

Paula Noyes	Yea __ Nay __
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Glen Wells	Yea __ Nay __
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Marvon Willson	Yea __ Nay __
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Bethany Perea	Yea __ Nay __
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Gary Rich	Yea __ Nay __
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PASSED by a majority vote of the Wellington City Council during the regular meeting of the City Council held October 9, 2019

ATTEST:

Joan Powell, Mayor

Glenna Nelson, City Recorder

RESOLUTION OF MEMBERS OR STOCKHOLDERS

Wellington City Corporation

(Name of Association)

150 West Main
Wellington, UT 84542

(Address, including Zip Code)

RESOLVED, that the Governing Board of this Association be and it hereby is authorized and empowered to take all action necessary or appropriate —

1. To obtain for and on behalf of the Association through the United States Department of Agriculture (USDA) or any other Governmental agency:
 - (a) A loan in a sum not to exceed \$ _____;
 - (b) A grant in a sum not to exceed \$ **\$50,000.00** _____ ;to be advanced by the lender or grantor in one or more advances at such time or times as may be agreed upon.
2. In case of a loan or grant or both —
 - (a) For the execution of such application or applications (including exhibits, amendments and/or supplements thereto) as may be required;
 - (b) For the execution and delivery to the lender or grantor of all such written instruments as may be required in regard to or as evidence of such loan or grant; and
 - (c) In its judgment to carry out the terms of this resolution.
3. And in case of a loan —
 - (a) To obligate this Association for the repayment of the loan at such rates of interest and on such other terms and conditions as the Governing Board shall deem proper;
 - (b) To pledge, hypothecate, mortgage, convey, or assign property of this Association of any kind and in any amount now owned or hereafter acquired, as security for any or all obligations (past, present and/or future) of this Association to such lender; and
 - (c) From time to time to pay, extend, or renew any such obligations.

CERTIFICATION

I, the undersigned, as _____ of the above named Association, hereby
(Secretary) (Acting Secretary)
certify that said Association on the _____ day of _____, _____, had _____
(Number)
_____ ; that _____ of these
(members) (stockholders) or (shares of voting stock outstanding)
constituted a quorum; that _____ said members or stockholders or shares of voting stock were present at a meeting
of the members or stockholders duly called and held on the _____ day of _____, _____ ;
that the foregoing resolution was adopted at such meeting by the affirmative vote of _____ said members
or stockholders or shares of voting stock; and that said resolution has not been rescinded or amended in any way.

Dated this day _____ of _____, _____.

Secretary of _____

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of October 9, 2019 ("Effective Date") between
WELLINGTON CITY ("Owner") and
SUNRISE ENGINEERING, INC. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Wellington City Sewer Improvements Project Preliminary Engineering Report and Environmental Report

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Engineer shall furnish the Preliminary Engineering Report (PER) and Environmental Report (ER) pursuant to the determination of the scope and impacts of a sewer system improvements project and the development of a USDA Rural Development funding application.

Preliminary Design, Final Design, Bid Phase Services, Construction Phase Services, and Post Construction Phase Services will be defined and incorporated by amendment following the Study and Report Phase.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. ***Invoices must include a breakdown of services provided.*** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. 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. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* 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 subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. 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.

Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- B. ***Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.***

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* 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.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in

Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. 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 Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's 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, or (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.

- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner 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 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.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. 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.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ *may* jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to

the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

- A. *Suspension:*
 - 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
 - 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.
- B. *Termination:* The obligation to provide further services 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 terms hereof through no fault of the terminating party.
 - 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 for the Project are delayed or suspended 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 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.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 thereof; 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 notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *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

6.08.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 in this Agreement:
 - 1. 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.
 - 2. 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.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known 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.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer 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, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *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. §§5501 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.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall:
(a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *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, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and

easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. ***Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.***

B. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. **(Not Used)**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. **(Not Used)**
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) 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 written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

- A. ***Agency Concurrence.*** *Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.*
- B. ***Audit and Access to Records.*** *Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.*
- C. ***Restrictions on Lobbying.*** *Engineer and each Consultant shall comply with "Byrd anti-lobbying amendment (31 U.S.C. 1352)" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier-up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.*
- D. ***Suspension and Debarment.*** *Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal*

department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

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

Owner: **WELLINGTON CITY**

By: _____

Print name: **JOAN POWELL**

Title: **MAYOR**

Date Signed: _____

Engineer: **SUNRISE ENGINEERING, INC.**

By:  _____

Print name: **ROBERT W. WORLEY**

Title: **VICE PRESIDENT**

Date Signed: 10/3/2019

Engineer License or Firm's Certificate No. (if required):

4876950-5550

State of: **UTAH**

Address for Owner's receipt of notices:

WELLINGTON CITY

150 W Main

PO BOX 559

WELLINGTON, UT 84751

Address for Engineer's receipt of notices:

SUNRISE ENGINEERING, INC.

25 EAST 500 NORTH

FILLMORE, UT 84631

Designated Representative (Paragraph 8.03.A):

GLENNA NELSON

Title: **CITY RECORDER**

Phone Number: **435-637-5213**

E-Mail Address: **Getzel@Wellingtonutah.us**

Designated Representative (Paragraph 8.03.A):

JESSE RALPHS

Title: **SERVICE CENTER MANAGER**

Phone Number: **435-743-6151**

E-Mail Address: **jralphs@sunrise-eng.com**

REVISIONS TO EJCDC E-500

- ☐ Amend paragraph 4.01.A by inserting the following text after the first sentence: "Invoices must include a breakdown of services provided."
- ☐ In paragraph 6.04.B replace "shall" with "may".
- ☐ Modify paragraph 7.01.A.25 by striking ", as an Additional Service."
- ☐ Add paragraph 7.01.A.38 to the Agreement as follows:
Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.
- ☐ Add paragraph 8.05 to the Agreement as follows:

8.05 Federal Requirements

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with "***Byrd anti-lobbying amendment (31 U.S.C. 1352)***" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared

ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

- ☐ Replace paragraph A1.01.A.1.b with "In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency."
- ☐ Delete paragraph A1.01.A.1.c.
- ☐ Insert the following additional text at the end of Article A1.01.A.8: "The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency."
- ☐ Modify paragraph A1.01.A.10 by inserting "and approved by the Agency" after "When mutually agreed."
- ☐ Add the following immediately after paragraph A1.01.A.14: "Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency."
- ☐ Replace paragraph A1.01.A.16 with "Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's and Agency's comments."
- ☐ Modify paragraph A1.02.A by inserting "and concurrence by Agency" after the words "acceptance by Owner."
- ☐ Modify paragraph A1.02.A.2 by inserting "and Agency" after "authorized by Owner."
- ☐ Add the following to the end of paragraph A1.02.A.8: "Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article."
- ☐ Add the following immediately after paragraph A1.03.A.9: "The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards."

- ☐ Modify paragraph A1.03.A.10 by adding the “and Agency” after the word “counsel.”
- ☐ Insert paragraph A1.03.A.12 stating, “Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer’s Certification of Final Plans and Specifications (Attachment GC-B) for this purpose.”
- ☐ Modify paragraph A1.03.B by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner.”
- ☐ Add the following to the end of paragraph A1.04.A.2: “Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.”
- ☐ Replace paragraph A1.04.A.6 with the following: “The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.”
- ☐ Add the following sentence immediately after paragraph A1.04.A.9: “Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.”
- ☐ Paragraph A1.05.A.4: Insert “and chair” after “Participate in” regarding the preconstruction conference.
- ☐ Delete “If requested by Owner to do so” from Article A1.05.A.6 regarding the Engineer maintaining a set of Drawings and Specifications.
- ☐ Insert paragraph A1.05.A.9.c stating “The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.”
- ☐ Add the following text at the end of paragraph A1.05.A.18: “Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.”
- ☐ Insert paragraph A1.05.A.24.a: “Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.”
- ☐ Modify paragraph A1.05.A.22 by striking the words “Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of

Engineer's review of record documents shall be to check that Contractor has submitted all pages."

- ☐ Add the following to the end of paragraph A1.05.A.22: "Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner."
- ☐ Add the following text after "preparation or review of environmental assessments and impact statements" in A2.01.A.1: "not including preparation of the Environmental Report defined under Basic Services."
- ☐ Replace the period at the end of Article A2.01.A.4 with a comma and add the following text to the end of the Article: "but only if the Owner's request is made after completion of the Study and Report Phase."
- ☐ Mark paragraph A2.01.A.17 as "[Deleted]."
- ☐ Replace paragraph A2.02.A.2 with the following: "Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract."
- ☐ Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.A.2, by adding "and Agency" after "approved in writing by the Owner."
- ☐ Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.5, by inserting "and Agency" after "approved in writing by Owner."
- ☐ Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.8, by inserting the following text at the end of the paragraph, "Changes will not be effective unless and until concurred in by the Owner and Agency."
- ☐ Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01,B by inserting "with concurrence of the Owner and Agency" after "the compensation amount for Engineer's services shall be appropriately adjusted."
- ☐ Modify text of Exhibit C, Compensation Packet BC-2, paragraph C2.03.C.2 by inserting "and Agency" after Owner in "Engineer shall give Owner written notice thereof."
- ☐ Add paragraph C2.04.A.2 to Exhibit C, Compensation Packet RPR-2, by adding the following text to the end of the paragraph: "If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$_____ per hour."

- ☐ Modify Exhibit C, Compensation Packet RPR-1, paragraph C2.04.A.3 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- ☐ Modify Exhibit C, Compensation Packet RPR-2, paragraph 2.04.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- ☐ Modify Exhibit C, Compensation Guide RPR-2, paragraph 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- ☐ Modify Exhibit C, Compensation Packet RPR-2, paragraph C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- ☐ Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- ☐ Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- ☐ Add the following to the end of Exhibit D, Article D1.01.A: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”
- ☐ Mark paragraph D1.01.C.12.b as [Deleted] regarding Resident Project representative role in Change Orders, Work Change Directives, and Field Orders.
- ☐ Add the following to the end of Exhibit F, Article F5.02.D: “Engineers determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.”

RUS CERTIFICATION PAGE

PROJECT NAME: **Wellington City Sewer Improvements Project**

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500. In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer “must plainly show all changes to the Standard EJCDC Text, using ‘Track Changes’ (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.” Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

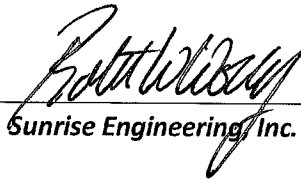
Basic Services	<u>\$36,000</u>
Construction Phase & RPR Services	<u>N/A</u>
Additional Services	<u>N/A</u>
TOTAL:	<u>\$36,000</u>

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Exhibit C

Page 2

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.


Sunrise Engineering, Inc.10/3/2019
Date**ROBERT W. WORLEY – VICE PRESIDENT**

Name and Title

Owner

Date

JOAN POWELL – WELLINGTON CITY MAYOR

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement

Agency Representative

Date

Name and Title



City Council Meeting Staff Report

Date of Meeting: 10/2/2019

Name of Project/Business: Clint's Mobile Services & Towing

Name of Applicant: Clinton Prettyman

Agenda Item: Home Occupation - Exempt

Location of Item: 220 East Rail Road Ave

Zoning Designation: R-1-7

Parcel Number: 1B-0240-0000

Item # 3

Planning and Zoning Info Received a favorable recommendation on October 2, 2019 for an Exempt Home Occupation License.

Background:

Clinton Prettyman is interested in obtaining a Home Occupation license to provide the following services: repairs on autos, small engines, ATV/OHV, farm equipment; mechanics; and towing. Individual will provide remote or roadside assistance.

Land Use Summary

- Lot Size: 6.41 AC
- [R-1-7- Zone](#)

Analysis:

Access: N/A individual plans to service vehicles outside of the home.

Findings:

- Wellington City Land Use Code does allow for Home Occupations in an R-1-7 Zone provided that the rules and regulations of Wellington City ordinances have been met.
- Business will need to meet the Home Occupation Requirements as defined in [Section 5-4 of the Wellington Land Use Code](#). This includes the following:
 - not having more than two (2) non-members of family employed;
 - prohibits the selling of articles produced elsewhere than on the premises;
 - Not having exterior displays or a display of goods visible from the outside, except one non-illuminated window sign not to exceed 6 square feet;

- No outside (in the open) storage of materials or products;
 - No use of any power-driven equipment using motors of more than one-half (1/2) horsepower capacity;
 - No print or radio advertising
- Business will meet the necessary requirements for an Exempt Home Occupation.

Possible Actions:

1. Recommendation of Approval: This action may be taken if the City Council feels the proposal complies with the requirements of the Land Use Code and General Plan.
 - a. List accepted findings
 - b. Place standards as needed
2. Table: This action may be taken if the City Council feels that there are unresolved issues.
 - a. List accepted findings
 - b. Reasons of tabling
 - i. Unresolved issues that must be addressed
 - c. Date when the item will be heard again
3. Recommendation of Denial: This action may be taken if the City Council feels that the request does not meet the intent of the Land Use Code and General Plan.
 - a. List accepted findings
 - b. Reasons for denial



City Council Meeting Staff Report – Utility Account Adjustment

Date of Meeting: 10/9/2019
Name of Resident: Betty Rich
Agenda Item: Request for Utility Account Adjustment
Address/Location: 335 S 100 E
Account Number 6.2880.0.1
Item # 6

Background:

Betty Rich contacted the Wellington City Recorder on October 2, 2019 to request an adjustment for her monthly sewer service. Ms. Rich previously spoke to the Public Works Supervisor, Kory Moosman to provide some background for her request. Ms. Rich would like Wellington City to issue her a \$300 credit on her Utility Account.

On September 22, 2019 Ms. Rich contracted with Waster and Water Logistics, LLC for the cleaning out of a drain that was slowly backing up into her basement. Ms. Rich has stated that Wellington City's Sewer Main is the reasoning for backup.

Attached Documents

- Waste and Water Logistics Invoice T19431 as provided by Betty Rich.

Staff Recommendations:

- City Council needs to review request with Public Works Supervisor Kory Moosman during the schedule Work Session.
- The Utility Account owner also needs to come before City Council to provide further explanation.
- If necessary, Wellington City will request a letter from Waste and Water Logistics stating their findings.

Possible Actions:

1. **Approval of Request:** This action may be taken if the City Council agrees that Wellington City is responsible for the resident's sewer backup.
 - a. List accepted findings
 - b. Place standards as needed
2. **Table:** This action may be taken if the City Council feels that additional information is needed.
 - a. List accepted findings
 - b. Reasons of tabling
 - i. Unresolved issues that must be addressed
 - c. Date when the item will be heard again
3. **Recommendation of Denial:** This action may be taken if the City Council does not agree that Wellington City is responsible for the resident's sewer backup.
 - a. List accepted findings
 - b. Reasons for denial

Waste and Water Logistics LLC

5145 N Hwy 6

Helper, UT 84526 US

435-472-2580

admin@igotpoop.com

http://www.igotpoop.com

Invoice**BILL TO**

BETTY RICH

335 S 100 E

WELLINGTON, UT 84542

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
T19431	09/22/2019	\$0.00	09/30/2019	COD	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
09/20/2019	NOTES	CLEAN OUT DRAIN, BASEMENT IS BACKING UP AND SLOWLY DRAINING RESOLUTION: 3:15 to 3:45 get 49 ready wait for jeff and drive to house 3:45 to 5:45 clean out line which was full of baby wipes not sure if that is what caused the plug or the sewer main tap tree roots had got in the tap at the main plugging it off tried calling Wellington city to let them know but know answer will call on Monday. Also why on the job found a clean out and exposed to avoid a mess in the house Jeff 3:30 to 6:15 on job Martin 4:15 to 6:15	1	0.00	0.00
09/20/2019	DRAIN CLEANING	DRAIN CLEANING / VIDEO INSPECTION SERVICE	3	150.00	450.00
09/20/2019	ADJUSTMENT		1	-150.00	-150.00

PAYMENT	300.00
BALANCE DUE	\$0.00

Waste and Water Logistics LLC

5145 N Hwy 6
Helper, UT 84526 US
435-472-2580
admin@igotpoop.com
<http://www.igotpoop.com>



Receipt

Received From

BETTY RICH
335 S 100 E
WELLINGTON, UT 84542

Date: 09/23/2019**Reference No:** 1726

Invoice Number	Invoice Date	Due Date	Original Amount	Balance	Payment
T19431	09/22/2019	09/30/2019	300.00	300.00	300.00

Memo:

Amount Credited:

\$0.00

Total:

\$300.00

Signature: _____



City Council Meeting Staff Report – Special Facility Lease Agreement

Date of Meeting: 10/9/2019
Name of Requestor: Kayla Haycock of Matrix Cheer
Agenda Item: Request to use the Wellington City Gymnasium weekly (twice) basis
Address/Location: 150 West Main
Item # 7

Background:

Kayla Haycock of Matrix Cheer would like to enter into a long-term lease agreement with Wellington City for the weekly use of the Wellington City Gymnasium. Matrix Cheer currently meets twice a week on Mondays and Tuesdays from 5:00 P.M. to 8:00 P.M.

Attached Documents

- Wellington City's Lease Agreement to Rent the Wellington City Hall – Gymnasium

Staff Recommendations:

- City Staff requests that the facilities are not used during the hours of 7:00 AM to 6:00 PM. Given the location of the Wellington City Offices and the Gymnasium, activities will disturb the work of the City Treasurer and City Recorder.
- City Staff recommends that Wellington City charge \$50 to \$75 per week for the use of the facilities. This is dependent upon whether or not Matrix Cheer will maintain and clean the gymnasium after each use.
- City Staff encourages that Matrix Cheer not rent the Gymnasium on Tuesday and Wednesday evenings as Court and City Meetings are held on those nights.
- Wellington City will need a Certificate of Liability from Matrix Cheer. User will assume all risks associated with the activity of Cheering, and User will enter into an Indemnification/Hold Harmless/Release of Liability Agreement with Wellington City.

Possible Actions:

- 1. Approve**
 - a. Days and Times Allowed
 - b. Cost per Week
 - c. Use Restrictions
- 2. Table**
 - a. Reasons for Table
 - b. Date for Review
- 3. Denial**
 - a. Reasons for Denial



Lease Agreement for City Hall Building

This lease is made this _____ day of _____, 20____, by and between **WELLINGTON CITY** a municipal corporation, **PO BOX 559 WELLINGTON, UTAH ("CITY")** AND

Name of Lessee

Phone

Address ("LESSEE")

Email Address

In consideration of the following conditions and covenants, the parties hereinafter agree:

1. The **CITY** leases to the **LESSEE** and **LESSEE** leased from **CITY** on the date of _____ The Gymnasium
2. **NON-REFUNDABLE** Lease amount shall be \$200 per day, which shall be due and payable on execution of this Lease agreement.
3. **REFUNDABLE** Cleaning/Security deposit of \$100 shall be paid to the City at the time Lessee makes application for Lease. Refund shall be made after the key has been returned and a physical inspection of the Gymnasium has been made by a representative of the Lessor for the following:
 - a. All surface areas are clean.
 - b. All food has been removed.
 - c. All cleaning equipment is returned to its assigned location.
 - d. Abnormal use of damage to building and its contents.
4. The **LESSEE** shall hold the **CITY** harmless on account of any and all liability which may arise out of; or be associated with any manner whatsoever with **LESSEE'S** occupancy or use of the building and adjoining property.
5. ****THERE SHALL BE NO ALCOHOL OR ALCOHOLIC BEVERAGES IN THE BUILDING OR ON THE ADJOINING PROPERTY AT ANY TIME DURING LESSEE'S USE OR OCCUPANCY OF THE BUILDING.** (Utah Cody Unannotated [32B-4-420](#)). Violations shall result in a Class C Misdemeanor with fines and fees up to \$750.00 and 90 days of Jail. **ALSO, THERE IS NO SMOKING ALLOWED IN THE CITY HALL BUILDINGS, INCLUDING MULTI-PURPOSE ROOM, BATHROOMS, HALLWAYS, ETC.**
6. All activities with the exception of clean-up shall conclude at 12:00 midnight on said date.
7. If the **CITY** retains an attorney to enforce any of the provisions of this lease, the **LESSEE** agrees to pay a reasonable attorney's fees, together with court costs.

Date

Signature of **LESSEE**

Accepted by _____
Wellington City Representative

Amount Paid _____

Wellington City

Indemnification, Hold Harmless and Release of Liability Agreement

Whereas _____ (hereinafter "User") desire(s) to use Wellington City (hereinafter "Town") Property or Facilities located at 150 West Main Street, to engage in the following activities:

And in consideration of Town's willingness to allow User to use said facilities and/or property.

I, as the duly authorized agent acting on behalf of the User, herewith agree and promise Indemnify and hold Wellington City, its officers, agents, officials and employees, and volunteers harmless and release them for and from any liability, costs or expenses arising from any action, causes of action, claims for relief, demands, damages, expenses, costs, fees, or compensation, whether or not said actions, causes of action, claims for relief, demands, damages, costs, fees, expenses and/or compensation are known or unknown, are in law or equity, and without limitation, all claims of relief which can be set forth through a complaint or otherwise that may arise out of the acts or omissions, negligent or otherwise of User, Town and /or their respective officers, agents, officials, members, employees, and volunteers, or any person or persons.

In addition, User agrees to repair, solely at Users Cost, all damage to Town's facilities or equipment arising out of User's use or possession of said facilities or equipment.

User acknowledges that User has been advised to consult legal counsel and have had the opportunity to consult with legal counsel prior to entering into this Indemnification/Hold Harmless/Release of Liability Agreement.

User understands and agrees that, by signing this Indemnification/Hold Harmless/Release of Liability Agreement that User relinquishes all rights or claims to adjudication or recourse to which User may be entitled in relation to any damages or injury that may arise out of the above described activities.

User warrants that User enters into this agreement with full knowledge of the meaning and future effect of the promises, releases and waivers contained herein.

User warrants that User has entered into the releases and waivers contained in the Agreement voluntarily and that User makes them without any duress or undue influence of any nature by any person or entity.

User agrees to assume all risk, chance or hazard that any loss sustained by User or any other Person or entity may be greater or more extensive than is known, anticipated or expected.

Signature of User Agreement

Date

Printed Name or User Agent

Office Use Only

Date Key Picked Up: _____

Name of Person Picking up Key: _____

Date Key Returned: _____

Phone Number or Email: _____

Please refund deposit amount of \$_____ to:

City Representative

Date