



CITY OF LANDER - CITY COUNCIL WORK SESSION MEETING

Tuesday, June 27, 2023 at 7:00 PM
City Council Chambers, 240 Lincoln Street

AGENDA

Join Zoom Meeting

<https://us06web.zoom.us/j/82110809857?pwd=bkp0dVBVZllQa0dHQmNXZ1ITitoZz09>

Meeting ID: 821 1080 9857

Passcode: 394030

1. CALL TO ORDER

- A. PLEDGE OF ALLEGIANCE
- B. Roll Call

2. MAYOR AND COUNCIL UPDATES

3. STAFF UPDATES

4. NEW BUSINESS (NON ACTION ITEMS)

- A. Eric Andrews presentation concerning LIFT program changes.
- B. Discussion concerning proposed Resolution 1292 Water and Utility Rate Changes.
- C. Discussion concerning updating the workers' compensation section in the policy manual.
- D. Discussion concerning Gannett Peak Safe Routes to Schools WYDOT TAP Grant CD215510.

5. ADJOURNMENT

Upcoming Council Meetings:

Regular Meetings:

Tuesday, July 11, 2023, 6:00 PM City Hall 240 Lincoln Street

Tuesday, July 25, 2023, 6:00 PM City Hall 240 Lincoln Street

Tuesday, August 8, 2023, 6:00 PM City Hall 240 Lincoln Street

Work Sessions:

Tuesday, July 25, 2023, following Regular Council Meeting City Hall 240 Lincoln Street

Tuesday, August 22, 2023 6:00 PM City Hall 240 Lincoln Street

All meetings are subject to cancellation or change.

RESOLUTION 1292
 AMENDING RESOLUTION 1248
 FEES AND UTILITY RATES FOR
 WATER AND WASTEWATER SERVICE

A Resolution establishing fees for water and wastewater service as defined and authorized by Title 9 -2-4 of the Lander City Code.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LANDER:

Section 1:

- (a) All consumer connections to the city water main and all water meters shall hereafter be made, at the expense of the consumer, in accordance with the following schedule of service charges according to the circumstances for the connection:

Line & Meter Size	Meter Fee ¹	Spuds & Flanges	Radio Read ²	Connection/Tap Fee In City	Connection/Tap Fee Out of City	Total In City	Total Out of City
3/4" line with 5/8" meter	\$235	\$55	\$135	\$410	\$820	\$835	\$1245
¾" line with ¾" meter	\$245	\$55	\$135	\$410	\$820	\$810	\$1220
1" line with 1" meter	\$255	\$75	\$135	\$875	\$1,750	\$1305	\$2180
1 ½" line with 1 ½" meter	\$600	\$220	\$135	\$1,015	\$2,030	\$1935	\$2950
2" line with 2" meter	\$800	\$300	\$135	\$1,475	\$2,950	\$2675	\$4150
3" meter Turbo	Call for pricing			\$1,914	\$3,828		
3" meter Compound	Call for pricing			\$1,914	\$3,828		
3" meter Mag Meter	Call for pricing			\$1,914	\$3,828		
4" meter Turbo	Call for pricing			\$2,500	\$5,000		
4" meter Compound	Call for pricing			\$2,500	\$5,000		
4" meter Mag Meter	Call for pricing			\$2,500	\$5,000		
6" meter	Call for pricing			\$3,512	\$7,024		
8" meter	Call for pricing			\$4,554	\$9,108		

Installation. - The applicant shall be responsible for providing the following: one copper setting or other approved fitting in a horizontal position and one stop. The applicant shall also be responsible for acquiring a water meter from the city at the rate specified in this section and have the same installed by a plumber licensed under the Lander Municipal Code. After installation applicant shall notify the city and have the water meter inspected by the same for proper installations.

Certificate Required. - No permit shall be granted without the certification of the Superintendent of Public Works that the water line up to and including the meter connections complies with the provisions of this Title, including regulations, specifications, and standards

¹ Meter prices subject to change with industry pricing.

² Purchase and installation of radio read units is required on all new meter installations.

adopted by the Superintendent of Public Works and the International Plumbing Code as adopted by the City.

Section 2:

(a) Rates are effective August 1, 2023 – July 31, 2025.

Meter Size (inches)	Monthly Minimum Charge – Inside City	Monthly Minimum Charge – Outside City
5/8" Meter	\$40.15	\$60.22
3/4" Meter	\$42.87	\$64.31
1" Meter	\$49.80	\$74.70
1 1/2" Meter	\$69.58	\$104.35
2" Meter	\$97.27	\$145.91
3" Meter	\$176.40	\$264.61
4" Meter	\$287.19	\$430.78
6" Meter	\$603.73	\$905.57
8" Meter	\$603.73	\$1570.30

(b) Excess Water Charges for inside city limit users all meter sizes and outside city limit users with 5/8" meters. For water use in excess of the minimum water use included in the minimum charge, charges shall be assessed at the following:

i. \$3.34 per 1,000 gallons over the allotted 4,000 gallons in city limits;

Excess Water Charges for outside city limit users with meters 3/4" to 8":

ii. \$4.99 per 1,000 gallons over the allotted 4,000 gallons

Rural Water House Rates

i. \$14.98 per 1,000 gallons. Rates are effective August 1, 2023- July 31, 2025

Snowbird Rate

i. \$32.38 monthly

Section 3:

(a) The following rates are established and shall be charged and paid on a monthly basis for all sanitary sewer service from the municipal sanitary sewer system. Rates are effective August 1, 2023.

SEWER TAP FEES

Sewer Tap Size	Connection Fee Inside City	Connection Fee Outside City
4"	\$175.00	\$350.00
6"	\$225.00	\$450.00
7"	\$275.00	\$550.00
8"	\$325.00	\$650.00
9"	\$375.00	\$750.00
10"	\$425.00	\$850.00

SEWER UTILITY RATES

Minimum Charges

Water Meter Size (inches)	Monthly Minimum Charge Inside City	Monthly Minimum Charge Outside City
5/8"	\$19.28	\$22.25
3/4"	\$20.59	\$24.85
1"	\$23.91	\$31.50
1 1/2"	\$33.39	\$50.46
2"	\$46.68	\$77.02
3"	\$84.61	\$152.88
4"	\$137.72	\$259.10
6"	\$289.45	\$562.58
8"	\$501.89	\$987.45

- (b) Sewer Charges – Sewer charges will be \$2.37 per 1,000 gallons over the base of 2,000 gallons plus the minimum charge for sewer. Effective August 1, 2023.
- (c) The residential customer’s monthly sewage usage will be based upon the customer’s average water usage during the winter for **two** billing periods in the months of November, and December re-determined annually on or about January 1st.
- (d) Sewer service charges for other than residential customers are to be based upon the indicated water usage. In the event that any customer can show (by meter) that a portion of the metered water does not enter the sanitary sewer system, the customer(s) are to be charged for only that volume entering the sanitary sewers. The customer may be required to install a meter in his system to record the difference between sewage and non-sewage flows.
- (e) For those users who use wastewater, the strength of which is greater than normal domestic sewage, a surcharge in addition to the normal user charge will be collected. The surcharge for operation and maintenance including replacement will be determined after testing for BOD, SS and other pollutants.
- (f) Non-property Owner Deposit Required. – All water and sewer customers who do not own the real estate or a substantial equity therein, in connection with which such services are required, will be required by the city utility department to post a two hundred dollar (\$200.00) deposit as a guarantee of payment of their service account, which deposit shall be returned to such customers, without interest upon discontinuance of service and payment of their account in full. At each change in occupancy the property owner will submit a transfer form signed by both the tenant and the landlord.

In lieu of the above required deposit a property owner may sign an agreement with the City utility director guaranteeing payment for all water and sewer services furnished such property. In the event a property owner executes a guarantor’s agreement, as provided in the preceding section, period bills shall be addressed to property owners in care of tenants at the address to which services were furnished.

Delinquent Charges. - Monthly charges for water and sewer not paid within 20 days of the billing date are deemed delinquent and a delinquency charge of 10% of the unpaid amount will be charged at the close of business on the 20th of the month. In such circumstances, the City may shut off the water upon ten (10) days’ notice to the property owner and/or tenant by U.S. Postal Service or posting of the notice on the property. After shut off, water service shall be resumed only upon payment of the account balance, together with the sum of \$100.00 for the costs incurred in shutting the water off, sending notice and turning the water on.

- (g) Payment of Charges and Penalties. - The City shall submit monthly statements to the user of water and/or sewer. Should any user fail to pay the balance due and interest penalty within two months of the due date, or if the account should exceed \$200.00 in delinquency, the City may shut off the water upon ten (10) days’ notice to the property owner and/or tenant by U.S. Postal Service or posting of the notice on the property.
- (h) Payment Arrangements. The City Treasurer and/or the City Clerk, or their designee, at his or her discretion, may formulate payment arrangements with a utility user for delinquent accounts. The payment arrangements will require the user to pay their current bill plus delinquency payment and additional payments for two months. If the utility user fails to comply with any part of the payment arrangement, water service may be shut off immediately without further notice.
- (i) Disconnection. - Any permit holder may request that their meter be disconnected. Upon payment of a disconnect fee of \$40 and any accrued charges, the City shall remove the meter. Accrued charges shall be figured as all past due charges adjusted by a pro rate credit for the unused portion of the prepaid basic demand charge. The permit holder shall pay for any overage.
- (j) Reconnection. - Any service disconnected under City Code Section 9-5-2 may be reconnected upon payment of a reconnect fee of \$40 and the basic demand charge.
- (k) Transfer of Permit. - A water permit may be transferred to a new owner of the premises served upon payment of all accrued charges and a transfer fee of \$25.
- (l) Rural Water Fees – Fees for water from the Rural Water House will be \$15.05 for 1,000 gallons

- (m) The Mayor and City Council may allow running of water for residential customers and reduced rates for sewer in the event the City needs citizens to run water to keep the City water and sewer mains from freezing.
- (n) These rates and charges are established so that each user class pays its proportionate share of the costs of water and wastewater treatment services and the City Treasurer is directed to review the charge structure to assure that proportionality between user classes is maintained and to recommend modifications as appropriate every three years. Each user shall be notified by the City of rate changes.

PASSED, APPROVED AND ADOPTED the 11th day of July, 2023

THE CITY OF LANDER
A Municipal Corporation

BY _____
Monte Richardson, Mayor

ATTEST:

Rachelle Fontaine, City Clerk

CERTIFICATE

I, Rachelle Fontaine, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Lander at a regular meeting held on July 11, 2023, and that the meeting was held according to law; and that the said Resolution has been duly entered in the minute book of the City of Lander.

Rachelle Fontaine, City Clerk



12 Financial Plan Development

12.1 Background of the Financial Plan

As part of the water master plan development, a financial plan was also developed. Five different capital planning/funding scenarios were considered. These are described in more detail in Appendix G. The discussion contained in this Chapter summarizes the financial plan for the preferred capital scenario.

This plan is intended to show future cash flows (both revenue and expenses) and to provide guidance on needed rate increases to fund the capital improvement plan developed. The City provided historical revenue and expense data for Fiscal Years (FY) 2021 and 2022 and prospective revenue and expense data for FY 2023. The expense data provided included a detailed budget for all departments associated with water and wastewater services. For departments that cover both utilities, it was generally assumed that 50% of the expenses are associated with the water utility. The City also provided the number of water customers by customer class, meter sizes for each customer, and the volume billed for each customer class over a full 12-month period. This information, and the developed CIP, was used to build a financial planning model for the water utility. This model forecasts future revenue and expenditures of the utility under varying assumptions including customer growth rates and varying levels and timing of capital improvement spending. The model provides projections for a 20-year period, or until 2042.

To develop a projection of revenues, the current FY23 water utility rates were entered, and the number of customers and volume billed in each customer class were used to calculate the revenue generated for each year of the 20-year period. In addition to rate revenues, the Water Utility also receives revenue from other miscellaneous sources including interest earnings, late charges and water transfer fees. No transfers in from the General Fund or other sources of revenue outside of the rate revenue were included. The financial model allows the water utility rates to be adjusted each year as a percentage increase. The total customer count can also be adjusted each year to reflect population growth and the collection rates can also be adjusted. It should be noted that the customer growth rate was set at 2.0% annually for all customers and the revenue generation was based on an assumed collection rate of 97%.

On the expenditures side, a 3% rate of inflation was assumed on all expenditures, including personnel, maintenance and supply costs. For the sequential CIP costs, a 3% rate of inflation was also assumed for all project costs. In general, some projects were assumed to be partially grant funded through WWDC grants, with the remaining portion of those projects being cash funded. Projects that were not eligible for grant funding are funded with only cash (no future debt issues are assumed in the scenario described below) It is important to understand that HDR is not acting as the City’s municipal financial advisor, and all assumptions described above were for scenario comparison purposes and estimated rate impacts only.

12.2 Current Utility Assessment

As summarized above, data contained within the rate model to determine revenues and expenses was derived from data provided by the City. This section will provide a more detailed discussion and summary of that data.

Currently, the City charges the water demand charge (or the fixed portion of the monthly water bill) based on water meter size. This is the current best practice for charging water rates within the industry. For the volume portion of the bill, all customers are considered one customer class and charged the same rate per 1,000 gallons of usage over 4,000 gallons per month. All usage under 4,000 gallons per month is included in the demand charge. Many utilities will have separate customer classes for residential and



non-residential customers as it is sometimes appropriate to have a different volume rate structure for each customer class depending on their use characteristics. Likewise, many utilities will employ more tiers (normally around four) to help better capture the cost of providing water service to high water users.

The water utility currently appears to have a health fund balance with about 6-months of cash on hand. It was assumed the utility entered FY23 with a fund balance of about \$1.2 million. Total estimated expenses for FY23 are \$2,507,671 (\$2,052,029 in Operations and Maintenance Expense, \$301,143 in existing debt service expense, and \$154,500 for cash funded Capital Projects. No transfers to the General Fund are included in the water utility expenses. Total estimated revenue in FY23 is \$2,806,716 for a positive net revenue of \$299,045.

There is currently limited debt associated with the water utility, so the utility will have capacity to issue debt if needed in the future to fund capital programs, although no future debt issues have been included in this scenario. In the past, there has been limited spending on capital projects have mostly been paid for with cash with limited debt issues to fund larger projects. Over the past several years, the utility has been generally neutral with net revenues, meaning increased revenue (i.e. rate increases) will be needed if expenses increase, such as with an increased capital program.

12.3 Proposed Plan (Capital Cost, Distribution and Assignment; Use of Funding Mechanisms, Assumptions, Term/Rate Projections/Fund Summary, Tool Guidance)

As part of the master plan development, \$45.8 million of needed capital projects were identified. When inflated to their year of construction, this total becomes \$66.2 million (Table 1). Of this total, about \$44.8 million is modeled as being cash funded with the remaining portion being grant funded.

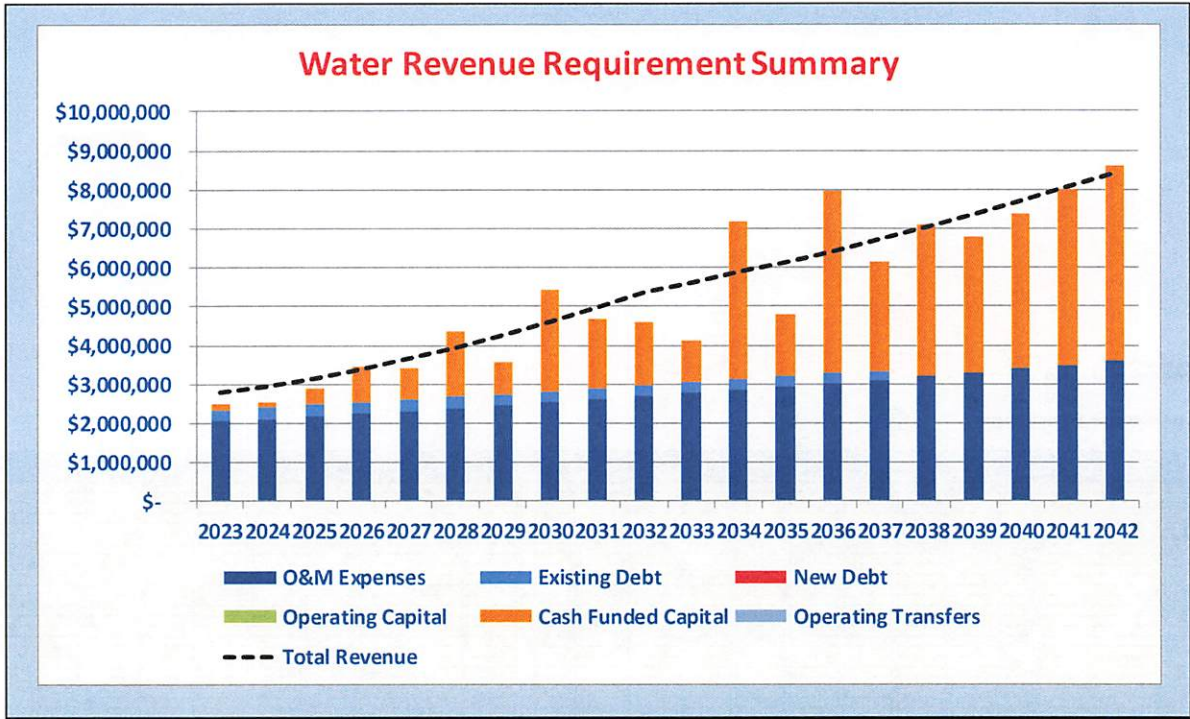


Figure 12-1 Water Revenue Requirement Summary

Due to the limited growth rate of the utility, most of the increased revenue needed will likely come from rate increases. As modeled, a 7% rate increase is assumed starting in 2023 and continuing through 2032. After this time period, a 3% rate increase has been modeled for the remaining years in the planning period (Figure 12-2).

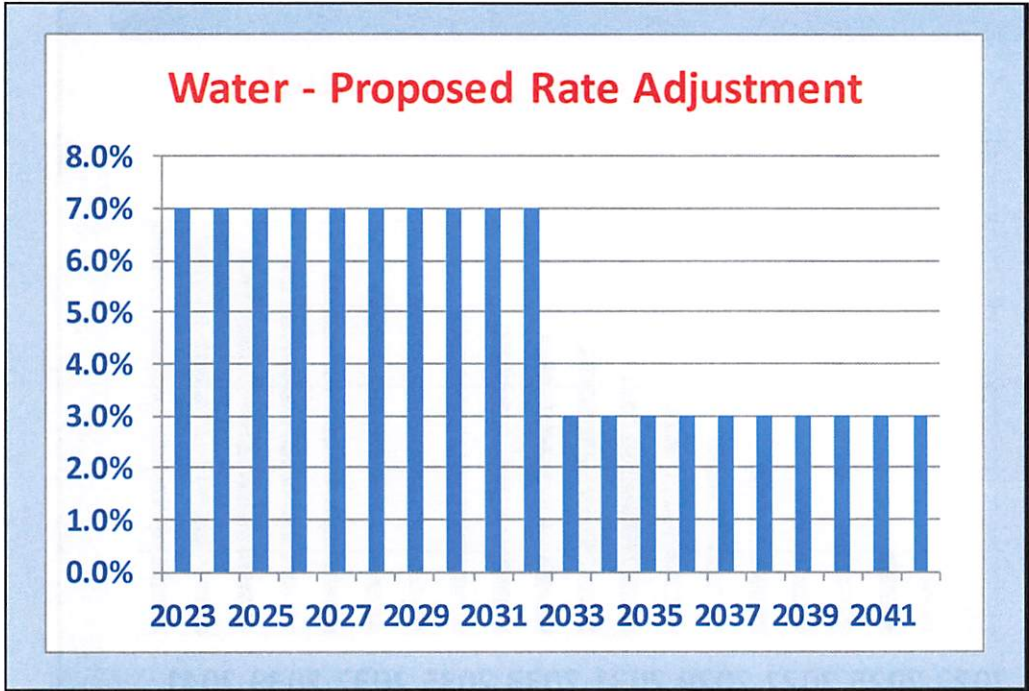


Figure 12-2 Proposed Rate Adjustments for Water Utility

The cumulative rate increase needed over the planning period to fund all projects and other expenses associated with the utility is 100% (Figure 3).

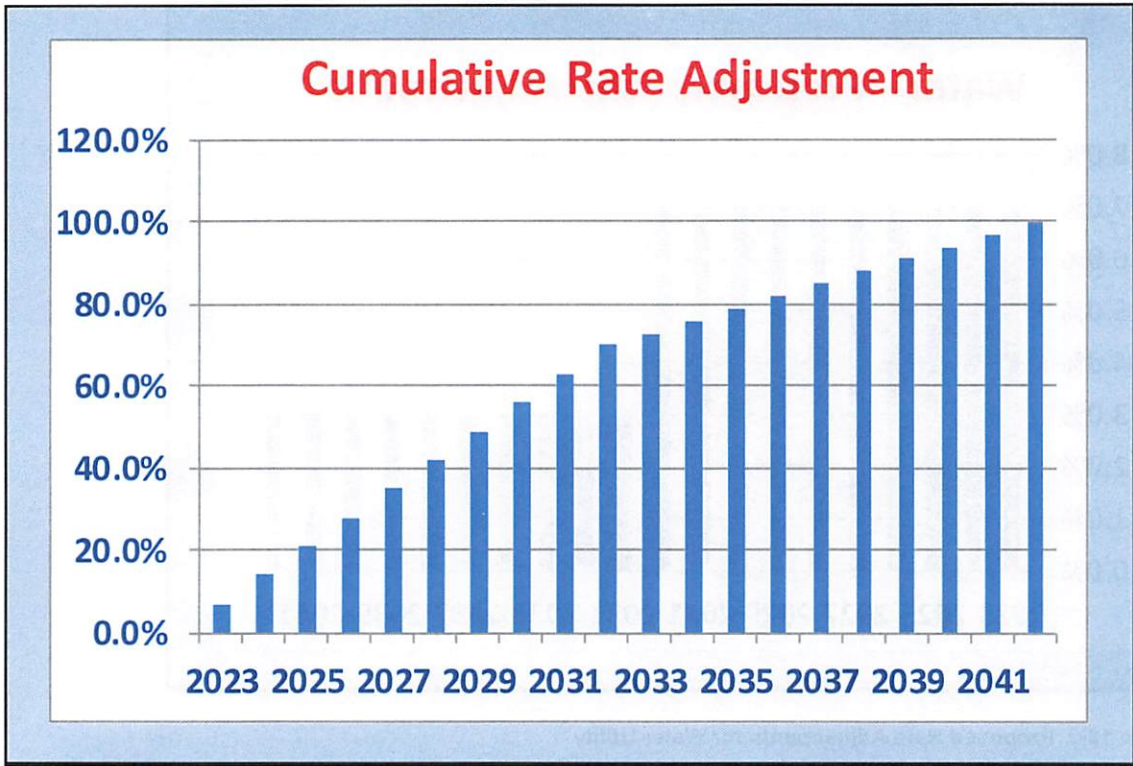


Figure 12-3 Cumulative Water Rate Increase

Worker’s Compensation

The City of Lander provides workers compensation insurance to compensate for any illness or injury an employee might suffer while working on company premises, traveling on official company business, or attending an activity officially sponsored by the City of Lander. If you become ill or injured, please get medical attention at once. Employees unable to work during this time period due to injury or illness will be placed on Family and Medical Leave if eligible.

Workers’ Compensation may pay for: Hospital and medical bills from the date of the compensable injury, Temporary total disability (TTD) or temporary light duty, time lost from work as allowed by law, Permanent loss of body function, Artificial replacement as set by statute, Death benefits as set by statute.

Reporting: Each Office/Department/Division shall take responsibility for providing a safe work environment in order to help prevent injuries and ensure that the individual receives prompt medical attention should an injury occur in the workplace. It is the responsibility of all supervisors to investigate and report all on-the-job injuries or illnesses to Human Resources within 24 hours of the incident. Within 24 hours of notification, review with the individual the details of the incident to include: what the individual was doing when the injury occurred, what could have prevented the accident/ injury, and any other pertinent facts regarding the incident. Complete and sign the back section of the WC Injury Report Form and forward a copy to the Human Resources Department within 72 hours of the incident. Forms for these reports are available through the Human Resources Department or online through the Wyoming Department of Workforce Services. Notify Human Resources if the employee will miss any work. When feasible and necessary, provide modified or light duty to the employee to allow the employee to return to work as soon as possible.

Employee/Volunteer Responsibilities: Each employee is responsible for adhering to these policies and procedures and keeping their supervisor informed of their Workers’ Compensation status. Report all on-the-job injuries or illnesses, no matter how slight, to their supervisor as soon as possible. Complete and sign the Wyoming Report of Injury form and submit to immediate supervisor for signature within 72 hours of the incident. Seek medical attention, if necessary, at the nearest medical facility; non-emergency injuries to an urgent care facility and critical or emergency medical needs to the hospital emergency room. Inform the medical facility/provider that the injury is job related, all claims should be filed through Workers’ Compensation, and that he/she is employed by or a volunteer for the City of Lander. After treatment, if the employee is released to return to work, the employee must obtain a written release from the physician. This statement must include any work restrictions or physical limitations necessary. If the employee is not released to return to work, he/she must obtain a statement from the physician stating:

- a. That the employee is unable to return to work,
- b. . When the employee may be expected to return to work, and
- c. Any work restrictions or physical limitations which may be necessary.

All physician statements or fitness-for-duty forms must be provided to the employee’s supervisor either prior to, or on the day the employee returns to duty, but in no case later than 24 hours.

An employee on workers' compensation leave will be entitled to receive the statutory benefits available under the Workers' Compensation Act of Wyoming, W.S. § 27-14-207, et seq., and as may be determined by Workers' Compensation. Benefits may be reduced if it is determined that the injury or illness was not job related, that the injury was caused by a willful failure of an employee to use safety devices provided by the employer or willful failure to obey a reasonable safety rule adopted by the employer, or where the injury results from intoxication of the employee from drugs or alcohol. During leave for a workers' compensation injury or illness, employees, if they are capable, must keep their supervisors informed on at least a weekly basis of their medical status in regard to their ability to return to work. The City of Lander reserves the right to request periodic reports regarding the employee's medical status from the designated medical provider.

A workers' compensation claim does not preclude an employee from being separated from employment pursuant to the other provisions of this Policy Manual.

While recovering from an on-the-job injury, an employee may return to work on a temporary basis with a modified work schedule and/or with restricted duties as the case may allow. The City reserves the right to limit or deny return to work on a modified schedule or restricted duty. (Reference Light Duty Policy for details.)

Wage Replacement Payments and Payroll Procedures: An employee who sustains a compensable injury or illness and is unable to work after a waiting period of three (3) days is entitled to income benefits (TTD) which are calculated at a rate of two thirds (2/3) of the injured employee's actual monthly gross earnings at the time of injury, but shall not exceed the statewide average monthly wage. Employees who elect to receive Workers' Compensation benefits will receive wage replacement in the following manner:

- a. When an employee loses time on the date of injury due to seeking medical attention, supervisors should record the employee's time as sick leave hours with a notation of 'WC'.
- b. If an employee loses up to eight (8) consecutive days, the first three (3) days of absence shall be taken as paid sick leave. TTD payments are not allowed for the first three (3) days unless the incapacity extends beyond eight (8) consecutive days.
- c. If more than eight (8) days are lost, an employee may elect to receive Workers' Compensation benefit wages for all lost work days
- d. Following a doctor's declaration that an employee may return to full duty, any occasional absence from work related to the original injury will be charged to sick leave.

Supervisors are responsible for accurate timecard related reporting. The law requires that what is reported must be paid; not reporting time accurately may be considered falsifying an official document and therefore needs to be reviewed carefully.

Workers' Compensation and Other Benefits: When accessing Workers' Compensation benefits, the injured employee and supervisor must be aware of how the employee's status may impact other benefits and applicable policies. They include, but are not limited to, the following:

- a. Reporting Lost Time. Each time an employee is absent from work due to a WC injury, the employee must provide documentation from his health care provider to his supervisor not less than every 30 days. This includes intermittent lost time.

b. Workers' Compensation and Family Medical Leave Act (FMLA). An employee who is off work on workers' compensation leave who also meets the eligibility requirements of the FMLA will have that time designated as FMLA leave. This time will count towards the 12-week FMLA entitlement. Insurance Benefits. If an employee exhausts FMLA or is not eligible for FMLA, and exhausts all leave accruals and allowable donations the employee is in 'leave without pay' status (LWOP).

c. Leave without pay (LWOP). When an employee reaches LWOP and is not protected under FMLA, they then are required to pay the City's Insurance premiums out-of-pocket to continue health benefits. In addition, all leave accruals, holiday pay, and contributions to the employee's health savings account and Wyoming Retirement Pension cease. Employees may elect to suspend their health insurance coverage; however, they will be subject to the eligibility waiting period upon returning to active status. If an employee elects to maintain coverage and fails to pay the premiums, all insurance will be canceled.

Supplementing WC Wage Replacement Payments: Upon receipt of the WC wage replacement check, an employee may opt to use available sick leave to supplement Workers' Compensation payments, but may not exceed the regular total gross earnings. To use accumulated sick leave for a Workers' Compensation injury, the employee must remit a copy of his/her Workers' Compensation check to Human Resources prior to receiving any accumulated leave payments. The difference between such benefits and the employee's regular gross earnings will be calculated and a sick leave deduction will be processed on the next payroll cycle. Employees are not obligated to use their accrued sick leave benefits to supplement the workers' compensation wage payments. Employees who have questions or disputes regarding Workers' Compensation benefits and payments should contact the Human Resources Department. Employees may also request a hearing with the Wyoming Workers' Compensation Division.

Light Duty: It is the intention of the City of Lander to return ill or injured employees, with appropriate medical release, to light duty on a temporary basis at the earliest possible opportunity. The City may make a written offer of temporary light duty work to an employee receiving temporary total disability benefits under Workers' Compensation. Workers' Compensation Act §27-14-404 (j) a.

A. Eligibility: An employee will be eligible for transitional or light duty based on: 1. the employee's medically determined physical limitations, 2. the availability of transitional or light duty positions or assignments, 3. the employee's vocational skills, additional abilities, and work experience, and 4. specific work force needs and fiscal responsibilities of the office, department, or division and the City. Unless unusual circumstances warrant, this period shall not exceed one (1) year cumulatively for any one injury and will be evaluated monthly for appropriateness by the Workers' Compensation Case Manager, Human Resources, and the employee's physician. City leave policies and benefit programs may be impacted.

B. Procedures: A light duty offer must be in writing and detail the proposed hours, starting date, and work requirements. The employee's doctor must certify that the work proposed for light duty will not harm the employee. If there is no light duty work available, then the employee is entitled to his/her full disability (TTD) until released back to full duty work.

An employee who refuses a bona fide written offer of temporary light duty work shall have a reduction of TTD benefits unless the employee provides written proof to the Workers' Compensation Division of their inability to perform the light duty assignment. To participate the Employee shall sign Wyoming Worker's Safety and Compensation Division's Agreement of Temporary Light Duty/ Restricted Work form; Cooperate with the Physician's treatment plan and Temporary Light Duty program; Attend all appointments and therapy as directed by Physician; Work as scheduled. Supervisor's Responsibilities include: Work with Human Resources to develop a list of modified duty activities available within the office, department or division, if applicable; Provide employee with written light duty agreement which outlines modified schedule and/or task assignments; Orient employee to temporary light duty tasks; Report attendance, compliance, and tolerance of employee in the Temporary Light Duty program to Human Resources; Identify and track time to timecards; and track time under FMLA if applicable. In the event that a subsequent medical evaluation indicates no possibility of future assignment to full duty, or in the event there is no longer light duty available for the employee, said employee may be required to return to workers' compensation status or be laid off. Upon an employee returning to full duty status after having been off duty due to a job related injury, a complete medical release statement or fitness-for-duty form will be required from the employee's physician.

Temporary light duty assignments may be drawn from a range of technical, administrative, and support areas that include, but are not limited to, the following: Administrative: Report review, special projects, research and compiling information, Clerical: Filing, data entry, answering phones, sorting mail; Technical: Design manuals, procedures, operational standards; perform repairs, troubleshoots issues; or conduct technical trainings, etc. Temporary light duty positions and/or assignments may be limited in number and variety. In the event that a light duty assignment causes undue hardship as a result of the reassignment from normally assigned shifts, the impacted employee is to notify the Supervisor in writing, to consider whether an alternative option is available.

Assignment to temporary light duty shall not affect an employee's pay classification, pay increases, promotions, or retirement benefits. ii. Employees on temporary light duty are prohibited from engaging in outside employment in which they may be reasonably expected to perform similar functions for which they have been determined medically unable to perform and that form the basis for their temporary light duty assignment. Depending on the nature and extent of the disability, a sworn officer on temporary light duty will not wear the departmental uniform, drive a county vehicle equipped with lights and siren, nor shall they be authorized to carry a weapon for the purposes of on-duty police functions and otherwise are limited in employing police powers as determined by the Chief.

If an employee refuses light duty for any reason other than to attend college, vocational retraining, general education development or other program designed to retrain the employee for employment in an occupation other than previously offered by the employer, temporary total disability benefits shall be reduced in accordance with the law. If there is no light duty work available, the employee is entitled to his/her full disability under Workers' Compensation TTD benefits, until released back to full duty.

Leave Compensation for Workman's Compensation absences: If an employee who is receiving Workers' Compensation benefits is determined by their physician to be unable to return to their regular position the employee may collect Workers' Compensation benefits. This benefit is administered through the Workers' Compensation Program and is the equivalent of two-thirds (2/3) of the employees' gross monthly income. The employee must utilize any eligible accrued benefit time or leave without pay for the remaining one-third (1/3) of their daily wage rate during the remainder of their injury leave. The employee may, during the period he or she is certified eligible for temporary total disability benefits:

- a.. Retain any accumulated sick leave, vacation hours, and receive only workers' compensation benefits or
- b.. Utilize his or her accumulated sick leave, vacation hours, in order to receive the difference between his or her regular pay and the amount paid by workers' compensation for temporary total disability benefits. Provided, however, that in no instance shall the combination of workers' compensation benefits, together with converted sick leave, vacation pay be greater than the injured worker's regular net monthly take home pay prior to his or her injury.

The City has the right to attend all Workers' Compensation job related physician appointments to ensure all restrictions are properly managed at the safety of the employee and employer. It is the employee's responsibility to notify Human Resources of said appointments and any changes in the appointment dates and/or times, in advance of such appointment.

The City may require a fitness for duty examination, at its own expense, performed by a physician of the City's choosing to determine when the employee is capable of returning to work and if they will be capable of performing the duties of the position.

If appropriate, at the City's option, the employee may be offered temporary restricted duty, if available, for up to ninety (90) calendar days. This timeframe may be extended in extenuating circumstances upon approval of the supervisor and the mayor. An injured employee must return to their regular position and be able to perform the essential functions of that position with or without reasonable accommodation within nine (9) calendar months of their injury. If the employee is unable to return to their regular position within nine (9) calendar months, the City may transfer the employee to a position for which they have the knowledge, skills and abilities to perform the essential functions of the position or terminate the employee. The City will follow an interactive communication process with the respective employees, if necessary. This decision will be made jointly by the Supervisor, Human Resources Department and City Administration.

CONTINUATION OF INSURANCE COVERAGE

- A. Workers' Compensation. An employee receiving Workers' Compensation benefits shall continue to accrue annual leave and sick leave for up to six (6) calendar months after their injury. The City currently continues to pay for the employer's portion of insurance premiums, provided that the employee continues to pay their share of premiums, if any. The employee must make arrangements with Payroll for the payment of their premiums while on Workers' Compensation. After six (6) calendar months from the injury, medical and dental insurance coverage ceases

unless employment has been extended. However, an employee whose employment has been terminated may be eligible for COBRA benefits.

- B. COBRA Rights. Upon an employee's separation from City employment or upon an unpaid leave of absence, and at the employee's option and expense, the employee may be eligible to continue City health insurance benefits under COBRA regulations. An administrative handling fee over and above the cost of the insurance premium may be charged to the employee or their dependents that elect to exercise their COBRA continuation rights. The Human Resources Department will notify employees of their COBRA rights.
- C. Separation, Retirement, Leave of Absence. For eligible employees who separate, retire or are on an approved leave of absence from the City, the City will pay the employer's portion of the insurance premium for the month the employee is leaving, provided the employee is in a paid status for at least one working day of the month. In the case of Leave of Absence, if the employee is not on paid status, Family/Medical Leave or Workers' Compensation for at least one working day of the month, the employee will be responsible for paying the employer's and the employee's portions of the insurance premium if they desire coverage for that month.



City of Lander Grant Pre-Application

PRE-APPLICATION INFORMATION

City Department	Public Works
Grant Program	Transportation Alternatives Program (TAP)
Funding Agency	WYDOT
CDFA # or State ID	
Program/Project Name &/or Code	Gannett Peak CD21510 cost overruns
Department Head/Project Manager	Lance Hopkin, RSFossen
Purpose of Grant	Cover construction cost overruns for original phase 1 grant award
Strategic Objective Met	Safe Routes to Schools, 1st priority category
Requested Amount	\$986,341
Match amount	\$103,569
Total Amount	\$1,090,000
Is the project in the budget?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 1% designated funds
Are on-going expenses budgeted?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Application Deadline	Date: <u>July 15, 2023</u>
Council Authorization required?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Reason: resolution form
Schedule for Council Agenda on	Date: June 20, or July 11, 2023
Legal Requirements	No. of Ads <input type="checkbox"/> Days between ads <input type="checkbox"/> Public Hearing Days in advance of Public Hearing
RSFossen <u>6/9/2023</u> Date: _____ Submitted by _____ Date: _____ Authorization of Department Head/Project Manager _____ Date: _____ City Authorization _____	



**TAP Attachment G: Resolution
RESOLUTION NO. Resolution 1293**

A RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR FEDERAL FUNDING THROUGH THE TRANSPORTATION ALTERNATIVES PROGRAM ADMINISTERED BY THE WYOMING DEPARTMENT OF TRANSPORTATION FOR CITY OF LANDER FOR THE PURPOSES OF THE GANNETT PEAK COST OVERRUNS PROJECT.

WITNESSETH

WHEREAS, the governing body for CITY OF LANDERthe City of Lander desires to participate in the Transportation Alternatives Program (TAP) to assist in funding this project;

WHEREAS, the governing body for City of Lander recognizes the need for the project;

WHEREAS, TAP requires that federal funding criteria be met, and the City of Lander agrees to ensure satisfaction of all requirements;

WHEREAS, City of Lander acknowledges that if funded, the TAP project shall be completed prior to December 31, 2026;

WHEREAS, the governing body for City of Lander agrees to set aside a minimum of \$\$103,569.00 as a line item in its budget for the required nine and fifty-one hundredths percent (9.51%) local cash match on the project;

WHEREAS, the governing body for City of Lander acknowledges TAP is funded on a reimbursement basis and all invoices must be 100% paid by City of Lander prior to reimbursement through TAP (90.49% Federal Reimbursement). The City of Lander acknowledges that failure to comply with this requirement may result in cancellation of the award and repayment by City of Lander of all funds reimbursed.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY for City of Lander that a funding application requesting \$986,341.00 in federal TAP funding be submitted to the Wyoming Department of Transportation – TAP for consideration to assist in funding for the City of Lander Gannett Peak CD21510 Cost OVERRUNS project.

BE IT FURTHER RESOLVED, THAT RaJean Strube Fossen and Lance Hopkin is hereby designated as the Project Administrator, of City of Lander to act on behalf of the governing body on all matters relating to this funding application.

PASSED, APPROVED AND ADOPTED THIS 11th DAY OF July, 2023.

Signature
Monte Richardson, Mayor

ATTEST:

Signature
Rachelle Fontaine, City Clerk



TAP Attachment J – Consultant Services Policy

CONSULTANT SERVICES POLICY

[City of Lander]

[June 20, or July 11, 2023]

SECTION I. INTRODUCTION

This policy establishes procedures of the *[City of Lander]* for the procurement, management, and administration of consultant services required for a project using federal or non-federal funds obtained through the Wyoming Department of Transportation (WYDOT). This policy and procedures will be followed when hiring consultants to supplement the *[City of Lander]* personnel or to provide other professional services that the *[City of Lander]* determines can be best completed by qualified private-sector firms.

Consultant, as used in this document, means engineering firms, architectural firms, survey firms, educational institutions, and other firms or individuals engaged in providing consulting or other professional services. *Subconsultant*, as used in this document, means an individual or firm contracted by the consultant to provide related services.

Simplified Acquisition Threshold (SAT), as used in this document, means the dollar amount at or below which a government entity may purchase services using small agreement/purchase methods. The SAT is currently \$250,000, but this threshold is periodically adjusted for inflation. (48 CFR 2.101)

Architectural and Engineering (A & E) services are defined to mean:

1. Professional services of an architectural or engineering nature, as defined by state statute, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide related services.
2. Professional services of an architectural or engineering nature, performed by consultant agreement, and associated with research, planning, development, design, construction, alteration, or repair of real property.
3. Professional services of an architectural or engineering nature, which a firm or individual within the engineering or architectural professions would perform, such as studies, investigations, survey and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Architectural and Engineering services that directly lead to development of a construction project are defined and limited to:

1. Preparation of roadway/bridge contract documents including preliminary through final design, contract plans, specifications, and incorporated engineering drawings, details, and estimates.
2. Completion of surveys and mapping necessary for preparation of roadway/bridge contract documents.
3. Completion of architectural services directly leading to facility construction.
4. Completion of feasibility studies when used for project planning leading to project construction.
5. Construction project management including contract administration and construction engineering.
6. Completion of consultant services not clearly within (1) thru (5) above, which must be performed or approved in accordance with state law by a registered professional (i.e. engineer, land surveyor, architect, geologist, etc.).
7. The final cost of these services, including the original agreement cost and subsequent agreement modifications, must exceed the SAT.

SECTION II. CONSULTANT PROCUREMENT – GENERAL

Two methods for procuring consultant services are available for use depending on administrative controls which consider the estimated cost of the proposed services.

Consultant services with an estimated cost at or less than the SAT (Small Agreement) will be procured using a simplified procurement process presented in SECTION IV(A) – Small Agreement – Estimated Cost at or less than the SAT.

Consultant services with an estimated cost exceeding the SAT (Large Agreement) will be procured using a formal request for proposal (RFP) process as presented in SECTION IV(B) – Large Agreement – Cost greater than the SAT.

SECTION III. CONSULTANT NEED AND OTHER SUPPORTING INFORMATION

The *[City of Lander]* will develop supporting information to establish the need for consultant services and identify the procurement method, selecting one of the procurement methods

outlined in SECTION IV – CONSULTANT PROCUREMENT PROCESSES. Supporting information should be tailored to the procurement method and include the following:

A. Small Agreement – Estimated Cost at or less than the SAT

Small agreements, developed consistent with SECTION IV(A) – Small Agreement – Estimated Cost at or less than the SAT, should include the following supporting information:

1. A statement supporting the use of a consultant to perform work due to unique capabilities not readily available within the *[City of Lander]* or that *[City of Lander]* personnel are not available to complete the necessary work or meet proposed schedules.
2. A preliminary scope of work for the proposed services.
3. A schedule for completion of work to be performed by the consultant.
4. A funding source for the required consultant services.
5. A preliminary cost estimate.
6. The agreement type to be used as the basis of compensation (See SECTION VI – AGREEMENT TYPE, BASIS FOR COMPENSATION, PAYMENT).

B. Large Agreement – Cost greater than the SAT

Large agreements, developed consistent with SECTION IV(B) – Large Agreement – Cost greater than the SAT, require that consultant services be procured through a request for proposal. The supporting information for these services should include the following:

1. A statement supporting the use of a consultant to perform work due to unique capabilities not readily available within the *[City of Lander]* or that *[City of Lander]* personnel are not available to complete the necessary work or meet proposed schedules.
2. A preliminary scope of work for the proposed services.
3. A schedule for completion of work to be performed by the consultant.
4. A funding source for the required consultant services.

5. A preliminary cost estimate. See SECTION IV(B) – Large Agreement – Cost greater than the SAT.
6. The agreement type to be used as the basis of compensation (See SECTION VI – AGREEMENT TYPE, BASIS FOR COMPENSATION, PAYMENT).
7. Consultant selection by the selection committee. Selection committee members should be identified by name and title.
8. A listing of evaluation factors and weighting factors for the ranking and selection of a qualified consultant firm. The use of evaluation factors and weighting factors should be tailored to the procurement process; the number of evaluation factors can be limited and the use of weighting factors can be limited or eliminated. The selected factors should assess the consultant’s qualifications and competency, tailored to the proposed type/scope of work and any anticipated work types. Evaluation factors **may** consider:
 - a. Established expertise;
 - b. Related work experience in a responsible role;
 - c. Qualifications of the firm’s personnel;
 - d. Previous performance on *[City of Lander]* projects;
 - e. Project understanding/knowledge, including proposed approach to completing project work;
 - f. Workload capacity;
 - g. Ability to meet project schedule;
 - h. Specialized expertise or product delivery requirements (such as computer hardware or software);
 - i. Other evaluation factors relating to the specific project may be used.

Evaluation factors that cannot be used on federal funded A & E services include:

- a. Cost components – consultant fee proposal, direct salaries/wages, other direct costs, or indirect cost rates;

- b. In-state or local preferences.

Cost, as one evaluation factor, may be used on federal funded non-A & E services.

The selection committee should note that two specific non-qualification-based evaluation factors may be used, if appropriate, but together cannot exceed 10% of the total weighted evaluation. These two factors, directed to an individual proposed project, are:

- a. A local presence, where that presence will add value to the quality or efficiency of project delivery, but will still allow for the consideration of a sufficient number of qualified firms;
- b. The participation of qualified and WYDOT-certified Disadvantaged Business Enterprise (DBE) consultants or subconsultants. The *[City of Lander]* should coordinate with the WYDOT Civil Rights Office to obtain a current listing of DBE consultants.

The need/use of a consultant firm in a management role for the *[City of Lander]* will require approval by WYDOT and FHWA before consultant solicitation. (23 CFR 172.7(b)(5))

SECTION IV. CONSULTANT PROCUREMENT PROCESSES

Two methods for procuring consultant services are available for the *[City of Lander]* use. The use of each method is limited depending on the estimated cost of the proposed services; these administrative controls are presented as an introductory paragraph to each procurement method/agreement type.

A. Small Agreement – Estimated Cost at or less than the SAT

The use by the *[City of Lander]* of a small agreement is limited to consultant services with an estimated cost at or less than the SAT, including the original agreement cost and subsequent agreement modifications. Small agreements can be used for non-federal and federal funded services, and for A & E and non-A & E services.

A preliminary cost estimate will be prepared for use as required in SECTION VIII – NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL.

The *[City of Lander]* will make an informal consultant selection utilizing a consultant list obtained from WYDOT Engineering Services or a list generated by the *[City of Lander]*. A minimum of three consultants must be evaluated leading to a qualification-based

selection. The evaluation should use information available from the consultant's Statement of Interest, and if needed, that information can be supplemented with interviews, or written or oral discussion with each firm.

If less than three qualified consultants are available, the *[City of Lander]* will proceed with evaluation and selection when assured that the selected consultant has the minimum qualifications to complete the agreement type of services and has the experience necessary to satisfactorily perform the required services.

The basis for selection will be documented. The following items should always remain under consideration to conclude that a consultant firm has the minimum qualifications to complete the proposed project scope of work:

1. The consultant shall have an exemplary ethical and professional reputation.
2. The consultant's employees shall have levels of education, training, and experience necessary to perform the required services satisfactorily.
3. Professional services provided to the *[City of Lander]* require that the consultant employee overseeing the work and the consulting firm be licensed, if required by the applicable State Board.
4. The consultant shall be established in the area of expertise for which the firm is being considered, with recent work experience in a responsible role.

After the consultant selection, the *[City of Lander]* shall follow procedures outlined in SECTION V – APPROVAL OF CONSULTANT prior to proceeding with the process of negotiating the agreement with the selected consultant.

A detailed scope of work shall be prepared, often by the selected consultant. The consultant shall submit a fee proposal including proposed billing rates, estimated units of work, and the total proposed fee. The *[City of Lander]* will negotiate and prepare an agreement for execution.

Execution of the agreement will follow procedures outlined in SECTION X – EXECUTION OF THE AGREEMENT.

B. Large Agreement – Cost greater than the SAT

The use by the *[City of Lander]* of a large agreement is required for consultant services with an estimated cost greater than the SAT, including the original agreement cost and

subsequent agreement modifications. Large agreements can be used for non-federal and federal funded services, and for A & E and non-A & E services.

When the *[City of Lander]* requires consultant services and proposes to use this large agreement, the following requirements apply.

A preliminary cost estimate will be prepared for use as required in SECTION VIII – NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL. For architectural and engineering services directly leading to construction, as defined in SECTION I – INTRODUCTION, the cost estimate must establish major elements of agreement costs: labor hours by work type and classifications of labor, direct salaries by labor classifications, other direct costs, anticipated indirect cost rates, and anticipated fixed fees (profit). This estimate will be used as the basis for negotiation. For all other services, the preliminary cost estimate can be less formal.

The *[City of Lander]* will direct the procurement process in coordination with the WYDOT Local Government Office and an appointed selection committee.

An early action will be to appoint participants to a selection committee. The committee should consist of at least three members, but generally not more than five members. The *[City of Lander]* should select committee members who can best evaluate consultant qualifications, but without previous experiences that could potentially influence their actions leading to a conflict of interest. Each committee member will ensure that he or she has no possible conflict of interest that may influence the evaluation, ranking, and selection process. If a conflict of interest may exist, the committee member will be excused from serving on the committee.

A pre-selection meeting will be conducted to establish the requirements of the RFP and the public announcement/advertisement to be used to assure that consultants have fair opportunity to be considered for award of the agreement.

The *[City of Lander]* may solicit project-specific letters of interest through a public announcement, public advertisement, or any other public forum or method (such as soliciting firms on a consultant list obtained from WYDOT Engineering Services) that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered. A minimum seven day announcement period is required.

The selection committee will determine a short list of firms from the respondents to the public announcement/advertisement to receive the RFP. If enough firms respond, a minimum of five firms should be short-listed.

Alternatively, the *[City of Lander]* may go directly to the RFP process and consider all the proposals submitted.

The RFP will include the following requirements and information to provide direction for the content of consultant proposals. The RFP requirements and information will not include any condition that would limit competition and the resulting number of proposals.

1. Detailed scope of work, including a preliminary project purpose and description.
2. Technical requirements: specific services; deliverables; applicable policies and guides; proposed standards, criteria, specifications, or contracting requirements; proposed schedule for completion of agreement work.
3. Evaluation and weighting factors to be used for the ranking and selection based on consultant competency and qualifications.
4. The anticipated schedule leading to consultant selection. The schedule should identify consultant submittal dates using a minimum of 14 calendar days from issuance of the RFP, but set to assure that interested firms have sufficient time to receive the RFP, and prepare and submit a proposal.
5. The type of agreement to be used and the basis for compensation.
6. Address potential discussions with interested firms after submittal of their proposal, if any, directed to clarification of technical requirements or approach, qualifications, or capability. Based on the size and complexity of the project, it may be beneficial to the selection committee to have one-on-one discussions with all or some of the qualified firms (minimum of three). The intent and structure of these discussions, if needed, should be outlined in the RFP.
7. Consultant proposal shall include additional submittals concerning proposed subconsultants.
8. Consultant cost proposals, if requested, should be included in a concealed format that is clearly separate from the technical proposal.

The RFP should provide an adequate number of consultant proposals. When three or more qualified firms respond, the *[City of Lander]* will proceed with consultant ranking and selection. If less than three firms respond, the *[City of Lander]* may proceed with ranking and selection of a qualified firm or may elect to re-distribute the RFP in an attempt to gain additional proposals. In the event the response to an RFP does not result in either qualified or competitive firms, the *[City of Lander]* may pursue other

contracting options, including non-competitive, to procure professional services. The *[City of Lander]* will coordinate with the WYDOT grant administrator prior to non-competitive selection of a consultant.

After receipt of consultant responses to the RFP, the final selection meeting will be held. The selection process will include a series of actions taken by the *[City of Lander]*.

1. Review RFP proposals to assure they are complete.
2. Distribute the supporting information outlined in SECTION III(B) – Large Agreement – Cost greater than the SAT, to include the RFP, all consultant proposals, and each consultant’s Letter of Interest, if applicable.
3. Assist the selection committee, as needed, to complete the evaluation, ranking, and selection process.
4. Notify, subsequent to consultant selection, all consultants responding to an RFP of the final ranking of the three most highly qualified consultants.
5. Properly dispose as necessary, subsequent to consultant selection, the concealed cost proposals of the unsuccessful consultant firms.
6. Retain documentation supporting the solicitation, RFP, proposals, evaluation, and selection of the consultant firm.

The selection committee completes the evaluation and selection process by using the supporting information for each evaluation factor and then developing an overall score and subsequent ranking. The committee must rank in order of preference at least the three most highly qualified firms, leading to final selection. If less than three qualified firms respond to the RFP and it is concluded that the responding firms represent those firms available to meet the requirements of the RFP, the evaluation and selection will be completed.

The selection committee may not use a consultant’s cost components – consultant fee proposal, direct salaries, direct costs, and indirect cost rates – as a factor in the evaluation, ranking, or selection process for federal funded A & E services. Federal funded non-A & E services may, or may not, use cost as an evaluation factor.

The following items should always remain under consideration to conclude that a consultant firm has the minimum qualifications to complete the proposed project scope of work:

1. The consultant shall have an exemplary ethical and professional reputation.
2. The consultant's and subconsultant's employees shall have levels of education, training, and experience necessary to perform the required services satisfactorily.
3. Professional services provided to the *[City of Lander]* require that the consultant employee overseeing the work and the consulting firm be licensed, if required by the applicable State Board.
4. The consultant shall be established in the area of expertise for which the firm is being considered, with recent work experience in a responsible role.

During this process, an unqualified consultant firm may be dismissed from further consideration.

After the consultant selection, the *[City of Lander]* shall follow procedures outlined in SECTION V – APPROVAL OF CONSULTANT prior to proceeding with the process of negotiating the agreement with the selected consultant.

The final scope of work may be refined through negotiations with the selected consultant. The consultant shall submit a fee proposal including proposed billing rates, estimated units of work, and the total proposed fee. The *[City of Lander]* will negotiate and prepare an agreement for execution.

Execution of the agreement will follow procedures outlined in SECTION X – EXECUTION OF THE AGREEMENT.

SECTION V. APPROVAL OF CONSULTANT

After the selection committee or the *[City of Lander]* authorized representative has completed the procurement process, the *[City of Lander]* shall submit, in writing, the selected consultant's name to the WYDOT grant administrator for approval. The WYDOT grant administrator's approval authorizes the process of negotiating the agreement with the selected consultant.

The WYDOT grant administrator will initiate a pre-negotiation audit, if necessary (see SECTION VII – PRE-NEGOTIATION AUDIT EVALUATION).

The *[City of Lander]* will maintain a correspondence file for each consultant services agreement documenting all aspects of the selection and approval process.

SECTION VI. AGREEMENT TYPE, BASIS FOR COMPENSATION, PAYMENT

Contractual requirements and the method of payment to direct and compensate the consultant will be established by agreement. An agreement type and basis for compensation will be selected as the need for consultant services is developed, as presented in SECTION III – CONSULTANT NEED AND OTHER SUPPORTING INFORMATION.

- A. Agreement Types.** An agreement type will be selected by the *[City of Lander]*.
 - 1. **Project Specific.** This will be used with a defined scope of work and the related consultant services when these services are directed to one or more specific projects.
 - 2. **Multi-Phase.** This can be used, similar to Project Specific, when the *[City of Lander]* determines that a consultant’s services should be divided into defined phases to gain better definition of the scope of work and related consultant services. Each phase would require a separate cost estimate.

- B. Basis for Compensation.** The method of payment to compensate the consultant will be specified in the agreement. It may establish a single method for all work or may be better administered with different methods for different elements of work.
 - 1. **Cost Plus Fixed Fee.** Cost reimbursement includes actual costs payable for direct labor and indirect labor (overhead) as established in the agreement, plus direct reimbursable expenses. Cost reimbursement also includes a negotiated fixed fee, established in the agreement, and is calculated to cover the consultant’s profit. Billing rates established in the agreement shall be used for all billings and a maximum amount payable will be established.

Cost plus percentage of cost and percentage of construction cost cannot be used as a basis for compensation.
 - 2. **Lump Sum.** May only be used when the scope of work and the duration of work can be accurately established, and an estimate of cost, including fixed fee, can be calculated with reasonable accuracy at the time of negotiation with the selected consultant.
 - 3. **Unit of Work.** May be used when a unit cost of work can be determined in advance with reasonable accuracy, but the extent of work is indefinite. Quantities and characteristics of each unit should be uniform, and a maximum amount payable will be established.

- 4. **Specific Rates for Compensation.** The specific rates for compensation will provide for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and profit, plus any other direct expenses or costs. This method of payment will be used for those types of services and agreements that establish a maximum amount payable and provide the *[City of Lander]* direct control of the number of consultant labor hours and resultant cost.

Specific Rates may also be used when a consultant’s services are required to perform work that cannot be estimated for extent, duration, or cost.

Consistent with all consultant agreements, a *[City of Lander]* representative will monitor the consultant’s performance of services to include labor hours, and classification/pay rate of consultant employees used to perform agreement services.

- C. **Consultant Payments and Retainage:** Periodic progress payments will be made for work satisfactorily completed based on invoice submittals to the *[City of Lander]*.

All agreements shall include provisions that require the consultant to make prompt payment to subconsultants within 30 calendar days from receipt of payment from the *[City of Lander]* (49 CFR 26.29). These provisions will advise the consultant to be prepared, if requested, to provide documentation that payment has been made for work satisfactorily completed by a subconsultant. These provisions will also notify the consultant that failure to make prompt payment may be addressed by the *[City of Lander]* as presented in the written procedures in ATTACHMENT 2 – BREACH OF AGREEMENT.

The *[City of Lander]* may withhold retainage from payments, including final payment, if specified in the agreement.

SECTION VII. PRE-NEGOTIATION AUDIT EVALUATION

Pre-negotiation audits are generally performed on first-time consultants, consultants with outdated audits, or as required by WYDOT Internal Review Services. A risk assessment will be performed by WYDOT Internal Review Services to determine if an audit is required and, if so, the type of audit required. An audit report or comparable correspondence will be provided by WYDOT Internal Review Services to the *[City of Lander]* for use in negotiating the consultant agreement.

SECTION VIII. NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL

Approval of the selected consultant in accordance with SECTION V – APPROVAL OF CONSULTANT authorizes the process of negotiating the agreement and cost proposal with the selected consultant.

The *[City of Lander]* will work with the consultant to finalize the scope of work, if needed, and initiate negotiations with the consultant for a final cost proposal. A draft agreement, including the scope of work, is provided to the consultant with instructions for preparing the cost proposal. The consultant is advised at the beginning of negotiations that selection is subject to arriving at a satisfactory agreement for terms and fees, and that the *[City of Lander]* assumes no obligation to the consultant until the agreement is executed.

The consultant’s use of subconsultants is allowed only with written approval from the *[City of Lander]* of the proposed subconsultants. The consultant shall describe the work to be done by the subconsultant in the fee proposal, assure incorporation of required agreement provisions into the subconsultant agreement (SECTION IX – AGREEMENT PROVISIONS) and include a cost for the subconsultant’s proposed work. The *[City of Lander]* may request a detailed proposal for subconsultant work to include proposed labor rates and direct costs. The cost proposal and included rates will be evaluated for reasonableness. If the subconsultant has a WYDOT-approved audit or approved billing rates, those rates shall be used.

A consultant’s fee proposal will be compared to the cost estimate done by the *[City of Lander]*, including careful attention to proposal details. The consultant’s fixed fee (profit) will be negotiated separate from other negotiations.

The consultant’s or subconsultant’s proposed indirect cost rate shall be certified by each firm’s chief executive or financial officer as being allowable in accordance with federal cost principles. Each firm’s certification shall read as required by WYDOT Internal Review Services.

A consultant’s schedule for completing the work, if different from the schedule proposed by the *[City of Lander]*, will be reviewed to assure that the established duration of the agreement permits completing the work in a time frame acceptable to the *[City of Lander]*. When the consultant’s fee proposal and the duration of the agreement are acceptable, the agreement is finalized and executed.

If the consultant’s proposed fee or schedule varies substantially from the estimate or schedule of the *[City of Lander]*, the items of variance are identified and discussed to resolution. After agreeing on the agreement terms and fees, the consultant submits a final cost proposal.

The *[City of Lander]* will maintain documentation of the negotiation process.

If the selected consultant and the *[City of Lander]* cannot reach a satisfactory agreement, the *[City of Lander]* will cease negotiations and notify the consultant and the WYDOT grant administrator. The *[City of Lander]* will then initiate negotiations with the next highest ranked consultant or, at its option, initiate a new procurement process.

SECTION IX. AGREEMENT PROVISIONS

The *[City of Lander]* will determine the consultant agreement type, the basis for compensation, terms of the agreement, and the required provisions, clauses, assurances, and/or certifications to ensure compliance with state and federal laws, regulations and requirements.

Each agreement will:

1. Name the authorized representative of the *[City of Lander]*.
2. Outline the representative’s administrative responsibilities.
3. Identify the project location.
4. Present the scope of work and consultant deliverables.
5. Provide for applicable plans and specifications.
6. Authorize commencement of work.
7. Specify fees and payments based on consultant’s progress reports.
8. Specify completion of work by number of calendar days or the calendar date by which all required services shall be completed.

Each agreement will outline data, services, and obligations of the *[City of Lander]* as related to the consultant’s performance of required services.

Federal General Provisions will be physically incorporated or incorporated by reference into consultant agreements funded with federal funds. These Provisions will apply to the consultant and all subconsultants engaged by the consultant. ATTACHMENT 1 – FEDERAL GENERAL PROVISIONS presents applicable Federal General Provisions and administrative procedures.

ATTACHMENT 2 – BREACH OF AGREEMENT presents written procedures to administer breach of the agreement.

The *[City of Lander]* reserves the right to terminate any agreement, as described in the agreement. In this event, compensation is made to the consultant based upon the progress of the work performed prior to termination. Work performed shall be defined as the deliverables specified in the agreement and accepted by the *[City of Lander]*, and not the labor hours billed. The *[City of Lander]* will notify the consultant, in writing, of agreement termination.

SECTION X. EXECUTION OF THE AGREEMENT

The *[City of Lander]* will prepare the final agreement for execution by all parties.

Agreements will conform to the state contract requirements as published by the Wyoming Attorney General’s office, or as directed by the assistant attorney general assigned to WYDOT.

All agreements shall be forwarded to the WYDOT grant administrator for approval before execution.

Agreements subsidized with federal funds will be made available to the appropriate federal agency upon request. The Federal Highway Administration (FHWA) and the Federal Aviation Administration (FAA) have currently delegated their approval authority to WYDOT.

Agreements shall be executed by the consultant and the *[City of Lander]*.

SECTION XI. AUTHORIZATION TO PROCEED

Once the consultant agreement is finalized and executed, the *[City of Lander]* will notify the consultant using a written “Authorization to Proceed” to commence work.

Consultant services cannot proceed before the “Authorization to Proceed” is issued.

SECTION XII. AGREEMENT MODIFICATIONS

The *[City of Lander]* or the consultant may, during performance of the agreement, propose agreement modifications within the type of services under which the original agreement was procured. Changes in the scope, complexity or quantity of the work, or if changes causing an increase or decrease in agreement fees or time for performance are required, an equitable adjustment in fees and/or contract time will be negotiated with the consultant. Any additional services outside of the original agreement type of work will be procured under a new procurement process.

If changes are required in the agreement, a written request shall be made by the consultant to the *[City of Lander]* and negotiated between the consultant and the *[City of Lander]*. The agreement will then be amended using documentation issued by the *[City of Lander]*. Agreement

modifications must define and document the changes made to the agreement, establish any adjustment in agreement fees and payment, establish any adjustment in completion date, and be in compliance with terms and conditions of the original agreement. An adjustment in agreement fees and payments will be negotiated, as outlined in SECTION VIII – NEGOTIATING THE FINAL AGREEMENT AND COST PROPOSAL, including the fixed fee, if warranted.

If the consultant is unable to complete the work within the number of calendar days or the calendar date required by the agreement, the *[City of Lander]* may authorize a schedule modification after receiving the consultant’s written request showing sufficient justification for an extension in time to complete agreement required services. In some cases, the *[City of Lander]* may initiate the schedule modification, especially when the *[City of Lander]* has delayed progress. If the schedule modification is significant, the agreement will then be amended to specify an additional number of days or revised calendar date, and the *[City of Lander]* will document the approval action with a formal change order. Minor changes in schedule, without adjustment in agreement cost, can be accepted by the *[City of Lander]* with informal documentation.

All agreement modifications shall be forwarded to the WYDOT grant administrator for approval before execution.

Consultant work shall not begin on any change in services until the agreement modification describing those services and fee has been executed. Services performed without prior request and authorization are deemed to be covered in the compensation and time provided in the original agreement and previously executed change orders.

For those agreements processed consistent with SECTION IV(A) – Small Agreement – Estimated Cost at or less than the SAT, in no case will subsequent change orders be permitted to cause the total fee to exceed the SAT if federal funds are involved. Exceeding the SAT limitation may jeopardize federal participation in the change order or the entire agreement amount. If federal funds are not involved, the *[City of Lander]* should contact the WYDOT grant administrator, and they will review the circumstances and make a determination regarding escalation of the agreement above the SAT.

SECTION XIII. AGREEMENT ADMINISTRATION

The agreement for consultant services will identify the representative for the *[City of Lander]* as the primary contact through which the consultant will coordinate all phases of agreement work, terms and conditions. The *[City of Lander]* representative will:

1. Monitor the consultant’s work and acceptability of work, in compliance with the agreement.

- 2. Monitor the consultant’s work progress – work performed versus agreement completion date – in compliance with the agreement.
- 3. Ensure the consultant’s labor hours and fees are in accordance with the agreement and the percent of the contract total being invoiced is commensurate with the progress of the work.
- 4. Address consultant correspondence and resolve administrative issues.
- 5. Monitor the consultant and subconsultant(s) for compliance with ATTACHMENT 1 – FEDERAL GENERAL PROVISIONS, if required by the Agreement.
- 6. Administer breach of agreement, when required, consistent with procedures presented in ATTACHMENT 2 – BREACH OF AGREEMENT. Consult with the WYDOT grant administrator before initiating procedures leading to breach of agreement.
- 7. Close-out agreement when all work deliverables have been accepted and all consultant billings have been accepted.

The *[City of Lander]* will maintain a correspondence file for each consultant services agreement, documenting all aspects of the selection, negotiation, and administration processes. The *[City of Lander]* will retain such records for at least three (3) years following agreement completion or termination.

SECTION XIV. FINAL PERFORMANCE EVALUATION

When the consultant services specified in the agreement are completed and accepted, the *[City of Lander]* will evaluate the consultant’s performance. This evaluation should consider such factors as the consultant’s performance on specific elements of work, promptness in meeting schedules and deadlines, cooperation with the *[City of Lander]*, and overall performance in delivery of the agreement terms and conditions. Documentation will be prepared and provided to the consultant, and request consultant comments on the evaluation. Subsequently, a copy of the final evaluation documentation will be provided to the WYDOT grant administrator.

SECTION XV. ADMINISTRATION, COST PRINCIPLES, AUDIT REQUIREMENTS

The administrative policies and procedures of the *[City of Lander]* for the consultant selection process are presented throughout this document. The *[City of Lander]* is responsible for the oversight and administration of these policies and procedures. The WYDOT Internal Review Services program is responsible for the audit requirements.

References:

- 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Services.
- 23 USC 112(b)(2), Contracting for Engineering and Design Services.
- 40 USC 11, Sections 1101-1104, Selection of Architects and Engineers.
- 48 CFR 2.101, Federal Acquisition Regulations System, Definitions of Words and Terms, Definitions.

ATTACHMENT 1

FEDERAL GENERAL PROVISIONS

The below General Provisions shall also apply to all subconsultants engaged by the Consultant.

SECTION A. ASSUMPTION OF RISK

The Consultant shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Consultant’s failure to comply with state or federal requirements. The *[City of Lander]* shall notify the Consultant of any state or federal determination of noncompliance.

SECTION B. AUDITING AND ACCESS TO RECORDS

The *[City of Lander]* and its representatives shall have access to any books, documents, papers, electronic data, and records of the Consultant which are pertinent to this Agreement.

SECTION C. BREACH OF AGREEMENT

The Consultant agrees to provide all professional services as required by the terms, conditions, provisions, and obligations of this Agreement. Failure by the Consultant to perform as required by the terms, conditions, provisions, or obligations of this Agreement shall constitute a breach of contract. The *[City of Lander]* shall consider a Consultant’s failure to perform as a material breach of contract when it can be determined that the terms, conditions, provisions, or obligations of the Agreement will not be completed and the *[City of Lander]* will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. A material breach may result in remedies as the *[City of Lander]* deems appropriate, which may include, but are not limited to:

1. Termination as provided in SECTION T – TERMINATION OF AGREEMENT;
2. Withholding monthly progress payments;
3. Assessing damages/sanctions;
4. Disqualifying the Consultant from future solicitations; and/or
5. Legal remedy.

SECTION D. CERTIFICATION FOR LIMITATIONS ON LOBBYING ACTIVITIES

This provision is applicable to all Agreements exceeding One Hundred Thousand dollars (\$100,000). By signing this Agreement, the Consultant certifies and agrees that, to the best of their knowledge:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION E. COMPLIANCE WITH LAWS

The Consultant shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

SECTION F. CONFLICTS OF INTEREST

1. The Consultant shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which may result in a disadvantage to the *[City of Lander]* or a disclosure which may adversely affect the interests of the *[City of Lander]*. This provision does not prohibit or affect the Consultant's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
2. A conflict of interest may be considered a material breach of this Agreement. A material breach under this section may result in remedies as provided in SECTION C – BREACH OF AGREEMENT. In the event the Agreement is terminated under this provision, the Consultant shall take steps to insure that the file, evidence, evaluation and data are provided to the *[City of Lander]* or its

designee.

3. The Consultant shall notify the *[City of Lander]* of any potential or actual conflicts of interest, including financial or other personal interests, arising during the course of the Consultant's performance under this Agreement. This Agreement may be terminated in the event a conflict of interest arises. Termination of this Agreement will be subject to a mutual settlement of accounts. In the event this Agreement is terminated under this provision, the Consultant shall take steps to ensure that all files, evidence, evaluations, and data are provided to the *[City of Lander]* or its designee.

SECTION G. DETERMINATION OF ALLOWABLE COSTS

The Consultant shall assure, prior to submittal of periodic progress payments, that all costs are in accordance with federal cost principals as provided in 48 CFR 31. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION H. DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR 26 in all subconsultant contract documents.

Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION I. ENVIRONMENTAL POLICY ACTS

The Consultant agrees all activities under this Agreement shall comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

SECTION J. ERRORS AND OMISSIONS

The Consultant shall be responsible for assuring that professional services provided under this Agreement are accurate and without mistakes or omissions. The Consultant shall endeavor to perform services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The *[City of Lander]* shall notify the Consultant at the earliest possible time of the professional services which require corrective action and the Consultant, by mutual agreement with the *[City of*

Lander] and without additional compensation, shall correct those services. Failure by the Consultant to carry out these requirements may be considered, in the sole discretion of the *[City of Lander]*, a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION K. HUMAN TRAFFICKING

As required by 22 USC 7104(g), 2 CFR 175, and 48 CFR 52.222-50 (Amended March 2015), severe forms of human trafficking, procurement of commercial sex acts, and the use of forced labor are prohibited. The March 2015 amendments expand the original requirements and introduce a list of specific types of conduct that are prohibited. The amendments modify mandatory disclosure obligations and specify the minimum level of cooperation required of consultants responding to a trafficking investigation. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION L. KICKBACKS

The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Consultant breaches or violates this warranty, the *[City of Lander]* may, at its discretion, terminate this Agreement without liability to the *[City of Lander]*, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

SECTION M. MANDATORY DISCLOSURES

The Consultant shall disclose, in a timely manner, in writing, to the *[City of Lander]* all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award. Failure to make required disclosures can result in remedies for non-compliance including suspension or debarment.

SECTION N. MONITORING ACTIVITIES

The *[City of Lander]* shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its subconsultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the Agreement-related work.

SECTION O. OWNERSHIP AND RETURN OF DOCUMENTS AND INFORMATION

The *[City of Lander]* is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Consultant in the performance of this Agreement. Upon termination of services, for any reason, the Consultant agrees to return all such original and derivative information and documents to the *[City of Lander]* in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers.

SECTION P. PATENT OR COPYRIGHT PROTECTION, AND RIGHTS IN DATA

The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Consultant or its subconsultants shall violate any such restriction. The Consultant shall defend and indemnify the *[City of Lander]* for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Copyrighting or other exclusions placed on any documents or materials developed by the Consultant, its sublets, agents or assigns under this Agreement are prohibited.

Data produced, furnished, acquired, or used in meeting the terms and conditions of this Agreement shall be available to the *[City of Lander]*, WYDOT and/or the federal funding agency with unlimited rights. Data means all recorded information, regardless of form, to include both technical – scientific or technical nature - and computer software information. It does not include information related to administration of the Agreement such as financial, cost or pricing, or management information. Unlimited rights means that the *[City of Lander]*, State or federal agency has the right to use, disclose, reproduce, and distribute the data in any manner and for any purpose, and to permit others to also have unlimited rights. Meanings and uses described in this SECTION P are superseded and/or supplemented by 48 CFR 52.227-14.

SECTION Q. PROFESSIONAL REGISTRATION

The Consultant shall endorse, if required by law, plans and reports prepared under this Agreement, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the State of Wyoming.

SECTION R. PUBLICITY

Any publicity given to the projects, program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Consultant and related to the services and

work to be performed under this Agreement, shall identify the *[City of Lander]*, WYDOT and the federal funding agency as the sponsoring agencies and shall not be released without prior written approval of the *[City of Lander]*.

SECTION S. SUSPENSION AND DEBARMENT

By signing this Agreement, the Consultant certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the disbarred, or otherwise ineligible, vendors list at www.sam.gov/portal/public/SAM/. Further, the Consultant agrees to notify the *[City of Lander]* by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement. Failure by the Consultant to carry out these requirements may be a material breach of this Agreement, which may result in remedies as provided in SECTION C – BREACH OF AGREEMENT.

SECTION T. TERMINATION OF AGREEMENT

The *[City of Lander]* may terminate all or part of the Agreement, without cause, upon thirty (30) days written notice. The Agreement may be terminated by the *[City of Lander]* immediately for cause if the *[City of Lander]* determines that the Consultant has failed to perform as required by the terms, conditions, provisions, or obligations of the Agreement – Termination for Cause or Breach – or the *[City of Lander]* determines that termination is in the public’s best interest – Termination on Public’s Behalf/Convenience. In either event, compensation shall be made to the Consultant based upon the progress of the work performed prior to termination.

Work performed shall be defined as the deliverables specified in the Agreement and accepted by the *[City of Lander]*, and not the labor hours billed. The ownership of the work completed or partially completed at the time of such termination or abandonment shall be retained by the *[City of Lander]*.

The *[City of Lander]* shall notify the Consultant, in writing, of Agreement termination.

SECTION U. TITLE VI ASSURANCES FOR NON-DISCRIMINATION

The Consultant agrees to comply with the requirements of the nondiscrimination clauses as described in the U.S. Department of Transportation (DOT) Order 1050.2.

(In addition to the Federal General Provisions listed above, additional provisions available from WYDOT shall be used in all consultant contracts which utilize Federal Transit Administration funding.)

ATTACHMENT 2

BREACH OF AGREEMENT
(Administrative Written Procedures)

Consultant agreements will incorporate Federal General Provisions regarding breach of agreement consistent with 23 CFR 172 and 2 CFR 200. These Regulations require written procedures to address contractual, legal, and administrative remedies including sanctions and penalties where consultants breach agreement terms, conditions, provisions, or obligations. For purposes of these written procedures, the Agreement terms, conditions, provisions, or obligations will be referred to as Agreement Services.

Numerous Federal General Provisions will be administered using these written procedures. For purposes of administering consultant agreements, breach of agreement may result when analyzing a consultant’s professional services under any of the following Federal General Provisions:

ATTACHMENT 1, FEDERAL GENERAL PROVISIONS

- SECTION C. BREACH OF AGREEMENT
- SECTION D. CERTIFICATION FOR LIMITATIONS ON LOBBYING ACTIVITIES
- SECTION F. CONFLICTS OF INTEREST
- SECTION G. DETERMINATION OF ALLOWABLE COSTS
- SECTION H. DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE
- SECTION J. ERRORS AND OMISSIONS
- SECTION K. HUMAN TRAFFICKING
- SECTION S. SUSPENSION AND DEBARMENT

The consultant’s responsibility to make prompt payment to subconsultants will be administered through these written procedures, as required by SECTION VI(C) – Consultant Payments and Retainage and the consultant agreement.

Contractual Remedy

Contractual remedy is provided when the above provisions are physically incorporated, or incorporated by reference, into an executed Agreement. Additionally, contractual remedy requires the physical incorporation of ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

Legal Remedy

Legal remedy is provided by the physical incorporation of ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION E – COMPLIANCE WITH LAWS and enforcement of the Agreement as governed by the laws of the State of Wyoming.

Administrative Procedures, Sanctions, and Penalties

[City of Lander] concerns with consultant performance and/or adherence to Agreement Services will most often be resolved through the coordination and resolution efforts as outline in SECTION XIII – AGREEMENT ADMINISTRATION of this document. The authorized representative/ primary contact of the *[City of Lander]* should document all administrative issues and subsequent resolutions, from start to completion of the Agreement.

There may be an occurrence when a cooperative and acceptable resolution cannot be reached between the *[City of Lander]* and the Consultant. At those occurrences, the *[City of Lander]* will typically make the determination that the Consultant has failed to perform Agreement-required acceptable work, has failed to progress in the performance of Agreement Services, or has not and will not comply with General Provisions. When that determination concludes that the Agreement Services cannot be completed and the *[City of Lander]* will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables, the threshold for a material breach of agreement has been reached and will invoke ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION C – BREACH OF AGREEMENT and the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

A *[City of Lander]* determination that the Consultant has failed to perform Agreement-required acceptable work, has failed to progress in the performance of Agreement Services, or has not and will not comply with General Provisions will need to be supported by the *[City of Lander]* documentation of monitoring activities as allowed by ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION N – MONITORING ACTIVITIES. Issues concerning the Consultant’s billing of allowable costs should be evaluated in accordance with ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION B – AUDITING AND ACCESS TO RECORDS.

The threshold for a material breach of agreement requires that the Consultant has failed to perform Agreement Services and that the *[City of Lander]* has or will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. Both represent a high threshold to assure an acceptable outcome and, as a result, the *[City of Lander]* representative through monitoring activities must identify and document unresolved issues early in the Agreement, before either the Consultant or the *[City of Lander]* has incurred substantial cost or time. All unresolved issues should be promptly addressed, either reaching resolution,

arriving at reasonable penalties/sanctions, or concluding breach of agreement with the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

Penalties and/or sanctions typically available to the *[City of Lander]* would be structured as 1) compensatory damages, 2) specific performance, or 3) termination.

Damages, based on additional cost or time incurred by the *[City of Lander]*, could be quantified and pursued. Damages, based on lost opportunity incurred by the *[City of Lander]*, may be more difficult to quantify. Lost opportunity could include *[City of Lander]* delays in the delivery of supplemental work or successor agreements for work, or delay in the year of project construction and the related increased construction costs. Other lost opportunities may be identified and quantified.

Specific performance would require the Consultant to pursue Agreement Services, with adjustment to allowable costs. Specific performance would be used as a remedy, either prior to or for breach of agreement, if the work required by the Agreement required special expertise, is an emergency, or is only available from a single or restricted number of firms. In those cases, damages would not suffice to place the *[City of Lander]* in as good a position as it would have been had the breach not occurred.

Termination of the Agreement is presented in ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT. The *[City of Lander]* may terminate the Agreement, and either pursue restitution or not pursue restitution. Restitution, as a remedy, means that the *[City of Lander]* is put back in the position it was in prior to the breach; without restitution, the Agreement is terminated with both the Consultant and the *[City of Lander]* no longer under any Agreement obligation.

Signature

Date

IDENTIFICATION OF TITLE VI / EEO COORDINATOR

Funding Recipient/Contractor Name:	City of Lander
WYDOT Project #:	CD21510 Gannett Peak cost overruns
Project Location:	Lander, WY
Phone #:	307-332-2870 x2

TITLE VI/EEO IDENTIFICATION REQUIREMENTS

Has the Title VI/EEO Coordinator attended the Local Public Agency training from the Wyoming Department of Transportation? <i>(Project Sponsor Only – Contractors need not respond)</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Has the Coordinator changed since the last submitted Identification form?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Is the Coordinator clearly identified within the organization as the individual who will process and/or notify required staff of Title VI/EEO identified issues?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

TITLE VI/EEO COORDINATOR IDENTIFICATION

As required in the Equal Employment Opportunity Special Provisions included in federally funded highway construction contracts/agreements, this form acts as official identification of the Title VI/EEO Coordinator (and/or update) to the Wyoming Department of Transportation and the U.S. Federal Highway Administration (FHWA).

The aforementioned Funding Recipient/Contractor understands that additional information regarding the Coordinator, the Title VI/EEO policy and other aspects of the construction contract compliance program may be requested and/or reviewed at the request of the funding agency.

Title VI/EEO Coordinator: Rachelle Fontaine	Signature:	Date:
Title VI/EEO Coordinator Work Title: Lander City Clerk	Email Address: rfontaine@landerwyoming.org	Phone #: 307-332-2870

APPOINTING OFFICIAL'S ACKNOWLEDGEMENT

Appointing Official's Name: Monte Richardson	Signature:
Appointing Official's Work Title: Mayor	Date:

For questions regarding this form, contact WYDOT's Office of Civil Rights Program Manager, Lisa Fresquez at 307.777.4457 or lisa.fresquez@wyo.gov.