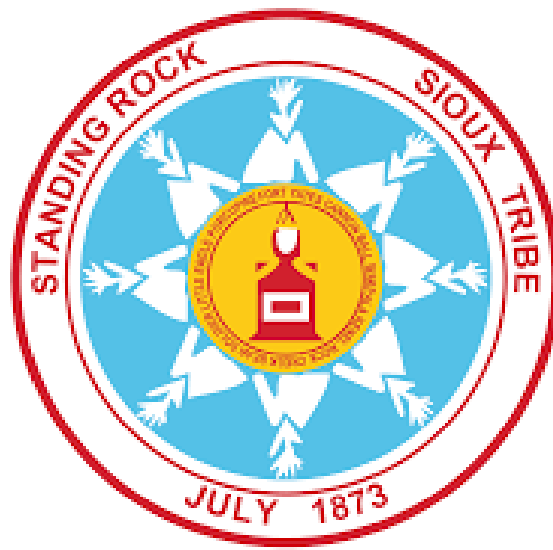


AGREEMENT BETWEEN
PROJECT SPONSOR AND ENGINEER FOR
CIVIL ENGINEERING AND
RELATED PROFESSIONAL SERVICES



In accordance with our license agreement, Sonosky, Chambers, Sachse, Endreson & Perry hereby provides notice that this document, though based in part on Engineers Joint Contract Documents Committee, Project Sponsor-Engineer Agreement, No. E-001, has been modified from its original form. This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

AGREEMENT BETWEEN
PROJECT SPONSOR AND ENGINEER FOR
CIVIL ENGINEERING AND
RELATED PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of Insert DATE (“Effective Date”) between
The Standing Rock Sioux Tribe, 1 Standing Rock Avenue, Fort Yates, ND 58538 (“Project Sponsor”)
and
TBD (“Engineer”).

Project Sponsor is Designing a two-lane road bridge and approach roadways across Lake Oahe, including sidewalks, to connect BIA route 16 on the Reservation in Sioux County, North Dakota to roads in Emmons County, North Dakota.

Project Sponsor and Engineer (together “the Parties”) agree as follows:

ARTICLE 1 INITIAL INFORMATION

1.01 General.

- A. Project Sponsor is a federally recognized Indian Tribe that has assumed responsibility and funding for transportation projects funded by the Tribal Transportation Facility Bridge Program (23 U.S.C. § 202(d) and 23 C.F.R. Part 661) through an Indian Self-Determination and Education Assistance Act (“ISDEAA”), Pub. L. 93-638, Subpart J Construction Contract (“Subpart J Contract”) with the Bureau of Indian Affairs (“BIA”), in accordance with 25 U.S.C. §§ 5321-5332 and 25 C.F.R. Part 900, Subpart J. The BIA is referred to as the “Federal Funding Agency.” All Work under this Agreement shall be contingent upon the receipt of funding from the Federal Funding Agency.
- B. Project Sponsor has assumed responsibility for preliminary engineering and related pre-construction services for the planning, environmental permitting, right-of-way (“ROW”) acquisition, survey, and design of a new two-lane road bridge, and approach roadways, across Lake Oahe, including a sidewalk on each side. (“Project”).
- C. The Project shall be performed in accordance with all applicable Federal Laws, Regulations, Executive Orders, including the Tribal Transportation Program (“TTP”), 23 U.S.C. § 202(b) and 25 C.F.R. Part 170, and the terms of Project Sponsor’s Subpart J Contract including, but not limited to, the requirement that the Project appear on the TTP Transportation Improvement Program (“TIP”), as approved by the BIA, and all other applicable Tribal, federal, and State laws and regulations. Applicable provisions of the Project Sponsor’s Subpart J Contract are included as **Attachment B**.

- D. Engineer understands and agrees that, in accordance with Project Sponsor's Subpart J Contract, the BIA and North Dakota Department of Transportation (NDDOT) may have certain oversight responsibilities with respect to the services provided under this Agreement. Engineer agrees, at the request of Project Sponsor, to provide copies of all Documents produced under this Agreement to BIA and NDDOT officials.

ARTICLE 2 BASIC SERVICES OF ENGINEER

2.01 *Qualifications of Engineer.*

- A. Engineer shall ensure that all services performed under this Agreement are performed by or under the supervision of an Engineer licensed and registered in the State of North Dakota, including the services provided but Engineer's Subcontractors and consultants operating under Engineer's supervision.

2.02 *Scope of Work.*

- A. Engineer shall provide, or cause to be provided, as Basic Services the Work described in the Scope of Work, attached and incorporated by reference herein as **Attachment A**. The Scope of Work includes a two-phased Task Order work authorization approach beginning with: (1) Right-of-Way Acquisition, Environmental Studies and Environmental Permitting; and (2) Preliminary and Final Design packages for the Bridge, Roadway and Structure Design, and assistance in developing Project Sponsor's Construction procurement packages.

1. The Engineer's Right-of-Way Acquisition plans, Environmental Studies and Environmental Permitting and Final Roadway and Bridge Structure Design, must satisfy the following requirements.

- a. Complete set of stamped plans, specifications and estimates (PS&Es).

- 1) As required by 23 U.S.C. § 202(d)(2), Engineer shall certify that PS&Es meet or exceed the health and safety standards made applicable to the Project by 25 C.F.R. § 170 and Project Sponsor's Subpart J Contract;
- 2) Engineer shall prepare PS&E design packages that comply with the design standards specified by Project Sponsor's Scope of Work (**Attachment A**) and Subpart J Contract (**Attachment B**). PS&Es packages must comply with the health and safety standards made applicable to the Project by 25 C.F.R. § 170 and Project Sponsor's Subpart J Contract;
- 3) The final PS&Es and design documents shall be sufficient to permit Project Sponsor to proceed to the construction phase of the Project.

- b. In addition to any other requirements imposed by the applicable standards or by this Agreement, the PS&E Package shall include:
 - 1) Horizontal and Vertical Alignments,
 - 2) Quantity Calculations, and
 - 3) Cost Estimates (which may be augmented with the assistance of an Independent Cost Estimating consulting firm retained by Owner).
- 2. It is understood and agreed that, in preparing the preliminary and final PS&E package for use by Project Sponsor for the Project, Engineer shall regularly consult with Project Sponsor and, to the extent required by Project Sponsor, with BIA and NDDOT officials, to ensure that the final PS&E package conforms to all design requirements imposed by Project Sponsor, the BIA or NDDOT, as well as all other applicable laws, regulations, building codes and design standards listed.
- B. Engineer shall provide, or cause to be provided, Additional Services if authorized by Project Sponsor. The Project Sponsor will authorize Additional Services through additional Task Orders. Compensation for Additional Services will be determined pursuant to Paragraph 3.01.C.

2.03 *Native Preference.*

- A. *Federal Statutory Requirements.* Engineer understands and agrees that in accordance with certain provisions of the Project Sponsor's Subpart J Contract, TERO ordinance, and procurement policy, Project Sponsor is required to apply, to the greatest extent feasible, and to pass on to subcontractors, an employment and subcontracting preference in favor of American Indian/Alaska Native individuals and Indian-owned economic enterprises as defined in 25 U.S.C. § 1452. Engineer agrees that, in accordance with these requirements, Engineer will apply such preferences, to the extent applicable, when hiring and selecting Consultants if any are needed to carry out this Agreement.
- B. *Native Preference Policy.* Engineer understands and agrees that Project Sponsor's TERO ordinance governs this Agreement. Engineer agrees to abide by Project Sponsor's TERO ordinance and to pay all applicable TERO fees.

2.04 *Confidentiality.*

- A. Except as may be reasonable and necessary to complete the Work required under this Agreement, Engineer shall not disclose any information concerning this Agreement, the Work to be performed, or any data or information pertaining to this Agreement to any third party, without first obtaining the prior written consent of Project Sponsor.

2.05 *Permits and Taxes.*

- A. Engineer shall comply with and pay all federal, state, tribal and local taxes, fees and licenses, including sales tax, if any for which Engineer may be liable in connection with

the labor and materials provided hereunder. Engineer shall also obtain, at its own cost and expense, all permits necessary to perform the Work required under this Agreement.

2.06 *Risk of Loss.*

- A. Engineer shall bear all risk of loss, theft, damage or destruction to Engineer's tools, equipment, appliances, facilities, and materials necessary to commence and complete the Work under this Agreement. Engineer shall at all times carry insurance against such destruction in an amount sufficient to cover the replacement value of such tools, equipment, appliances, facilities, and materials.

ARTICLE 3 PROJECT SPONSOR'S RESPONSIBILITIES

3.01 *General.*

- A. Project Sponsor shall have the responsibilities set forth herein.
- B. Project Sponsor shall permit Engineer access to all Project-related documents in Project Sponsor's possession including BIA and NDDOT requirements, including those listed in in **Attachment B**, programs, instructions, reports, data, and other information necessary to allow Engineer to perform its services under this Agreement. Engineer may rely on such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, unless such reliance conflicts with other terms of this Agreement, Task Orders issued under this Agreement, or Engineer's professional standards of care.
- C. Project Sponsor shall pay Engineer as follows for the Scope of Work, and such other Additional Services as Project Sponsor authorizes by written Task Order issued to the Engineer by Project Sponsor.
 - 1. *General.* An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees multiplied by Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any, up the not-to-exceed ("NTE") amount specified in each Task Order. NTE amounts shall be "all inclusive" and consist of all reimbursable expenses, profits, and general or administrative overhead costs of Engineer, as well as any of Engineer's Consultants and Subcontractors retained to provide services under this Agreement. Engineer's **Standard Hourly Rates and Project Sponsor-approved Reimbursable Expenses** are set forth in **Attachment C**. Engineer may charge a maximum mark-up rate of [TBD%] for its Consultants, Subcontractors, and material suppliers. All Consultants and Subcontractors must be approved in advance by Project Sponsor in accordance with the applicable provisions of **Attachment B**, and all such costs must be accounted for in the NTE amount set forth in each Task Order.

2. *Reimbursable Expenses.*

- a. It is understood and agreed that, with respect to the Scope of Work described in Paragraph 2.02, Project Sponsor shall not pay Engineer any additional charges for Reimbursable Expenses beyond the compensation provided under Paragraph 3.01.C.
- b. For those Reimbursable Expenses related to Additional Services requested by Project Sponsor pursuant to Paragraph 2.02.B and not related to the ROW, environmental, preliminary and final design services and other services provided by the Engineer in accordance with Paragraph 2.02.A's Scope of Work, Project Sponsor shall pay Engineer at the rates set forth in **Attachment C**.
- c. Reimbursable Expenses for Additional Services include the following categories: transportation and subsistence incidental thereto; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items; and, if authorized in writing in advance by Project Sponsor, overtime work requiring higher than regular rates. Reimbursable Expenses may also include expenses incurred for the use of other highly specialized equipment, but only if authorized in writing in advance by Project Sponsor and included within each Task Order's NTE amount.

3. Upon Project Sponsor's request, Engineer shall make copies of records of Reimbursable Expenses and Consultant charges to Engineer available to Project Sponsor at no cost.

- D. *Not to Exceed Amount for the Entire Scope of Work.* In addition to the NTE amounts set out in each Task Order, Engineer understands and agrees that the total compensation, inclusive of all fees and expenses, related to the total Scope of Work provided under this Agreement shall not exceed \$ [REDACTED], without a written amendment to this Agreement executed by an authorized representative of the Project Sponsor.

ARTICLE 4 SCHEDULE FOR RENDERING SERVICES

4.01 Commencement.

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

4.02 Time for Completion.

- A. It is understood and agreed that time is of the essence in the performance of this Agreement. Engineer shall complete its obligations under this Agreement as follows:
 1. Completion of Final Design Services shall occur [list either [REDACTED] calendar days or a specific date] from the Effective Date of the Agreement.

- B. If Project Sponsor authorizes, in a writing signed by an authorized representative of Project Sponsor, changes in the scope, extent, or character of the Project, then Project Sponsor and Engineer shall negotiate a fair and equitable adjustment to the time for completion of Engineer's Final Design Services, and the rates and amounts of Engineer's compensation.
- C. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Project Sponsor shall be entitled to the recovery of damages resulting from such failure in addition to all other remedies provided by law.

ARTICLE 5 INVOICES AND PAYMENTS

5.01 *Invoices.*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare detailed written invoices sufficient to allow Project Sponsor to determine that stated Work has been completed and a brief statement of progress toward final completion of the Work. Engineer shall submit its invoices to Project Sponsor on a monthly basis. Invoices are due and payable within 30 days of receipt by an authorized representative of Project Sponsor. Invoices for payment shall not exceed the amount set forth in Paragraph 3.01.D of this Agreement and must conform to any requirements contained in Project Sponsor's Subpart J Contract.

5.02 *Payments.*

- A. *Payments Contingent Upon Receipt of Federal Funds.* Project Sponsor is entering into this Agreement with funds received under its Subpart J Contract, appended as **Attachment B**. All payments under this Agreement will be contingent upon Project Sponsor receiving such funding from the Federal Funding Agency.
- B. *Disputed Invoices.* If Project Sponsor contests an invoice, Project Sponsor may withhold only that portion so contested and must pay the undisputed portion within 30 days of receipt.

ARTICLE 6 OPINIONS OF COST

6.01 *Designing to Construction Cost Limit.*

- A. Project Sponsor and Engineer hereby agree to determine a Construction Cost limit for the final design after completion of the Scope of Work outlined in **Attachment A** and to include such amount in Dollars as a modification to this Agreement. Project Sponsor may retain an Independent Cost Estimating ("ICE") firm to assist the Project Sponsor and Engineer in developing the Construction Cost limit for the final design.
- B. A bidding or negotiating contingency of ten (10) percent will be added to any Construction Cost limit established.
- C. Engineer shall use its professional skills and judgment to accomplish the design services required under this Agreement and as described in the Scope of Work in **Attachment A**, to

permit the award of the Construction Contract for the Work at a price that does not exceed the Construction Cost limit.

- D. If Engineer provides Project Sponsor with a revised written opinion of probable Construction Cost in excess of the then established Construction Cost limit during the development of the final PS&E package, Project Sponsor, in its sole discretion, may:
1. Accept the revised opinion and give written approval to increase the Construction Cost limit; or
 2. Reject the revised opinion and direct that Engineer revise the Project's scope, extent, or character to permit the Project to remain within the Construction Cost limit to the extent consistent with the Project's requirements and with sound engineering practices, at no additional cost to the Project Sponsor.
- E. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Project Sponsor may, at its sole discretion:
1. Give written approval to increase the Construction Cost limit;
 2. Authorize negotiating or rebidding the Project within a reasonable time;
 3. Direct Engineer to perform such redesign and other services as are necessary to permit contract award within the Construction Cost limit at no cost to Project Sponsor unless the unfavorable bids or proposals are the result of conditions or events affecting the general level of prices or times of delivery in the construction industry that were not reasonably anticipatable either in kind or in extent during final design phases of this Agreement.
- F. If the Bidding or Negotiating Phase has not commenced within one year of completion of the Final Design Phase of the Project, the established Construction Cost limit will not be binding on Engineer. In such cases, Project Sponsor may, in its sole discretion:
1. Give written approval to increase the Construction Cost limit; or
 2. Cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In such case, Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Project Sponsor shall pay Engineer's cost to provide such modification services, in accordance with the methods and rates for Additional Services set forth in Paragraph 3.01.C.

ARTICLE 7 GENERAL CONSIDERATIONS

7.01 *Standards of Performance.*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the highest level of care and skill

ordinarily used by Road and Highway Engineers practicing under similar circumstances at the same time and in the State of North Dakota.

- B. Project Sponsor shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly and solely attributable to deficiencies in Project Sponsor-furnished information.
- C. Engineer may, within the total compensation provided in Paragraph 3.01, employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Project Sponsor.
- D. Subject to the standard of care set forth in Paragraph 7.01.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 Engineers, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Project Sponsor shall comply with applicable provisions of Project Sponsor's Subpart J Contract, applicable Laws and Regulations, and Project Sponsor-mandated standards that Project Sponsor provides to Engineer.

7.02 *Use of Documents.*

- A. Subject to the limitations set forth in this Agreement, all Documents are instruments of service in respect to this Project, and Engineer shall retain a Project Sponsorship and property interest therein (including the copyright and the right of reuse at the discretion of Engineer) whether or not the Project is completed.
- B. A party may rely on data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.
- C. When transferring Documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such Documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the Documents' creator. For this reason, Engineer shall provide Project Sponsor with hard copies of all Documents required to complete the services required under this Agreement.
- D. Project Sponsor may make and retain copies of all Documents for information and reference in connection with the Project. Engineer does hereby grant Project Sponsor and the Federal Funding Agency a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use the Documents on the Project, extensions of the Project, and other projects of Project Sponsor, subject to the following limitations: (1) Project Sponsor acknowledges that such Documents are not intended or represented to

be suitable for use on the Project unless completed by a licensed engineer, or for use or reuse by Project Sponsor or others on extensions of the Project or on any other project without written verification or adaptation by a licensed engineer; and (2) such license to Project Sponsor shall not create any rights in third parties.

- E. If Engineer, at Project Sponsor's request, verifies or adapts the Documents for extensions of the Project or for any other project, Project Sponsor shall compensate Engineer in an amount to be agreed upon by Project Sponsor and Engineer.
- F. Engineer does hereby provide the Federal Funding Agency a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal government purposes: (a) the copyright in any Work developed for this Project; and (b) any rights of copyright which Project Sponsor obtains for this Project.

7.03 *Insurance.*

- A. Engineer shall procure and maintain insurance as set forth in **Attachment D**, "Insurance" during the term of this Agreement. Engineer shall cause Project Sponsor to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer during the term of this Agreement. Engineer shall deliver to Project Sponsor certificates of insurance evidencing the coverages indicated in **Attachment D** and, upon request by Project Sponsor, shall provide copies of the insurance policy carried by Engineer for Project Sponsor's review. Such certificates shall be furnished prior to commencement of Engineer's services and at the insurance coverage's renewal periods thereafter during the term of the Agreement.
- B. At any time, Project Sponsor may request that Engineer or its Consultants, at Project Sponsor's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in **Attachment D**. If so requested by Project Sponsor, 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 Project Sponsor, and **Attachment D** will be supplemented to incorporate these requirements.
- C. It is understood and agreed that Project Sponsor, as a federally-recognized Indian Tribe performing federal services under a Subpart J Contract, is entitled to certain tort claim and other liability protections as set forth in Public Law 101-512, Section 314, as amended, and shall only maintain such insurance protection as Project Sponsor, in its sole discretion, deems necessary to supplement such protection.

7.04 *Suspension and Termination.*

- A. *Suspension.* Project Sponsor reserves the right to suspend the Project upon seven (7) days written notice to Engineer if:
 - 1. Project Sponsor receives notice from the BIA that Project Sponsor's Subpart J Contract has been suspended;

2. Funds required to be paid for services under this Agreement are not available; or
 3. Engineer has failed to comply with the terms of this Agreement.
- B. *Termination.* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. By either party upon fourteen (14) 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. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 7.04.B.1 if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than fourteen (14) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such fourteen (14) 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 thirty (30) days after the date of receipt of the notice or such additional time as may be agreed to in writing by the Parties.
 2. For convenience.
 - a. Project Sponsor may terminate this Agreement for its convenience at any time upon providing five (5) days written notice to the Engineer.
 - b. Upon receipt of written notice from Project Sponsor of such termination for convenience:
 - 1) cease operations as directed by Project Sponsor in the notice;
 - 2) take actions necessary, or as Project Sponsor may direct, for the protection and preservation of the Work;
 - 3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing agreements, including agreements with the Engineer's Consultants, Subcontractors, and suppliers, and enter into no further agreements or purchase orders.
- C. *Effective Date of Termination.* Project Sponsor may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Engineer to remove personnel and equipment from the Project 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 termination for cause by either party:
 - a. Engineer shall provide Project Sponsor with all completed Work and Documents prepared as of the effective date of termination.
 - b. Engineer may invoice Project Sponsor for all services properly performed through the effective date of termination.
 - c. Project Sponsor shall pay any unpaid and undisputed invoices for all properly completed and delivered Documents.
 - d. Both parties shall retain the right to pursue the dispute resolution procedures authorized in Paragraph 7.07.
2. In the event of termination for convenience by Project Sponsor
 - a. Engineer shall provide Project Sponsor with all completed Documents prepared as of the effective date of termination.
 - b. Engineer may invoice Project Sponsor for all services properly performed and furnished to Project Sponsor with respect to authorized Work through the effective date of termination. Payment of such compensation is Engineer's sole and exclusive remedy for termination of this Agreement by Project Sponsor. Engineer shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses.

7.05 *Controlling Law.*

- A. This Agreement is to be governed by: first, the laws of the Standing Rock Sioux Tribe, including traditional tribal law or tribal common law and without regard to conflict of laws principles; second, federal law, including federal statutory and common law; and third, in the absence of applicable tribal or federal law, the law of the State of North Dakota, provided, however, that references to the laws of the State of North Dakota shall not be construed as an admission or concession by Project Sponsor that the State of North Dakota or any subdivision or agency thereof has authority to promulgate laws applicable to Project Sponsor (the Tribe or tribal members).

7.06 *Successors, Assigns, and Beneficiaries.*

- A. Project Sponsor and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Project Sponsor and Engineer (and, to the extent permitted by this Paragraph 7.06, the assigns of Project Sponsor and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors,

administrators and legal representatives (and said assigns) of such other party in respect of all covenants, agreements, and obligations of this Agreement.

- B. Engineer may not assign, sublet, or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that are due or may become due) without the written consent of the Project Sponsor, 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 Project Sponsor or Engineer to any Engineer, Engineer's subengineer or subcontractor, supplier, other 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 Project Sponsor and Engineer and not for the benefit of any other party.

7.07 *Dispute Resolution.*

- A. Project Sponsor and Engineer shall endeavor to resolve claims, disputes and other matters in question through good faith discussions between themselves prior to invoking any other means of dispute resolution authorized under this Agreement. The Parties agree that the Standing Rock Sioux Tribal Court is the sole court of competent jurisdiction for this matter. The Parties agree that if a Party exercises its right to give notice of their intent to submit a "Claim" as provided in section 7.07, the sole remedy will be to file an action in Standing Rock Tribal Court, which court shall have exclusive jurisdiction over the Parties to hear and decide the Claim and to enter and enforce a judgment, as may be appropriate. The exclusive remedy available to Engineer under the Agreement shall be the recovery of the amounts due; and in no event shall such recovery exceed the full amount of this Agreement. In any such proceeding before the Standing Rock Sioux Tribal Court, the Parties shall abide by Title I (Courts) of the Project Sponsor's "Standing Rock Sioux Tribal Code of Justice" (Ordinance No. 103-21).
- B. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to this section.
 - 1. If a claim, dispute or other matter in question arising out of or related to this Agreement between Project Sponsor and Engineer involves the Work of an Engineer, Engineer's Subcontractors, or Consultants to Project Sponsor or Engineer (each a "Joinable Party"), either Project Sponsor or Engineer may join each Joinable Party as a party to the arbitration between Project Sponsor and Engineer hereunder, and Engineer or Project Sponsor, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Project Sponsor and

Engineer involving the Work of such Joinable Party. Nothing in this Paragraph nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Project Sponsor or Engineer that does not otherwise exist.

C. Sovereign Immunity.

1. Project Sponsor is a federally-recognized Indian Tribe and as such possesses sovereign immunity from suit. Subject to the provisions of Section 7.07.A above, with respect to Engineer's Recovery Limitation, Project Sponsor hereby grants a limited waiver of its sovereign immunity or claim for immunity and consents to the sole jurisdiction of the Standing Rock Sioux Tribal Court with respect to any dispute arising out of this Agreement as to Engineer. Engineer hereby consents to and accepts and affirms that it has the authority to consent, and does hereby consent to, and accept the jurisdiction of the Standing Rock Sioux Tribal Court with respect to any action, proceeding, or Claim arising out of or relating to this Agreement. Sovereign immunity is not waived as to any employee, Tribal Council member, or agent of Project Sponsor and Project Sponsor hereby specifically reserves and retains its sovereign immunity, and all rights and privileges pertaining thereto except to the limited extent expressly stated in this Paragraph 7.07.
2. The sole remedy available as against Project Sponsor shall be an award for the payment of the amount of an approved invoice for Work properly completed which is due to the Engineer and unpaid. The Standing Rock Sioux Tribal Court may order that any property of Project Sponsor, income or assets, other than Project Sponsor's Tribal Transportation Facility Bridge Program funds shall be payable pursuant to this Paragraph 7.07. Nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, attachment or encumbrance upon any other funds, assets or income or any real property or interest in any real property of Project Sponsor, whether held in trust for the benefit of Project Sponsor by the United States, as restricted fee land, or in fee simple.
3. This limited waiver of sovereign immunity specifically does not allow for recovery of attorneys fees, post-judgment interest, or special damages, and does not extend to actions for declaratory judgment or injunctive relief.
4. The Parties hereby acknowledge and agree that this Paragraph 7.07 shall also apply to any other agreements entered into by the Parties during the respective terms of such agreements, and shall, whenever any application of this Contract continues beyond the termination of this Agreement, continue to apply thereto, notwithstanding any prior termination of this Agreement.

7.08 *Indemnification by Engineer.*

- A. To the fullest extent permitted by law, Engineer shall indemnify, defend and hold harmless and hereby releases Project Sponsor, and Project Sponsor's Council members, officers, agents, consultants, and employees from and against any and all suits, claims, costs, losses, liabilities, fines, penalties, actions and damages (including but not limited to all fees and

charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable in whole or in part to Engineer's performance of services under this Agreement.

7.09 *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 facsimile, electronic mail, 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 Project Sponsor and Engineer, who 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. *Document Retention.* Engineer and Engineer's Subcontractors must retain all records of the Project for three (3) years after final payment under this Agreement and all other pending matters are closed.
- F. *Warranty of Asbestos Free Delivery.* Engineer and Engineer Subcontractors shall warranty that delivery or items or Work will be free of asbestos in any form whatsoever except for the use of asbestos cement pipe.

ARTICLE 8 DEFINITIONS

8.01 *Defined Terms.*

- A. Wherever used in this Agreement (including the Attachments hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the Attachments; or in the following provisions:
 - 1. *Additional Services.* Services performed or furnished by Engineer in addition to the Basic Services described in Article 2.02 and further defined in **Attachment A** to this Agreement.

2. *Environmental Studies and Environmental Contract.* The services to be performed for or furnished to Project Sponsor by Engineer as described under Article 2.02 and further defined in **Attachment A** to this Agreement.
3. *Final Roadway and Structure Design, Right-of-Way Acquisition, and Construction Plans/Bid Package.* The services to be performed for or furnished to Project Sponsor by Engineer as described under Article 2.02 and further defined in **Attachment A** to this Agreement.
4. *Construction Cost.* The cost to Project Sponsor of those portions of the entire Project designed or specified by Engineer. 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 properties, or Project Sponsor's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other non-construction services provided by other contractors or consultants to Project Sponsor. Construction Cost is one of the items comprising Total Project Costs.
5. *Engineer's Consultants and Subcontractors.* Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subengineers, or vendors.
6. *Documents.* Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, not including the Construction Contract Documents, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Project Sponsor pursuant to this Agreement.
7. *Drawings.* That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Engineer. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations.* Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, Agency, authorities, and courts having jurisdiction, including but not limited to 25 C.F.R. Part 169 (ROW regulations) 25 C.F.R. Part 170 (TTP regulations), 23 U.S.C. § 202, 25 U.S.C. §§ 5301-5423, 23 C.F.R. Part 661 (Tribal Transportation Facility Bridge Program regulations), and any other laws, regulations, or Executive Orders made applicable to this Project under the Project Sponsor's Subpart J Contract and as incorporated by **Attachment B**.
9. *Plans, Specifications & Estimates (PS&E).* Design documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Project and certain administrative details applicable thereto, as required by Project Sponsor's Subpart J Contract, 23 U.S.C. § 202 and 25 C.F.R. Part 170;

10. *Preliminary Engineering*. Means planning, survey, design, engineering, and preconstruction activities, including archaeological, environmental, and right-of-way activities, related to a specific project.
11. *Reimbursable Expenses*. The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

ARTICLE 9 ATTACHMENTS AND SPECIAL PROVISIONS

9.01 *Attachments Included.*

Attachment A, Scope of Work for the Oahe Bridge Project consisting of 11 pages.

Attachment B, Excerpt of Project Sponsor's "Subpart J Contract" consisting of [REDACTED] pages

Attachment C, Engineer's Standard Hourly Rates and Rates for Reimbursable Expenses, consisting of [REDACTED] pages.

Attachment D, Insurance Requirements consisting of 2 pages.

9.02 *Total Agreement.*

- A. This Agreement (consisting of pages 1 to 17 inclusive, together with the **Attachments A-D** identified above) constitutes the entire agreement between Project Sponsor and Engineer and supersedes all prior written or oral understandings. This Agreement may be amended only by a written instrument signed by both parties and accompanied by an authorizing resolution of the Tribal Council of the Standing Rock Sioux Tribe.

9.03 *Designated Representatives.*

- A. Project Sponsor hereby designates as its representatives a Project Manager and an Authorized Official whose authorization to act on Project Sponsor's behalf shall be as follows: (a) the Contracting Officer alone shall be authorized to enter into amendments to this Agreement; (b) the Project Manager shall serve as Project Sponsor's Designated Technical Representative and shall be authorized to coordinate with Engineer on Project and technical matters.

1. Authorized Official:

[REDACTED]
Bldg. 1 North Standing Rock Ave.
Fort Yates, ND 58538
Tel: (701)854-8500
Email: [REDACTED]

2. Project Manager:

Larissa Young
Transportation Director

Tribal Roads Director
Bldg. 1 North Standing Rock Ave.
Fort Yates, ND 58538
Tel: (701) 854-8622
Email: larissa.young@standingrock.org

- B. Engineer hereby designates as its representative authorized to act on Engineer's behalf with respect to the Project:

Name: _____ **[Insert Name and Address]**
Address: _____

Tel: _____
Fax: _____
Email: _____

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

Project Sponsor:

Engineer:

Standing Rock Sioux Tribe

By: _____

By: _____

Title: Tribal Chair _____

Title: _____

Date Signed: _____

Date Signed: _____

Engineering License
or Certificate No.

State of: North Dakota _____

Address for giving notices:

Address for giving notices:

Standing Rock Sioux Tribe

1 Standing Rock Avenue

Fort Yates, ND 58538