

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

THIS IS AN AGREEMENT effective as of March 1, 2022 ("Effective Date") between Pennington County, SD ("Owner") and KLJ Engineering LLC. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Preservation designs for six bridges at various locations within Pennington County ("Project").

**KLJ Project Number:** 2203-00206

Engineer's services under this Agreement are generally identified as follows: Project management, field surveys, hydraulic review, design engineering and plan preparation ("Services").

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

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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 pay Engineer as set forth in Article 4.
- B. Owner shall provide Engineer with all criteria and full information as to Owner's requirements for the Services, including but not limited to design objectives and constraints; space, capacity and performance requirements; flexibility and expandability goals; any anticipated funding sources; and budgetary limitations.
- C. Owner shall furnish to Engineer all existing studies, reports, and other available information pertinent to the Engineer's performance of the Services, including reports and data relative to previous designs, construction, or investigation at or adjacent to any Site under consideration.
- D. Following Engineer's assessment of initially-available Project data and information, and receipt of Engineer's advice regarding the need (if any) for additional Project-related data and information, Owner shall either (1) authorize Engineer to undertake Additional Services necessary to obtain such additional Project-related data and information, or (2) obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related data and information.
- E. Owner shall advise Engineer of the identity and scope of services of any independent consultants retained by Owner to perform or furnish services pertinent to the Services.
- F. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

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- G. Owner shall inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to any Site under study.
- H. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- I. Owner shall inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- J. Owner shall advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- K. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall provide, as required for Engineer's performance of its Services:
  - 1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, or Engineer reasonably requests.
- L. Owner shall be responsible for, and Engineer may rely upon, all requirements and instructions that it furnished to Engineer pursuant to this Agreement, and for the accuracy and completeness of all requirements, instructions, 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.
- M. 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 of any Constituent of Concern at any Site; or
  - 3. any relevant, material defect or nonconformance in Engineer's services or 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.

## 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 this Article. Engineer shall submit its invoices to Owner according to the Pennington County Auditor's regular voucher process. Invoices are due and payable within 45 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 payments due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  1. Engineer will be entitled to interest on all amounts due and payable 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.

### 4.03 *Payment for Basic Services (Direct Labor Costs Times Factor, Plus Reimbursables) and Additional Services*

- A. Using the procedures set forth in Paragraph 4.01, Owner shall pay Engineer a for Basic Services as follows:
  1. An amount equal to Engineer's Direct Labor Costs times a factor for Basic Services provided by Engineer's employees, plus reimbursement of expenses incurred in connection with providing the Basic Services and Engineer's Consultants' charges, if any.
  2. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits.
  3. The total compensation for services and reimbursable expenses is not to exceed \$87,500.
- B. For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's Consultants' charges, if any.

## 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 of the limited and preliminary nature of the Services, and 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.

#### 5.02 *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.

### 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. 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.
- F. Engineer shall not have any construction-related duties under this Agreement. 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 any 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.
- G. 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.
- H. Engineer's services do not include providing legal advice or representation.
- I. 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.

#### 6.02 *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 Services or the Project is completed.
- B. Owner may make and retain copies of Documents solely for Owner's information and reference in connection with the specific subject matter of the Documents, subject to receipt by Engineer of full payment 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 by Owner unless completed by Engineer; (2) the Documents are instruments of service only, and are not final design or construction documents, (3) if Engineer has completed a Report under this Agreement, and received full payment for such Report, then the Owner may furnish copies of the completed Report to Owner's consultants and design professionals for their reference in proceeding with design or similar services, provided that the Owner informs such consultants and design professionals of Engineer's ownership interests in the Report, and includes with the Report all Engineer's written statements regarding the purpose, scope, use, and limitations of the Report; (3) the Documents are not design or construction documents, (4) no Document shall be altered, modified, or reused by Owner or any third party for any purpose except with Engineer's express written consent; (5) any use, reuse, alteration, or modification of the Documents, except as authorized in this Agreement or by Engineer's written consent, 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; (6) 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 unauthorized use, reuse, alteration, or modification of the Documents; and (7) nothing in this paragraph shall create any rights in third parties.

#### 6.03 *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 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.

#### 6.04 *Insurance*

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner.
- B. Owner shall be listed on Engineer's policies of insurance as additional insureds.

C. Engineer shall provide the following insurance coverages at the limited of liability as follows:

a. Workers' Compensation:	Statutory
b. Employer's Liability –	
1) Bodily injury, each accident:	\$1,000,000
2) Bodily injury by disease, each employee:	\$1,000,000
3) Bodily injury/disease, aggregate:	\$1,000,000
c. General Liability –	
1) Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000
2) General Aggregate:	\$2,000,000
d. Excess or Umbrella Liability –	
1) Each Occurrence:	\$2,000,000
2) General Aggregate:	\$2,000,000
e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):	\$1,000,000
f. Professional Liability –	
1) Each Claim Made:	\$2,000,000
2) Annual Aggregate:	\$2,000,000

#### 6.05 *Termination*

A. *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 Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
  - b. By Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services are delayed for more than 90 days for reasons beyond Engineer's control.
  - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
2. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 6.05.A.1.a or 6.05.A.1.b.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same

and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- B. *Termination for Convenience:* Owner may terminate the Agreement for Owner's convenience effective upon the Engineer's receipt of written notice from Owner.
- C. The terminating party under Paragraphs 6.05.A or 6.05.B 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.
- D. In the event of any termination under Paragraph 6.05, 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.

- E. 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 6.05.D, 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 Article 4.

#### 6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the subject matter of the Services is located.

#### 6.07 *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 6.07.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, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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, or 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. Any and all Documents prepared by Engineer, including but not limited to the Report to be prepared pursuant to Exhibit A, are prepared solely for the use and benefit of Owner, unless expressly agreed otherwise by Engineer.

#### 6.08 *Dispute Resolution*

- A. 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.

#### 6.09 *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 any Site under study.
- 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, or provide notice to the owner of the Site.
- D. If investigative or remedial action, or other professional services, are necessary with respect to disclosed or 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.

#### 6.10 *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 reasonable claims, costs, losses, damages and judgments (including reasonable consultants' and attorneys' fees) arising from third-party claims or actions relating to the Agreement, the Services, or the Project, provided that any such claim, cost, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, 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:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, Consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the

Services, the Agreement, or the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, consultants, employees, or others retained by or under contract to the Owner with respect to the Project.

- 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 and against any and all claims, costs, losses, and damages (including but not limited to all 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, 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 the Agreement, the Services, or the Project, from any cause or causes.

#### 6.11 *Limitation of Engineer's Liability*

- A. To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, members, employees, agents, and Consultants, or any of them, to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses whatsoever arising out of, resulting from, or in any way related to the Services this Agreement, or the Project from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, members, employees, agents, or Consultants, or any of them, shall not exceed the total amount of \$50,000 or the total compensation paid to Engineer under this Agreement, whichever is greater.

#### 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 completion of the Services.

## ARTICLE 7 – DEFINITIONS

### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits and Appendix) 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 provisions:
  1. *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.
  2. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. *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.
  4. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  5. *Construction Cost*—The cost to Owner of the construction of a recommended solution presented in the Report furnished by Engineer under Exhibit A, or of a specific portion of the Project for which Engineer has agreed to provide opinions of cost. Construction Cost includes the cost of construction labor, services, materials, equipment, insurance, and bonding, and

allows 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.

6. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
7. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Agreement as Engineer's independent professional associates and consultants; subcontractors; or vendors.
8. *Documents*—Data, studies, reports (including the Report referred to in Exhibit A), and other deliverables, whether in printed or electronic format, provided or furnished by Engineer to Owner pursuant to this Agreement.
9. *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.
10. *Engineer*—The individual or entity named as such in this Agreement.
11. *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.
12. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed.
13. *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.
14. *Site*—One or more lands or areas or possible location of the Project.
15. *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 and other design professionals and consultants, together with such other Project-related costs that Owner furnishes to Engineer for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to property, 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.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*

- A. Exhibit A, Engineer's Services.

#### 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.

#### 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 Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of the respective party that 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 any thing 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 *Affirmative Action:*

- A. Owner and Engineer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

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

Owner: Pennington County

By:



Print Name: Gary Drewes

Title: Commission Chair

Date: 3/1/2022

Engineer: KLJ Engineering LLC

By:



Print Name: Mark Anderson

Title: Senior Vice President, EPW

Date: 2/23/2022

Firm's License Number: C-170

State of: SD

Address for Owner's receipt of notices:

Pennington County Highway

3601 Cambell Street

Rapid City, SD 57701

Designated Representative (Paragraph 8.03.A):

Name: Joe Miller

Title: Highway Superintendent

Phone Number: 605-394-2166

E-Mail Address: joe.miller@pennco.org

Address for Engineer's receipt of notices:

KLJ Engineering LLC

4585 Coleman Street

Bismarck, ND 58503

**Legal Notices to:** legal.klj@kljeng.com

Designated Representative (Paragraph 8.03.A):

Name: Shawn Mayfield

Title: Project Manager

Phone Number: 605-721-5553

E-Mail Address: shawn.mayfield@kljeng.com



**EXHIBIT A - SCOPE OF SERVICES**  
Design Engineering for  
Bridge Deck Rehabilitation and/or Delamination Repair of 5 Bridges  
Delamination Repair & Guardrail Improvements of 1 Bridge  
within Pennington County  
KLJ #2203-00206

#### **PURPOSE**

The purpose of this exhibit is to describe the scope of work and responsibilities required to complete Design Engineering for the proposed project. KLJ will provide Project Management, Field Measurements, Design Engineering, Plan Preparation and Bid Specifications for the County's use in applying for SDDOT Bridge Improvement Grant (BIG) Funds.

#### **PROJECT MANAGEMENT**

##### **Project Management & Coordination**

The KLJ Project Manager will coordinate internal work tasks and external submittals to effectively complete the project.

##### **Project Schedule**

A proposed schedule is included with the document showing milestone dates for the completion of each bridge. The schedule may be reviewed and adjusted as necessary to incorporate any changes as work progresses. Progress updates will be provided concurrently with the monthly invoices.

#### **ENVIRONMENTAL CONSIDERATIONS**

##### **Cultural Resources**

KLJ assumes SDDOT will not require a Section 106 review as part of the BIG submittal for this type of work. *If SDDOT does request a Level 1 or higher site review, the work will be scoped accordingly and completed under a contract amendment.*

##### **Wetland Delineation (#52-460-329)**

KLJ will conduct a field wetland delineation to evaluate potential impacts the guardrail installation will have on wetlands within the project limits. Mitigation measures (if needed) will be discussed with Pennington County.



#### **Floodplain & Permitting (#52-460-329)**

A hydraulic analysis will be completed utilizing existing FEMA FIS models to show no increase in water surface elevations due to guardrail installations at the site within the identified floodway. KLJ will complete and submit the required no-rise certification and floodplain permit to the Pennington County Floodplain Manager for review and approval.

It is not anticipated, but if further floodway investigation is needed and/or a FEMA map revision is requested, KLJ could assist with this process. *This work will be scoped accordingly and completed under a contract amendment.*

#### **Wetlands, Floodplain & Permitting (other sites)**

The proposed work is not anticipated to affect areas outside the roadway footprint or the waterway under each structure. Wetland delineations, floodplain reviews and permitting were not included with this scope of services. *If further investigation is needed, KLJ can assist with these services. This work will be scoped accordingly and completed under a contract amendment.*

### **DESIGN ENGINEERING**

#### **Field Survey (#52-460-329)**

KLJ will complete a ground pick-up surveys within a 200' radius of the existing structure for items such as hydraulic review, guardrail widening, utility locations and existing right-of-way. KLJ will also obtain bridge measurements and identify areas of concrete delamination that need repair. Agreements with adjacent landowners for permission to survey on private property is not included with our proposal. We anticipate these permissions will be arranged by Pennington County.

#### **Field Survey (other sites)**

KLJ will complete limited field surveys to obtain bridge measurements and identify areas of bridge components that need repair or replacement. These measurements will be used for plan preparation and quantities. Existing plans, as available, will be used to verify in service conditions.

#### **Utility Coordination**

KLJ will identify potential utility conflicts that may require relocation or replacement as part of the project.



## Roadway Design & Plan Preparation

The roadway plans will include the following items:

- Notes
- Quantities
- Removals
- Surfacing
- Traffic Control
- Standard Plates

## Structure Design & Plan Preparation

The bridge plans will include the following items:

- Bridge Layout
- Structure Notes
- Quantities
- Repair Details
- Traffic Barriers
- Standard Plates

Note: The traffic barrier is assumed to be reset or replaced in kind with a barrier matching the existing. *If funding stipulates a barrier upgrade is needed to meet current safety standards, the design will be scoped accordingly and completed under a contract amendment.*

## PLAN SUBMITTAL

### Plan QA/QC Review

KLJ will conduct in-depth quality reviews to all calculations, project plans, specifications and special provisions. Reviews will be completed prior to the plan submittal.

### Preliminary Plan Review

KLJ will assemble and distribute preliminary plans for review by Pennington County. Written responses will be provided to all comments received.

### Final Plans - Revision & Submittal

Revisions from County reviews will be incorporated into the final plans. The final plans submittal will include the bidding plans, specifications, calculations and independent checks.

### Opinion of Cost

KLJ will develop the engineer's opinion of cost for each bridge for Pennington County's review.

### Bid Documents & Award

KLJ will assist with the following bidding items.

- Create bid documents and construction management (CM) plan



- Answer BIG preparation and submittal questions as needed
- Field and answer any pre-bid questions from the contractors
- Provide staff to prepare addendums, if necessary
- Assist with recommendations to award the project

## ADDITIONAL INFORMATION

### Deliverables Provided By KLJ

1. Monthly progress updates
2. Plans & Specifications
3. Bid documents & CM Plan

### Items Not Included in this Scope of Work

1. Architectural/Historic Survey
2. Section 4(f) & 6(f) Evaluation
3. Study Utility Relocation Agreements
4. ROW Documents including Appraisals, Searches, Deeds
5. Environmental Assessment/Impact Statement
6. USACE Permitting & Mitigation Planning
7. FEMA Floodplain Mapping
8. SDDOT Coordination & Reviews
9. Construction Engineering

## PROPOSED FEE

KLJ's anticipated fee associated with the tasks discussed above will be on an hourly basis not to exceed \$87,500. The fee is broken down by bridge as shown below.

Bridge 52-460-329	\$30,000	Bridge 52-316-317	\$11,500
Bridge 52-308-298	\$11,500	Bridge 52-318-318	\$11,500
Bridge 52-320-312	\$11,500	Bridge 52-314-432	\$11,500

## SCHEDULE

KLJ's anticipated schedule for submittal of final plans and specifications to Pennington County for the six bridge preservations is August 22, 2022.