**AGREEMENT**

**BETWEEN OWNER AND ENGINEER**

**FOR PRO BONO PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_\_\_\_\_\_ (“Effective Date”) between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Engineer”) who is a licensed engineer for the State in which the project is being implemented, and the volunteer team acting by and on behalf of Community Engineering Corps, a not for profit organization headquartered in Denver, Colorado (“CECorps volunteers”).

Owner requires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Project”), as more particularly set forth in the ***Work Plan*** attached hereto as Attachment A (“Services”).

Owner and Engineer agree as follows:

1. Basic Agreement and Period of Service
   1. Engineer shall provide, or cause to be provided, the Services set forth in this Agreement as the registered engineer in charge for the Project. The Services shall be subject to changes by additions, deletions, or revisions pursuant to a mutual agreement of the parties, in writing. Neither the Engineer nor CECorps volunteers will charge for Services, labor, or time under this agreement. If parties agree that the Owner will provide funds for reimbursable goods and third party services detailed in the Work Plan, refer to terms in Section 2.B. In lieu of payment of Engineer’s fees, Owner shall grant Engineer all rights of publicity and all rights to use this project as an educational resource and to be used in submittals to federal, State, or private institution grant applications subject to paragraph C. As further consideration, Owner agrees to limit Engineer’s liability as set forth in Section 5 and acknowledges that Engineer's liability is further limited by the Volunteer Protection Act of 1997 and various applicable state statutes.
   2. Engineer estimates that it will complete its Services within the approximate timeframe as outlined in the attached Work Plan. Owner acknowledges and understands that Engineer is a volunteer organization comprised primarily of volunteers, and therefore agrees not to rely on any scheduled periods of time or representations by any of Engineer’s representatives related to time for completion of the Services. Time is not of the essence under this Agreement. If deliverables are not performed in the timeframe stated in the Work Plan, CECorps volunteers will provide an addendum to the Work Plan which includes an explanation for delays and proposed changes in the Work Plan and included timelines.
   3. Engineer and its affiliates shall have the right to include photographic or artistic representations of the design of the Project among the Engineer’s promotional materials, in all media, including social media, worldwide and in perpetuity. Engineer and its affiliates shall be given reasonable access to the completed Project to make such representations. However, Engineer’s promotional materials shall not include Owner’s confidential or proprietary information if Owner has previously advised Engineer in writing of the specific information considered by Owner to be confidential or proprietary. Owner shall arrange for the execution of appropriate releases by persons photographed or represented in such promotional materials. Owner shall provide professional credit for Engineer in Owner’s promotional materials for the Project.
   4. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data and other information in performing or furnishing Services under this Agreement.
2. Basis of Payment and Invoicing Procedures

A.  Consideration: Owner agrees to the indemnities and limitations of liabilities as set forth in Section 5 and understands that the indemnities and limitations of liabilities are consideration for Engineer to perform the Services on a pro bono basis.

B.  *Invoices:* Owner and Engineer agree that there may be reimbursable goods and third party services that Owner is obligated to pay for. Owner shall pay invoices for such goods and third party services within 30 days of receipt of invoice by Owner. If Owner fails to make any payment during the 30-day period following receipt of the invoice, Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full for all amounts due.  Owner waives any and all claims against Engineer for any such suspension. After 30 days following the receipt of the invoice, the interest on the amounts due shall be the lesser of 1% per month and the maximum rate of interest permitted by law.

1. Termination
   1. The obligation to continue performance under this Agreement may be terminated:
      1. For cause, by Owner upon 30 days written notice in the event of material breach by Engineer to perform in accordance with the Agreement’s terms through no fault of Owner.
      2. For cause, by Engineer:
         1. upon 30 days written notice in the event of material breach by Owner to perform in accordance with the Agreement’s terms through no fault of Engineer;
         2. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer’s responsibilities as a licensed professional, or contrary to applicable law or regulation; or
         3. upon seven days written notice if the Engineer’s Services are delayed for more than 90 days for reasons beyond Engineer’s control, or as the result of the presence at the site of undisclosed Hazardous Environmental Conditions, as set forth in Section 5.J.

Engineer shall have no liability to Owner on account of a termination for cause by Engineer.

* + 1. Notwithstanding the foregoing, this Agreement will not terminate as a result of a material breach if the party receiving such termination notice for a material breach begins, within seven days of receipt of such notice, to correct its material breach and proceeds diligently to cure such material breach within 30 days of receipt of notice; provided, however, that if and to the extent such material breach cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
    2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
    3. For convenience, by Engineer effective upon Owner’s receipt of written notice from Engineer.
  1. The terminating party under Section 3.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.

1. Successors, Assigns, and Beneficiaries
   1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Section 4.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.
   2. 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.
   3. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor (as defined in Section 5.B), third-party individual or entity, or to any surety for or employee of any third party. 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.
2. General Considerations
   1. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
   2. Engineer shall not at any time supervise, direct, control, or have authority over any work performed by any person or entity (not including Engineer, its employees, agents, volunteers, representatives, and consultants) performing or supporting construction activities relating to the Project, including but not limited to any contractor, subcontractor, supplier, person or entity in Owner's work force, utility company, construction manager, testing firm, shipper, trucker, and employee, agent, volunteer, representative, or consultant of any of the aforementioned (“Constructor”). Engineer shall not have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor furnishing and performing its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
   3. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform its work.
   4. 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, over any Constructor’s method 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.
   5. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own volunteers and employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract documents other than those made by Engineer.
   6. Drawings, specifications, and other documents prepared by Engineer pursuant to the Services (each an “Instrument of Service”) are for the Owner’s use solely with respect to this Project. Engineer shall retain all common law, statutory and other reserved rights, including copyright, to all Instruments of Service. Upon completion of the Project, or termination of this Agreement by Engineer for cause as specified in Section 3.A.2, Owner’s right to use any Instrument of Service shall cease. In the event Owner terminates this Agreement for cause, or in the event either party terminates this Agreement for convenience, Engineer grants Owner a non-exclusive license to subsequently use Engineer’s Instruments of Service solely for the purpose of completing the Project, provided that Owner substantially performed its obligations under this Agreement, and subject to the following limitations:
      1. Owner acknowledges that such Instruments of Service 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 use or reuse, or any modification of the any Instrument of Service, 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, volunteers, and consultants;
      3. to the fullest extent permitted by law, Owner shall indemnify, defend, and hold harmless Engineer and its officers, directors, members, partners, agents, employees, volunteers, and consultants from all claims, damages, losses, and expenses, including attorney’s fees, arising out of or resulting from any use, reuse, or modification of any Instrument of Service without written verification, completion, or adaptation by Engineer; and
      4. such limited license to Owner shall not create any rights in third parties.
   7. 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.
   8. To the fullest extent permitted by law, Owner and Engineer agree that Engineer's total liability to Owner under this Agreement shall be limited to Owner's right to recover damages that are recoverable, available, and covered under any insurance policy procured by Owner or Engineer applicable to the Services. This limitation is a material part of the consideration exchanged by this Agreement and goes to the essence of this Contract. It is intended by the parties to this Agreement that Engineer’s Services in connection with the Project shall not subject Engineer’s individual employees, volunteers, consultants, agents, members, partners, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Owner agrees that, as its sole and exclusive remedy, any claims, demands or suits it initiates against Engineer shall be directed and/or asserted only against Engineer’s professional liability insurer, and not individually against any of Engineer’s employees, consultants, members, partners, agents, volunteers, officers or directors. Owner and Engineer agree that Engineer will not be liable for any claims, demands or suits exclusively related to the willful misconduct of Engineer’s individual employees, volunteers, consultants, agents, members, partners, officer or directors.
      1. The Owner and Engineer shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of Section 5.K within the period specified by applicable law, but in any case not more than six years after the time at which the Project is sufficiently complete, in accordance with the Work Plan, so that the Instruments of Service can be utilized for the purposes for which they were intended. Owner and Engineer waive all claims and causes of action not commenced in accordance with this Section 5.I.1.
      2. To the extent damages are recoverable, available, and covered under any insurance policy procured by Owner or Engineer applicable to the Services, Owner and Engineer waive all rights against each other and against the contractors, consultants, agents, volunteers, members, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. Owner or Engineer, as appropriate, shall require of the contractors, consultants, agents, volunteers, members, and employees of either of them similar waivers in favor of the other parties enumerated herein.
      3. Engineer and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination of this Agreement.
      4. Owner shall indemnify, defend and hold Engineer and Engineer’s individual volunteers, officers, directors, agents, members, partners, employees, and consultants harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorney’s fees and expenses recoverable under applicable law. This indemnity, however, shall not apply to any claims directly, fully and completely caused by Engineer’s gross negligence, or willful or wanton misconduct.
      5. Neither Engineer nor Engineer’s individual consultants, volunteers, officers, directors, partners, members, agents or employees shall be jointly, severally or individually liable to the Owner in excess $1,000 by reason of any act or omission, including breach of contract or negligence, not amounting to willful misconduct.
      6. Owner shall be responsible for purchasing and maintaining commercial general liability insurance and shall include Engineer as an additional named insured for claims caused in whole or in part by Owner’s negligent acts or omissions during the course of the Project.
      7. Owner shall provide prompt written notice to Engineer if Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in any Instrument of Service.
   9. The parties acknowledge that Engineer's Services do not include any services related to evaluating the presence or absence of any environmental contaminants, including, but not limited to, asbestos, PCBs, petroleum, hazardous substances or waste, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials (“Hazardous Environmental Conditions”). If Engineer or any other party encounters a Hazardous Environmental Condition, 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 Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the site is in full compliance with applicable laws and regulations.
   10. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
   11. This Agreement is to be governed by the laws of the state in which the Project is located.

Engineer’s Services and Additional Services do not include: (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date below written, but effective as of the Effective Date indicated on page 1.

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| By: | | [ ] | | | |  | By: | [ ] | | | | | |
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| Date Signed: | | | | | [ ] |  | Date Signed: | | | | | | [ ] |
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|  | Engineer License or Firm's Certificate No. (if required): | | | | | | |
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| Address for Owner’s receipt of notices: | | | | | |  | Address for Engineer’s receipt of notices: | | | | | | |
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Attachment(s)

1. Work Plan