

**Civil Design Consultants, Inc.**  
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

Project: Dakota Ridge waterline replacement

CLIENT: Dakota Ridge Homeowner's Association

ENGINEER: Civil Design Consultants, Inc  
2145 Resort Drive, Suite 100  
Steamboat Springs, CO 80487  
Tel (970) 879-3022  
Fax (970) 879-3028

CLIENT requests and authorizes **Civil Design Consultants, Inc.**, (herein also referred to as CDC) to perform the professional services presented in the Proposal dated March 18, 2015, a copy of which becomes a part of this Agreement by reference.

CLIENT agrees to pay for the authorized services on a time and material basis per CDC's most current rate sheet and /or as follows:

Professional services covered by this Agreement will be performed in accordance with the CONDITIONS OF AGREEMENT stated herein and any attachments hereto.

CLIENT Approval:

Accepted for:  
**Civil Design Consultants, Inc.**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## CONDITIONS OF AGREEMENT

### 1. Authorization to Proceed

This Agreement shall become binding, subject to the terms and conditions herein; when accepted by written or verbal acknowledgement, commencement of the requested work, furnishing of any requested documents, payments for services by Client or acceptance of payment by CDC.

### 2. Standard of Care

The standard of care applicable to CDC's services will be the same degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. CDC will correct those services not meeting such a standard without additional compensation. CDC makes no warranty, express or implied, as to the professional services rendered under this Agreement.

### 3. Opinions of Probable Construction Costs

In providing estimates of probable construction costs, the Client understands that CDC has no control over the cost or availability of labor, materials or equipment, the contractor's method of determining prices or over market conditions, and that CDC's estimates of probable construction costs are made on the basis of CDC's professional judgment and experience. CDC makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from CDC's estimates of probable construction costs.

### 4. Limitation of Liability

In recognition of the relative risks and benefits of the Project to both the Client and CDC, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of CDC and CDC's officers, directors, employees, shareholders and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of CDC and CDC's officers, directors, employees, shareholders and subconsultants shall not exceed \$100,000. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

### 5. Interpretation

This Agreement shall be construed and enforced in accordance with the law of Colorado.

## 6. No Third Party Beneficiaries

This Agreement gives no rights to benefits to anyone other than the CLIENT and CDC and has no third party beneficiaries.

## 7. CDC's Personnel at Construction Site

The presence or duties of CDC's personnel at a construction site, whether as an on-site representative for construction observation or otherwise, do not make CDC or its personnel in any way responsible for those duties that belong to the CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entities of their obligations, duties and responsibilities including, but not limited to all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work and any health or safety precautions required by such construction work. CDC and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety programs or procedures and have not been retained to correct or report on health or safety deficiencies of the construction contractor or other entity or any other persons at the site. Client agrees that the General Contractor shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in Client's contract with the General Contractor. Client also agrees the General Contractor shall defend and indemnify the Client, CDC and CDC's subconsultants. Client also agrees that Client, CDC and CDC's subconsultants shall be made additional insureds under the General Contractor's policies of general liability insurance.

CDC shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and CDC, in order to observe the progress and quality of the work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow CDC to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Construction Documents.

CDC shall not be responsible for any acts or omissions of the Contractor, any subcontractor, any entity performing portions of the work or any agents or employees of any of them. CDC does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Construction Documents or any applicable laws, codes, rules or regulations.

## 8. Payments to CDC

CDC will issue monthly invoices for all work performed under this Agreement; Invoices are due and payable upon receipt. If CLIENT fails to make any payment due CDC for services and expenses within thirty days of the date of CDC's invoice,

thereafter the amounts due CDC will be increased at the rate of 1½ % per month from said thirtieth day, and in addition, CDC may, after giving notice to CLIENT, suspend services under this Agreement until CDC has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest then to principal. If the Client fails to make payments when due and CDC incurs any costs in order to collect overdue sums from Client, Client agrees that all such collection costs incurred shall immediately become due and payable to CDC. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable CDC staff costs at standard billing rates for CDC's time spent in efforts to collect.

#### 9. Rate Sheet

A copy of CDC's most current rate sheet is attached hereto when payment is based on a time and material basis. The rate sheet is adjusted from time to time.

#### 10. CLIENT's Responsibilities

CLIENT shall provide all criteria and full information as to CLIENT's requirements for the project; designate a person to act with authority on CLIENT's behalf in respect of all aspects of the project; examine and respond promptly to CDC's submissions; and give prompt written notice to CDC whenever CLIENT observes or otherwise becomes aware of any defect in the work.

#### 11. Planning Review Process

Due to the subjective nature of the planning process and the specific goals and desires of the CLIENT, it is understood that the services provided by CDC do not in any way imply or guaranty that an approval by the planning authority(s) will be received.

#### 12. Construction Phase Services

If CDC is not authorized to provide construction phase services, or is authorized to provide only limited services; it is understood that the CLIENT assumes all responsibility for interpretation of the Contract Documents, interpretation of conditions unforeseen during the design phase but uncovered during the construction phase, and construction observation of work phases not specifically included in CDC's scope of services. The CLIENT agrees that CDC shall have no liability for construction that differs from the final Contract Documents unless CDC has approved such changes in writing; any such unauthorized modifications shall be at the sole responsibility of the CLIENT. In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless CDC its officers, directors, employees and subconsultants (collectively CDC) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other parties and from any loss, damage, claim, liability, or cost arising from such

modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of CDC.

### 13. Ownership of Instruments of Service

All reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by CDC are instruments of service and shall remain the property of CDC. CDC shall retain all common law, statutory and other reserved rights, including the copyright thereto.

### 14. Consequential Damages

To the fullest extent permitted by law, neither the CLIENT nor the CDC, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred for any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the CLIENT and CDC shall require similar waivers of consequential damages protecting all entities or persons named herein in all contracts and subcontracts with others involved in this project.

### 15. Corporate Protection

It is intended by the parties to this Agreement that CDC's services in connection with the Project shall not subject CDC's individual employees, officers, or directors to any personal legal exposure for the risks associated with the Project. Therefore, and notwithstanding anything to the contrary contained herein, the CLIENT agrees that the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted against Civil Design Consultants, Inc., a Colorado Corporation, and not against any of CDC's individual employees, officers, or directors.

### 16. Defects in Service

The CLIENT shall promptly report to CDC any defects or suspected defects in CDC's services of which the Client becomes aware, so that CDC may take measures to minimize the consequences of such a defect. The CLIENT further agrees to impose a similar notification requirement on all contractors in its CLIENT/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Should liability for the defects exist, failure by the CLIENT and the CLIENT'S Contractors or subcontractors to notify CDC shall relieve CDC of the costs to remedy the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

## 17. Mediation

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and CDC agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation.

The Client and CDC further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

## 18. Hazardous Materials Indemnity

The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless CDC, its officers, employees and subconsultants (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in anyway connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.

## 19. Assignment

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by CDC as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

## 20. Right of Entry

Unless otherwise agreed upon, the CLIENT shall secure and provide for CDC and CDC's subconsultants (collectively CDC) right to enter the property owned by CLIENT and/or by others in order for CDC to fulfill the Scope of Services generally identified in this Agreement. The CLIENT understands that use of testing and other equipment, and fulfillment of construction activities, may unavoidably cause damage, the correction or restoration of which by CDC is not part of this Agreement.

The CLIENT, agrees, that to the fullest extent of the law, to indemnify and hold CDC harmless from any claim, liability or cost (including reasonable attorney fees

and costs of defense) for injury or loss arising or allegedly arising from procedures associated with completion of work associated with this Agreement.