

GENERAL ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") for the performance of professional consulting and engineering services is executed and made effective as of June 8, 2021 between the City of Grand Island – PLATTE GENERATING STATION, a City Government formed under the laws of the State of Nebraska, ("Owner") and SARGENT & LUNDY, L.L.C., an Illinois limited liability company, ("Engineer").

IN CONSIDERATION of the covenants hereinafter set forth, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

- 1.1. Engineer shall perform professional consulting and/or engineering services (the "Services") for compensation as specified in the Owner's Specifications for Generation Study – Engineering Services set forth in Exhibit B and the Engineer's proposal dated April 29, 2021 set forth in Exhibit C, which describe the scope of Services, the compensation, schedule and deliverables for the Services. In the event Owner uses a purchase order form or other similar Owner generated document to administer this Agreement, the use of such form shall be for convenience purposes only, and any typed provision in conflict with the terms of this Agreement and all preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.

2. COMPENSATION AND TERMS OF PAYMENT

- 2.1 Engineer shall provide the Services on a time-and-material basis in accordance with the hourly billing rates set forth in Exhibit A. If Engineer modifies these billing rates, Engineer will notify Owner in writing. Updated billing rates shall be provided for subsequent calendar years. Included in the billing rates are salary and wage-related expenses such as sick and personal leave; vacation and holiday pay; home office overtime premium; health and retirement benefits; group life and Workers' Compensation Insurance premiums; and federal, state and local payroll taxes imposed on employers such as FICA, excise and unemployment taxes. Not included in the billing rates are state gross receipts, compensating, sale(s), excise, and other similar taxes and any non-U.S. taxes (including withholding requirements), duties, fees, tariffs, etc. which, if applicable, shall be reimbursed by or payable by the Owner. Also included in the rates are general office overhead expenses such as rent, light, stationery and supplies, the salaries and wages of certain personnel while engaged in the internal administration of Engineer, and profit.
- 2.2 Traveling expenses, including transportation, room, board, and other similar expenses will be invoiced at actual cost.
- 2.3 Services of subcontractors and outside consultants will be invoiced at actual cost plus ten percent (10%) for handling.

- 2.4 Invoices will be submitted monthly as the Services progress or in accordance with a mutually agreed payment schedule, as appropriate. Payments shall be due within thirty (30) calendar days of receipt of an invoice. In the event of a dispute regarding any invoice, the undisputed amounts will be paid and Engineer will be notified, in writing, of the amount(s) in dispute and the basis of the dispute within such thirty (30) calendar day period.
- 2.5 Engineer shall have the right, at its sole option, to suspend or terminate the Services, either in whole or in part, in the event that any undisputed amounts are not paid within forty-five (45) calendar days of receipt of an invoice. Further, Owner shall waive any claim against Engineer and agrees to indemnify, defend and hold Engineer harmless from and against any claims arising from such suspension or termination. Additionally, a finance charge shall be assessed on the unpaid balance for each day of a month that any undisputed amount remains unpaid beyond thirty (30) calendar days, using the prime rate for the last day of the prior month as reported in the Wall Street Journal, plus 5%. For example, if the published rate is 7%, the daily interest rate used for the following month will be $(7\% + 5\%)/360 = 0.0333\%$.

3. **GENERAL TERMS AND CONDITIONS**

- 3.1. Engineer's sole obligation and Owner's exclusive remedy for any failure to perform its Services in accordance with generally accepted engineering practices, whether in tort or in contract, shall be to reperform those non-conforming Services so long as such failure is reported in writing to Engineer within thirty (30) calendar days following the discovery thereof, but in no event later than one (1) year from the date on which such Services were performed. After said one (1) year, Engineer shall have no remaining obligation to reperform any service or otherwise compensate Owner.
- 3.2. Engineer's review and/or translation and conversion of information, interface and documents prepared or provided by others shall in no way serve to transfer to Engineer the responsibility for the correctness and/or accuracy of the work performed by others. Further, Engineer shall have no liability for defects in the Services attributable to Engineer's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by Owner or third parties retained by, or working with, Owner.
- 3.3. Engineer shall endeavor to prepare cost estimates, project time schedules, reports, or any other deliverable as accurately as possible based on current information and experience. It is expressly acknowledged that information and data provided by others, which may constitute the basis for these deliverables, has not been independently verified by Engineer. In addition, Owner acknowledges that the cost estimates, project schedules, reports, or any other deliverable generated by Engineer are time sensitive and changes in the underlying data, applicable codes, standards, and acceptable engineering

practices, as well as the passage of time, may affect the accuracy of the deliverables provided to Owner.

- 3.4. Neither party shall be liable for any fault or delay caused by any contingency beyond such party's control such as wars, acts of terrorism, strikes, walkouts, fires, pandemics, natural calamities, or demands or requirements of governmental agencies.
- 3.5. It is the desire of the parties to keep changes in the scope of Services at a minimum, but the parties recognize that such changes may become necessary and agree that they shall be handled as follows: Owner may initiate a change by advising Engineer in writing of the change believed to be necessary. Engineer shall prepare and forward to Owner a cost estimate of the change which shall include the adjustment to the total compensation and schedule applicable thereto. Owner shall advise Engineer in writing of its approval or disapproval of the change. If Owner approves the change, Engineer shall perform the Services as changed. Engineer may initiate changes by advising Owner in writing that in Engineer's opinion a change is necessary. If Owner agrees, it shall advise Engineer and, thereafter, the change shall be handled as if initiated by Owner.
- 3.6. This Agreement will be governed by and interpreted in accordance with the laws of the State of Nebraska, without regard to its choice of law provisions. The words and phrases of this Agreement shall be given their ordinary English meaning. The laws of the State of Nebraska govern all matters arising out of or relating to this Agreement. In an effort to resolve any conflicts relating to this Agreement or that arise during any phase of or following completion of the Services, Owner and Engineer agree to negotiate in good faith in reaching an equitable agreement. If a satisfactory agreement is not reached between the executives of both Parties after a reasonable time period (not to exceed sixty (60) calendar days after the date on which one Party notifies the other Party in writing of the dispute), Owner and Engineer agree that any dispute may be submitted to litigation for final resolution, unless the Parties mutually agree otherwise. Any Party bringing a legal action or proceeding against the other Party arising out of or relating to this Agreement submits to the exclusive jurisdiction of and shall bring the legal action or proceeding in the United States District Court for the State of Nebraska or in any court of the State of Nebraska.
- 3.7. Engineer may have portions of the Services performed by its affiliated entities (or their employees) or submit invoices from such affiliates, in which event Engineer shall be responsible for such Services and Owner shall look solely to Engineer as if the Services were performed by Engineer.
- 3.8. This Agreement may be terminated for the convenience of either party at any time by providing thirty (30) days prior written notice.
- 3.9. Notwithstanding anything to the contrary, in no event shall Engineer at any time be liable for special, incidental, punitive or consequential damages, including, but not limited to, loss of profits, loss of revenue, loss of use, loss of capital, claims of

customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, and arising from any cause whatsoever by reason of the Services rendered under this Agreement.

- 3.10. Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.
- 3.11. This Agreement gives no rights or benefits to anyone other than Owner and Engineer and does not create any third party beneficiaries to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY OF GRAND ISLAND

SARGENT & LUNDY, L.L.C.

By: Roger G. Steele

By: [Signature]

Name: Roger G. Steele

Name: Sang H. Gang

Title: Mayor

Title: Vice President

Date: July 1, 2021

Date: June 28, 2021

Stacy R. Jonhof
Interim City Attorney

EXHIBIT A

Sargent & Lundy Consulting Rates

Hourly Billing Rates by Category

City of Grand Island

Effective for The Calendar Year 2021

Classification	Billing Rate (US\$)
Director / Principal Consultant	204.00
Senior Consultant	191.00
Consultant	182.00

1. The above rates include computer and reprographics usage charges as well as miscellaneous charges, such as telephone, special mailings, etc.
2. Travel charges are not included in the above rates and will be billed at actual cost.
3. Billing rates are considered to be proprietary to Sargent & Lundy. Please treat them as confidential.
4. Billing Classifications include one or more Sargent & Lundy position categories that are typically grouped under a classification on the basis of similarities in position function, experience factors, and/or wage levels. Acceptance of this schedule includes the rates shown, the period of time for which they are effective, and the combination of individual position categories that comprise each classification.
5. Select subcontractors may be invoiced at the Sargent & Lundy billing rate equivalent to their experience or at cost plus 10%.
6. The rates are for calendar year 2021 and will be revised annually.

EXHIBIT B

Owner's Specifications for Generation Study – Engineering Services