

## CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is entered as of May 8, 2017 by and between Black Hills/Colorado Electric Utility Company, LP with its principal place of business located at 625 Ninth Street, Rapid City, SD 57701 ("Owner") and Accion Group LLC with its principal place of business located at 244 N Main Street, Concord, NH 03301 a Corporation organized in the state of New Hampshire ("Consultant").

It is agreed by and between Owner and Consultant as follows:

### 1. SCOPE OF SERVICE.

- 1.1 Statement of Services. This Agreement is for Independent Evaluator services for Owner 2017 Renewable RFP. Consultant shall perform consulting services in accordance with the written Statement of Services attached hereto as Exhibit 1 ("Services").
- 1.2 Consultant's Responsibilities. Consultant shall, subject to the terms and conditions of this Agreement:
  - 1.2.1 Furnish the services of all necessary consultants and other personnel necessary for the performance of the Services; and
  - 1.2.2 Appoint an individual who is authorized to act on behalf of Consultant and with whom Owner may consult at all reasonable times, and whose instructions, requests, and decisions are binding upon Consultant as to all matters pertaining to this Agreement and the performance of the parties hereunder. Consultant's representative for this Agreement is Harry Judd. The contact information for Consultant's representative is 603-229-1644, hjudd@acciongroup.com.
- 1.3 Owner's Responsibilities. Owner shall, subject to the terms and conditions of this Agreement:
  - 1.3.1 Provide Consultant with information necessary for the completion of the Services; and
  - 1.3.2 Appoint an individual who is authorized to act on behalf of Owner, with whom Consultant may consult at all reasonable times, and whose instructions, requests, and decisions are binding upon Owner as to all matters pertaining to this Agreement and the performance of the parties hereunder. Owner's representative for this Agreement is Lisa Seaman. The contact information for Owner's representative is Lisa.Seaman@blackhillscorp.com, (605) 721-2278. Owner's administrative representative is Tom Schoenhard. The Administrative Representative's contact information is 721 Mountain View Road, Rapid City, SD 57702, tom.schoenhard@blackhillscorp.com, 605-721-4258. With the exception of invoices, all original administrative correspondence, including, but not limited to lien releases, tax licenses and insurance certificates must be sent to the administrative representative.

### 2. TERM.

- 2.1 Term. The term of this Agreement shall begin on May 8, 2017 and shall end on December 31, 2018, unless terminated earlier in a manner provided herein.
- 2.2 Scheduled Completion. Consultant shall commence the Services upon execution of this Agreement and use all reasonable efforts to prosecute the Services continuously and with

due diligence. When Consultant has completed the Services, it must notify Owner in writing. All time limits set forth in this Agreement and the Statement of the Services are of the essence of the Agreement.

### **3. PAYMENT AND INVOICING.**

- 3.1 Fee. Owner shall pay Consultant for the satisfactory performance of the Services, subject to additions and deductions allowed by Change Orders, on a time and material basis in accordance with the rates set forth in Exhibit 1 ("Fee"). Tax is not included in the rates set forth in Exhibit 1. A minimum amount of compensation is not guaranteed.
- 3.2 Invoices. Invoices shall be sent to Owner at [APhelpdesk@blackhillscorp.com](mailto:APhelpdesk@blackhillscorp.com) or,

**Accounts Payable**  
**MSC: 50507**  
Black Hills/Colorado Electric Utility Company, LP  
**PO Box 8106**  
**Rapid City, SD 57709-8106**

Invoices shall: (a) be accompanied by all supporting documentation; (b) reference the Agreement number (37309) set forth above and any applicable Change Order number; and (c) identify the applicable taxes as a line item or indicate that state and local taxes are not included in the invoice amount.

Payment of undisputed invoices shall be made within thirty (30) days of Owner's receipt of an undisputed invoice for Services performed and completed during the calendar month prior to invoicing. No payment by Owner constitutes approval or acceptance of any portion of the Services, nor does such payment relieve Consultant from any responsibility or obligation under this Agreement or constitute a waiver of any claim arising hereunder.

- 3.3 Withholding. Owner is entitled to withhold all or any part of a payment due as a result of the failure of Consultant to perform the Services pursuant to the terms and conditions of this Agreement and for unsubstantiated or unsupported amounts invoiced by Consultant. When payment is withheld for any of the grounds set forth in this Section 3.3, such payment will be made when such grounds have been removed.

### **4. STANDARD OF CARE AND REPRESENTATIONS.**

- 4.1 Standard of Care. Consultant shall perform the Services in accordance with the standards of care and diligence normally practiced by recognized consulting firms and professionals in performing services of a similar nature in existence at the time of performance of the Services ("Standard of Care"). All Services not conforming to the Standard of Care shall be considered defective.
- 4.2 Correction. If, following completion of the Services, it is shown there is an error in the Services caused by Consultant's failure to meet the Standard of Care, Consultant shall correct, at no additional cost to Owner, such Services so that the Services conform to the Standard of Care.
- 4.3 Intellectual Property. Consultant represents and warrants that the Services and any portion thereof does not infringe any patent, copyright, trademark, trade secret, or other

intellectual property right. Consultant represents and warrants that it has the right to grant Owner a nonexclusive irrevocable sublicense to use proprietary technical information, including software when applicable, owned or legally obtained by Consultant in the operation of Owner's business operations. Royalties and fees for intellectual property rights covering methods, systems, materials, articles, apparatus, devices, goods, software, or processes incorporated into or used in conjunction with the Services are included in the Fee.

- 4.4 Consultant's Representations. Consultant represents that Consultant: (a) is financially capable of fulfilling all of its obligations under this Agreement and that there are no legal or administrative proceedings pending or threatened against it that could adversely affect its performance and that Consultant is not prohibited by any arrangements or any document or obligation from entering into or performing this Agreement; (b) is fully experienced and properly qualified, organized and equipped to perform the Services; and (c) is cognizant of and shall comply with all quality requirements of the Statement of Services.

## 5. SUSPENSION.

- 5.1 Suspension Without Cause. Owner may, at any time, and without invalidating the provisions of the Agreement, suspend and reinstate the performance of the Services, in whole or in part, upon written notice to Consultant. Suspension of Services does not automatically entitle Consultant to additional compensation; however, Consultant is entitled to reimbursement for reasonable real and unavoidable direct costs incurred as a result of suspension and reinstatement.
- 5.2 Suspension With Cause. If the Services are defective, Consultant fails to supply sufficient skilled consultants and necessary assistants or fails to perform the Services in such a way that conforms to the Agreement, or fails to maintain compliance with any Owner-required pre-qualification program, Owner may order Consultant to stop the Services or any portion thereof until the cause for such suspension in Services has been eliminated. Owner's right to stop the Services pursuant to this provision is in addition to any other remedies Owner may have. Consultant is not entitled to any reimbursement of costs or an adjustment of the Fee due to suspensions ordered by Owner pursuant to this Section 5.2.

## 6. TERMINATION.

- 6.1 Termination Without Cause. Owner may, at any time and at its sole discretion, terminate this Agreement in whole or in part and for its convenience, by giving Consultant ten (10) days written notice specifying the extent to which this Agreement is terminated and the effective date of such termination. Upon receipt of notice, Consultant shall immediately discontinue performance of the Services under this Agreement to the extent that the notice so specifies but continue to perform any portion of the Services not terminated.

Subject to Consultant's compliance with the provisions of this Section 6.1 and other applicable portions of this Agreement, Consultant is entitled, as complete, full, and final settlement, to a sum equal to its actual direct cost for the terminated Services satisfactorily performed as of the effective date of termination and an allowance for reasonable overhead and profit on such direct cost. In no event will Consultant be entitled to any prospective, anticipated, or lost profits or any damages of any type with respect to the terminated portion of the Services. Payment of the compensation specified

under this Section 6.1 is the sole and exclusive liability of Owner and the sole and exclusive remedy of Consultant with respect to termination of this Agreement pursuant to this Section 6.1.

- 6.2 Termination for Cause. Owner may terminate this Agreement, without prejudice to any right or remedy, if Consultant files for bankruptcy, makes a general assignment for the benefit of its creditors or has a receiver appointed on account of its insolvency. Owner may also terminate this Agreement, without prejudice to any right or remedy, if Consultant fails to maintain compliance with any Owner-required pre-qualification program, or Consultant defaults in the performance of any other obligation under this Agreement and Consultant does not cure its default in performance within a period of seven (7) days after Consultant's receipt of such a written notice of default from Owner. Consultant is not entitled to reimbursement of costs, lost profit or any adjustment of the Fee due to termination ordered by Owner pursuant to this Section 6.2.

## 7. INDEMNIFICATION.

- 7.1 Indemnification. Each party ("Indemnifying Party") will indemnify, hold harmless and defend the other party and its officers, affiliates, directors, shareholders, agents, employees, and representatives ("Indemnified Party") from all claims, liabilities, fines, interest, costs, expenses and damages (including reasonable attorneys' fees) incurred by the Indemnified Party for any damage, injury, death, loss or destruction of any kind to persons or property to the extent the damage, injury, death, loss or destruction arises out of any act or omission of the Indemnifying Party or any of its servants, representatives, agents, employees or subcontractors.
- 7.2 Intellectual Property. Consultant agrees to defend, indemnify, and hold harmless Owner and its affiliates, directors, shareholders, agents, employees, and representatives from and against any claim, loss, damage, expense, or liability (including attorneys' fees), arising from any claim or legal action based on a claim that the Services or any portion thereof infringes any patent, copyright, trademark, or other intellectual property right, or constitutes an unauthorized disclosure of any trade secret.
- 7.3 Miscellaneous. Whenever any suit or other proceeding which involves any matter for which the indemnification provisions of this Section 7 are applicable, the Indemnifying Party shall, upon receipt of timely notice of the institution of such suit or other proceedings, assume the defense thereof and defend the same at its own expense and shall pay any and all costs, charges, attorneys' fees and other expenses and any and all judgments that may be incurred by or obtained against the Indemnified Party in such suits or other proceedings, and if any judgment or other lien is placed upon or obtained against the property of the Indemnified Party as a result of such suits or other proceedings, the Indemnifying Party shall at once cause the same to be released and discharged by giving bond or otherwise.
- 7.4 Concurrent Negligence. In the event the damage, injury, death, loss or destruction is caused by the joint or concurrent negligence of Owner and Consultant, the loss shall be borne by each party in proportion to its negligence.
- 7.5 Survival. The indemnification obligation herein survives completion of the Services or termination of this Agreement.

**8. INSURANCE.**

Consultant shall at all times maintain insurance with such coverage which is reasonable within Consultant's industry and to the satisfaction of Owner including, but not limited to, Commercial General Liability insurance with Contractual Liability and Products and Completed Operations coverage, Workers' Compensation coverage and Employers' Liability coverage in compliance with all applicable laws. Upon request, Consultant shall provide evidence of such coverage to Owner. If Consultant provides Services on Owner's property or the property of Owner's customers, Consultant shall satisfy the insurance requirements set forth in Exhibit 3.

**9. TAXES.**

9.1 Sales Tax, Gross Receipt, Use and Contractor's Excise Tax. Consultant shall obtain all necessary tax licenses for all jurisdictions where Services are performed, and is responsible for and shall pay all sales, gross receipts, use and contractor's excise tax and any other tax imposed by any authority having jurisdiction arising out of the performance of the Services. Consultant's invoices shall show the aforementioned taxes as a separate line item.

9.2 Other Taxes. Consultant is solely responsible for and shall properly account for and pay all taxes levied on wages and /or salaries paid to Consultant's employees, including, without limitation, unemployment insurance, social security taxes, withholding taxes or any other taxes or royalties related to the Services and all taxes based upon net income of the Consultant's business, imposed by any applicable authority pursuant to the legal requirements of any governmental entities.

**10. MODIFICATIONS.**

10.1 Change Orders. The Services to be performed by Consultant cannot be modified without a written Change Order prepared by Owner, using the form attached as Exhibit 2, signed by both Owner and Consultant. Change Orders must:

10.1.1 list in detail any change in the Services;

10.1.2 specify any increase or decrease in the amount to be paid by Owner to the Consultant because of such change; and

10.1.3 identify any extension of the Term of this Agreement.

Owner, without invalidating the Agreement, may at any time by giving Consultant reasonable notice, order minor changes in the Services. Minor changes to the Services consist only of such changes which are within the general scope of the Agreement and which do not alter the Fee and the Term.

In the absence of a Change Order signed by Owner, Consultant is not entitled to any increase in the Fee with respect to any such additional Services performed or to any extension of the Term.

**11. DELAYS.**

11.1 Force Majeure. If Consultant is delayed at any time in the progress of the Services by any causes or events beyond the reasonable control of, and without any fault or negligence of Consultant, including acts of God and severe actions of the elements such as floods, earthquakes, hurricanes, tornadoes and severe weather conditions, terrorism,

war, fire, or explosion, then the time for performance may be extended by a Change Order for such a reasonable period of time as Owner may determine. Economic hardship is not considered a provision for force majeure under the Agreement and is specifically excluded.

- 11.2 Notice of Delay or Potential Delay. Consultant shall give Owner notice in writing of any delay or potential delay within three (3) days after the occurrence of the event giving rise to the delay or the potential delay. The notice shall include a description and cause of the delay or the potential delay and the actions Consultant is undertaking to remediate or avoid the delay. Consultant shall use reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event excusing performance.

## **12. SUPPLIER DIVERSITY AND REPORTING REQUIREMENTS.**

Consultant must report to Owner Consultant's current business size status and classification (as defined by the Small Business Administration ("SBA") at [www.sba.gov](http://www.sba.gov) prior to execution of the Agreement and upon a change in size status or classification.

Owner will notify Consultant if Consultant will be subject to certain federal acquisition regulations ("FARs") concerning small business concerns during the performance of the Agreement. In that event, Consultant agrees to comply with, and to perform the Services in accordance with such FARs. If Consultant is subject to FARs, and Consultant engages subcontractors under this Agreement, Consultant will perform any subcontracting under this Agreement in compliance with FAR 52.219-8, Utilization of Small Business Concerns. Further, if Consultant will receive in excess of \$650,000 (\$1,500,000 in the case of construction contracts) under this Agreement, and Consultant is not a Small Business Concern (as defined by the SBA), Consultant must adopt a subcontracting plan that complies with the requirements of FAR 52.219-9.

Additional subcontracting plan information is available at <http://esrs.gov>. All FARs referenced in this Section 12 are available electronically at <http://acquisition.gov/far>, and will be made available to Consultant upon request.

## **13. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.**

Owner is an equal opportunity/affirmative action employer. Consultant shall not discriminate during the performance of this Agreement on the basis of race, color, religion, sex, national origin or any other status protected by applicable law and agrees to comply with the requirements of Executive Order 11246. The parties hereby incorporate the requirements of 41 CFR 60-1.4(a) and 29 CFR Part 471, Appendix A to Subpart A, if applicable.

**This Owner and Consultant shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

All applicable aforementioned laws and regulations are incorporated herein by this reference. Consultant agrees to execute and deliver such documents as may be required to effect or to evidence compliance with the aforementioned laws and regulations.

## **14. CODE OF CONDUCT.**

Consultant shall comply with Owner's "Supplier Code of Conduct" which is available at <http://www.blackhillscorp.com/work-us/suppliers-contractors/supplier-code-conduct> and incorporated herein by this reference.

**15. DISPUTE RESOLUTION.**

The parties will attempt, in good faith, to resolve all disputes under this Agreement in accordance with this Section 15.

Any and all disputes, controversies or claims between the parties to this Agreement, if not settled within twenty (20) days following written notice of such dispute, shall be referred to senior management of the parties for resolution. In the event that the dispute has not been resolved within thirty (30) days following referral to senior management, or such longer period as the parties may agree, either party may initiate formal proceedings against the other party.

Notwithstanding the foregoing, a party may initiate formal proceedings with regard to any dispute, controversy or claim: (i) in order to avoid the expiration of any applicable statute of limitations period; (ii) with respect to which injunctive relief is available under this Agreement; or (iii) which is the subject of, or related to, a pending lawsuit or arbitration to which either Owner or Consultant is a party and under which Owner or Consultant brings a third-party action or cross-claim against the other party.

**16. PERFORMANCE OF SERVICES.**

16.1 Independent Contractor. Consultant is an independent contractor and this Agreement cannot be construed to provide for or create a partnership, joint venture, joint undertaking, or employer/employee relationship between the parties hereto.

16.2 Nonexclusive and Nonspecific. This Agreement is nonexclusive and nonspecific. Owner may retain the Services of other consultants for this and similar work and Consultant may perform services for others.

16.3 Removal of Personnel. Owner may require Consultant to remove individual personnel from providing Services to Owner for any lawful reason. Owner is not obligated to pay for Services provided by the removed personnel following Owner's written notice of removal.

16.4 Rights to Work Product.

16.4.1 Except as otherwise provided herein, all documents which Consultant prepares and delivers to Owner pursuant to this Agreement become the property of Owner upon delivery.

16.4.2 Consultant hereby grants to Owner an irrevocable, nonexclusive, royalty-free license for use of intellectual work product solely in connection with the operation, maintenance, repair, or alteration of Owner's facilities or business operations, with respect to any proprietary information incorporated into the Services by Consultant, its employees or agents during the course of the Services.

16.5 Confidentiality.

16.5.1 Consultant covenants and agrees that, during the term of this Agreement and for a period of three (3) years thereafter, it will not, without the prior written

permission of Owner, use, disclose, or permit to be disclosed, or, in the case of documents, reproduce or permit to be reproduced to any person or entity any Confidential Information acquired from or given by Owner to Consultant in the course of carrying out Services under this Agreement.

- 16.5.2 For the purpose of this Section 16.5, "Confidential Information" includes any designs, drawings, plans, calculations, formulae, techniques and/or trade secrets or like information and any other written information, data, correspondence or other tangible materials disclosed orally, electronically or in any other intangible form, by Owner. Confidential Information includes all information as described herein, whether or not it is marked "Confidential" or "Proprietary".
- 16.5.3 All Confidential Information disclosed by Owner remains the property of Owner and, upon request of Owner, will be returned at termination or upon the expiration of the Term of this Agreement. Confidential Information must be used by Consultant strictly for the performance of this Agreement and for no other purpose.
- 16.5.4 Consultant's confidentiality obligation hereunder does not extend to information which: (a) is already public or becomes available to the public through no fault of Consultant; (b) was in the possession of Consultant prior to receipt from Owner; or (c) Consultant can demonstrate that such information was independently developed by Consultant without reference to Owner's information.
- 16.5.5 If compelled by a requirement of a government agency, a court, or by law or discovery to disclose any Confidential Information, Consultant shall make reasonable efforts to resist disclosure and shall notify Owner in writing prior to making any disclosure in order to provide Owner a reasonable opportunity to either waive any objection to such disclosure or request a remedy from the appropriate authority. Consultant shall reasonably cooperate with Owner in its efforts to obtain such a remedy. If Owner waives its objections or is unsuccessful in its request for a remedy or fails to make such a request, Consultant will only furnish that portion of the Confidential Information that is legally required.
- 16.5.6 Consultant acknowledges the importance of protecting the security and confidentiality of Owner's non-public customer information in accordance with the customer privacy laws, including but not limited to the Gramm Leach Bliley Act and related Federal Trade Commission regulations. Consultant represents and warrants to Owner that it has proper policies and procedures in place to: (a) insure the security and confidentiality of customer information, (b) protect against any anticipated threats or hazards to the security or integrity of such information, and (c) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Owner's customers. Consultant shall implement and maintain necessary administrative, technical and physical safeguards to insure the security and confidentiality of customer information. Consultant further agrees to indemnify and hold Owner harmless against any liabilities and expenses resulting from its failure to properly safeguard the security and confidentiality of the customer information.

- 16.6 Limitation of Damages. Having considered the risks and potential liabilities that may arise out of the Services, the benefits of the Services and in specific consideration of the promises contained in this Agreement and other valuable consideration receipt of which is acknowledged, Owner and Consultant agree that, with the exception of third party claims, neither Owner nor Consultant is liable to each other for any special, consequential, incidental, indirect, punitive or exemplary damages in any way arising



from or related to the performance of this Agreement.

- 16.7 Audit and Maintenance of Records. Owner may audit and inspect Consultant's records and accounts covering direct costs hereunder at all reasonable times during the performance of the Services and for a period of one (1) year after the completion of the Services.
- 16.8 Subcontracts. Consultant may only subcontract Services to subcontractors approved by Owner. Subcontractors shall perform Services pursuant to the terms and conditions of this Agreement and in no case shall Owner's approval of any subcontract relieve Consultant of any of its obligations under this Agreement.
- 16.9 Network Access. When Consultant is on-site, Consultant shall not physically connect any electronic device to Owner's corporate network. Consultant may connect to Owner's guest wireless network (where available) to access the internet.
- Any electronic device with portable storage used to upgrade software, setup or troubleshoot Owner's equipment shall be scanned or inspected and approved by Owner prior to connecting to Owner's equipment. Consultant shall use commercially reasonable efforts to minimize connections made to Owner's equipment. Any electronic device connected to Owner's equipment shall be free of any virus or malware.
- 16.10 Sending / Receiving Data. Consultant agrees that for all engagements that require transfer of Confidential Information or Personally Identifiable Information ("Data"), Owner will prepare the Data and approve the files that Owner will send to Consultant. Consultant will not utilize any other process to extract Data from Owner's environment other than through an Owner approved process. If through some failure in the process or practice, Consultant obtains unprepared Data in Consultant's environment, Consultant shall immediately purge such information and notify Owner about the incident.
- 16.11 Data Breach. A data breach is an incident in which there is unauthorized access to Owner Data ("Data Breach"). Upon confirmation of a Data Breach, Consultant shall notify Owner of any Data Breaches as soon as practicable, but no later than forty-eight (48) hours after Consultant becomes aware of a Data Breach by e-mailing Owner with a read receipt at [Security@blackhillscorp.com](mailto:Security@blackhillscorp.com).

Consultant shall take reasonable steps to immediately remedy any Data Breach and prevent any further Data Breach at Consultant's expense in accordance with applicable privacy rights, laws, regulations and standards. In addition to the foregoing, Consultant shall provide Owner with any assistance necessary to comply with any state and federal laws requiring the provision of notice of any privacy incident or security breach with respect to any Personally Identifiable Information to the affected or impacted individuals and organizations, in addition to any notification to applicable state and federal agencies.

## **17. ENVIRONMENTAL.**

- 17.1 Environmental Compliance: Consultant shall observe and comply with all federal, state and local environmental laws, rules, regulations, policies, and orders.
- 17.2 Hazard Communication (SDS): Consultant will supply the Technical Representative with a Safety Data Sheet (SDS) for any substance to be used during the performance of the

Services. These chemicals include, but are not limited to, those classified as a health hazard or physical hazard under federal or state environmental laws.

A chemical health hazard is defined as any chemical for which there is statistically significant evidence that acute or chronic health effects may occur in exposed employees. Chemicals covered by this definition include carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents that act on the hematopoietic system, and agents that damage the lungs, skin, eyes, or mucous membranes.

A physical hazard is defined as a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive.

In addition, Consultant shall provide the Technical Representative with a list of the maximum quantities of such substances which will be used in the Services. Consultant represents that all personnel involved in performing the Services shall be properly trained and experienced in the use, handling and cleanup of the hazardous substances used.

- 17.3 Labeling: All hazardous chemicals, substances and/or petroleum brought onto the project site or hazardous waste, waste oil, or used oil generated during the performance of the Services shall be plainly and properly labeled.
- 17.4 Spills and Release: Consultant shall immediately notify the Technical Representative in the event of a spill, leak or other intended or unintended release of any chemical, petroleum product or other hazardous substance occurring at the project site or during the course of performing the Services.
- 17.5 Waste Removal: Consultant shall remove all hazardous waste, waste material, or refuse generated by Consultant while performing Services at the project site. The removal, transport, and disposal will be in compliance with all applicable laws and regulations. Consultant will pay all costs associated with removal and disposal unless otherwise agreed upon in writing.
- 17.6 Hazardous Materials Transport: If Consultant is transporting hazardous materials as defined by the regulations of the U.S. Department of Transportation (DOT) from Owner's property, they shall comply with the applicable provisions in 49 CFR Parts 171-180, including but not limited to labeling, packaging, shipping papers, placarding, and hazmat employee training.
- 17.7 Discharge of Process/Treated/Waste Water Prohibited: Consultant shall not discharge process, treated, or waste water off the project site. Consultant may discharge process, treated, or waste water into Owner's water treatment systems upon prior written approval from the Technical Representative. A water analysis may be required to assess water quality. Consultant will pay all costs associated with the removal and disposal of process, treated, or waste water unless otherwise agreed upon in writing. Storm water may be discharged but only in compliance with applicable site-specific or general National Pollutant Discharge Elimination System (NPDES) Permits.

## 18. MISCELLANEOUS.

- 18.1 Governing Law and Jurisdiction. This Agreement shall be governed by, and construed in

accordance with, the laws of the state of Colorado, without regard to conflicts of law principles. Consultant hereby consents and submits to the personal jurisdiction and exclusive venue of the state and federal courts sitting in the state of Colorado.

- 18.2 Assignment. The Agreement is personal to Consultant. Consultant may not assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of Owner. After notice to Consultant, Owner may assign this Agreement to an affiliate or subsidiary without the consent of Consultant.
- 18.3 Third Party Beneficiaries. Except as expressly provided herein, these provisions are for the benefit of the parties hereto and not for any other third party.
- 18.4 Severability and Entire Agreement. The invalidity in whole or in any part of this Agreement shall not affect the validity of the remainder of the Agreement. This written Agreement represents the complete Agreement of the parties. Commercial terms and conditions incorporated into Consultant's invoices are of no effect. It is understood and agreed that the written terms and provisions of the Agreement supersedes all oral statements of representatives of the Owner, and oral statements shall not be effective or be construed as being a part of the Agreement.
- 18.5 Notices. All notices under this Agreement must be in writing, identified by the Agreement number and title and sent by certified mail, return receipt requested, by overnight mail, by facsimile with proof of transmission to or by hand-delivery to the following:
- |   |   |
|---|---|
| Black Hills/Colorado Electric Utility<br>Company, LP<br>Attn: Contracts Manager<br>721 Mountain View Road<br>Rapid City SD 57702<br>Phone: 605-721-2630<br>Email:<br>Brad.Bond@blackhillscorp.com | Accion Group LLC<br>Attn: Harry Judd<br><br>244 N Main Street<br>Concord NH 03301<br>Phone: 603-2291644<br>Email: hjudd@acciongroup.com |
|---|---|
- or to such other addresses or facsimile numbers as either party shall notify the other of in writing.
- 18.6 Nonwaiver. The failure of Owner to insist upon or enforce, in any instance, strict performance by Consultant of any of the terms of this Agreement or to exercise any rights herein conferred cannot be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.
- 18.7 Amendments. No alteration or amendment of this Agreement is valid unless the same is made in accordance with a Change Order or by an instrument in writing signed by Owner and Consultant. No alteration or amendment of a specific section or paragraph of this Agreement may be construed to alter or amend any other provisions of the Agreement unless expressly so stated in such written instrument.
- 18.8 Counterparts. This Agreement may be signed in any number of counterparts and by signatures transmitted electronically, each of which are deemed an original and which together constitute one and the same instrument.

Agreement No. 37309

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

**OWNER:**

Brad Bond  
(signature)

Brad Bond  
(name printed)

Contracts & Sourcing mgr.  
(title)

5-8-17  
(date)

**CONSULTANT:**

Harold T. Tudd  
(signature)

Harold T. Tudd  
(name printed)

President  
(title)

5/8/2017  
(date)

## **EXHIBIT 1**

### **STATEMENT OF SERVICES**

A. **Terms:** Accion Group, LLC (“Consultant”), Black Hills Colorado Electric Utility Company, LP (“Owner”) Independent Evaluator (“IE”), and the Colorado Public Utility Commission (“CPUC”).

B. **Requested Services:**

#### **I. EVALUATION PROCESS**

##### **Bid Screening Process**

Consultant expects the Owner and IE will review the weightings proposed for cost and non-cost components of the Owner evaluation methodology, with the expectation that a model employed by Owner in the prior RFPs will be deployed. It is possible for the RFP to be designed so that a determination is first made as to whether a bidder is qualified to participate, and if so all bids can be ranked by price. These are determinations that will be established after the IE is selected.

##### **Bid Selection Process: Overview**

The IE will review Owner’s ranking of bids. The ranking will include, presumably, credit worthiness of the bidder, established ability to meet the supply commitment, price, and system impact costs, including reliability. Deploying the on-line bid form can eliminate non-conforming bids, but it will still be appropriate for the IE to review all bids eliminated from consideration by Owner.

It will be appropriate to meet with Owner to review the initial and final short list determinations, and to review the determination to eliminate bids. Once that review is completed, the IE will work with Owner to produce a review that will be shared with the Commission. The report will review the RFP process, review the evaluation and selection process employed by Owner, the Staff and IE reaction to the process and final determinations, and recommendations for improvements.

Our consultants’ hands-on experience with utility operation will be essential during this process, as will be our ability to simplify the modeling analysis to assure all parties involved that the evaluation was not a “black box”, but based on appropriate criteria.

Consultant will audit the Owner’s evaluation process and validate that the evaluation criteria, methods, models, and other solicitation processes are consistently applied to all bids, as approved by the Commission. Our consultants will also verify that assumptions, inputs, outputs, and results are appropriate and reasonable.

Non-price comparisons can be significant, especially with renewable resources. Key issues that Consultant’s consultants will examine include how to: assess transmission system upgrades; account for capital cost and fuel price risk to consumers; account for different environmental attributes of coal and natural gas bids; and account for balance sheet impacts of purchase power.

Listed below are the tasks that our consultants will undertake to ensure a consistent and fair evaluation process:

- *Review evaluation processes and procedures*
- *Assign system upgrades and benefits*
- *Establish bid receipt procedures*
- *Review and test models*
- *Review assumptions and data sets*
- *Evaluate criteria used and criteria weightings*
- *Define bid security issues*
- *Test evaluation processes*
- *Monitor bid receipts*
- *Evaluate bid qualification and cure procedures*
- *Independent review all bids selected*
- *Review operational factors and economic factors*
- *Review cost presentation*
- *Monitor and evaluate bid evaluation processes and results*
- *Monitor bid selection processes and decisions*
- *Monitor negotiations with bidders as directed and necessary by a contract oversight process developed jointly by Consultant and Owner.*
- *Review the total cost impact of selected bids*
- *Review final bid selection*

#### **Bid Selection Process: Specific**

Consultant will provide an independent review of the evaluation methodology and bid rankings performed by Owner. Typically, Consultant reviews multiple expansion plans that simulate the different technologies, Total Present Value, Revenue Requirements that include the energy payment for the new resource. As in prior engagements with Owner, Consultant expects to review:

- **Initial Model Construction and Expansion Plans:**
  - General review and validation will be performed on the simulations for the entire planning horizon. Generic expansion plans will be constructed for technology classes expected in the RFP.
  - Scoring worksheets will be developed including both price and non-price components. The non-price template will be derived substantially from the non-financial worksheet used in the prior RFP.
  - Term and size normalization, as well as any other tuning of the evaluation, will be documented.
- **Mock Bids:**
  - Consultant will develop 6-10 mock bids in conjunction with Owner to test both price and non-price scoring. The mock bids will include anticipated technology and general locations expected to bid. Consultant consultants will draw from their knowledge of the Black Hill's system needs and generation

portfolio when developing mock bids.

- Evaluation:
  - Consultant will review the evaluation modeling and ranking performed by Owner. Total present value revenue requirements will be reviewed for the system, with each bid as the marginal unit.
  - Portfolio Analysis: multiple portfolios will be constructed if individual projects do not provide the optimal solution. These portfolios will be defined working with Owner and the results will be reviewed by Consultant.
- Non-Price Evaluation:
  - Consultant will provide an independent cursory non-price evaluation including development experience, credit evaluation, equipment review, schedule viability, and PPA mark-up. Consultant expects that Owner will perform its own non-price evaluation and will work with Owner to ensure that their non-price scoring is comprehensive and fair.

## II. FINAL/POST-RFP PROCESS

### Independent Evaluator Report

Following the solicitation process, Consultant will prepare a comprehensive report that documents the Owner's adherence to procurement procedures and protocols. Our IE report will include details of Consultant's review of the bid scoring and evaluation results, a detailed assessment of the RFP and the bid selection process, descriptions of the roles and responsibilities of involved parties, and observations, conclusions, and recommendations regarding the RFP process and results.

Owner, the CPUC and the IE will agree upon the scope of the final report. Typically, Consultant final reports include the following:

- *Owner's conduct of the RFPs and the Owner's bid selection process;*
- *The scoring of bids, the basis for ranking, selecting, and rejecting bids, and whether selected bids minimize long-term costs;*
- *The results of Owner's evaluation compared to the results obtained by Consultant ;*
- *The fairness of the RFP process, and whether screening factors and weightings were applied equitably and consistently to bids;*
- *Credit and risk management terms and conditions, their application to evaluated bids, and their impact on the RFP outcome;*
- *The extent to which required data was available and accessible to potential bidders, and any impact that the unavailability of data may have had on the outcome of Owner's RFPs;*
- *The level of cooperation provided by Owner to Consultant regarding access to information, personnel, and models used in the evaluation of bids;*
- *Public participation in the development and conduct of the RFP;*
- *The process by which issues were resolved and confidentiality was*

*maintained;*

- *Owner's overall compliance with the Commission's rules and regulations;*
- *To the extent that a conflict of interest is identified, the Closing Report will discuss the nature and consequence of the conflict;*
- *Review of assumptions, and data sets;*
- *Evaluation of criteria used and criteria weightings;*
- *Definition of bid security issues, including confidentiality, physical security, access, and records retention;*
- *Review of the existence mock bids, and advise Commission Staff on bid-specific evaluation issues;*
- *Review of operational factors, including reliability, dispatch ability, transmission benefits, and maintenance;*
- *Review of economic factors, including cost and security;*
- *Review of other factors, including environmental impacts and compliance issues, counter-part risk profiles, and regulatory risk; and*
- *Review of the total cost impact of selected bids.*

## **II. CONSULTANT WEB-BASED PLATFORM**

The Consultant solicitation website permits Consultant to simultaneously serve as IE on multiple solicitations in different jurisdictions. Our ability to receive all information, and therefore evaluate bids, electronically permits us to perform evaluations from our offices. This approach avoids unnecessary travel and associated expenses by Consultant, and saves time for the client. The platform also permits us to quickly identify differences among bids, and to provide preliminary rankings when bid forms are built to strictly define acceptable products and terms. This ability to sort and rank bids can be used to concentrate in-depth evaluation efforts on the most attractive bids, which can both shorten the review process and control the investment of personnel. Our process is also used to produce a contract for each of the selected bids.

### **CONSULTANT WEBSITE - OVERVIEW**

Consultant offers the most sophisticated procurement website available to commissions and utilities. Our procurement website's capabilities will provide Owner with a comprehensive management platform for its bidding processes, while also providing complete security for confidential documents and anonymity for bidders. Our procurement website structure will facilitate exchanges with interested parties before the bid date, manage bidder conference presentations, and handle bids and post-bid exchanges. In addition to managing the bidding process, our website platform will serve as a permanent record of Owner's two solicitations, for use by the Owner and for review by regulators. If desired by Owner, a 100% paperless, entirely electronic bidding process can be custom-built to Owner's RFP requirements, allowing for the Owner's immediate review of proposal contents once online applications are completed.

The benefits of an online application process include automatic collection and



organization of all proposal data upon submission, and the ability to run one-click Microsoft Excel reports that compare and rank any criteria specified by Owner.

Consultant -managed solicitation websites are structured on our proprietary procurement technology, which has proven itself through past engagements. This website technology was successfully employed in Consultant's prior engagements for RFPs in Arizona, Georgia, California, Colorado, Florida, Hawaii, New Hampshire and Oregon. The website structure can be tailored to the unique considerations of Owner's All-Source RFP, and Consultant will work directly with Owner and Staff to ensure the development and execution of the desired evaluation methodology and criteria.

All of our procurement websites are built on the same underlying principles:

**All bidders have 24/7 access to the same information at the same time**

Bidders are required to use the website for access to all information, including documents provided by the utility and answers to questions posed by bidders. All solicitation information is date-stamped when posted, and all RFP documents and data can be accessed at any time, 24/7.

**Confidential communication between Owner and bidders**

Bidders may anonymously post questions (visible to all users) and comments that are confidential. Potential bidders registering with the site are provided confidential bid folders for each bid, and for the retention and exchange of bid-specific data. Confidential evaluation folders are also provided for the retention of data from the Owner Evaluation Team, for use during regulatory review.

**Comprehensive records of website activity**

Every Log-on to the website, every access to website material, and every announcement, question, or document posted is recorded. This creates a complete and permanent record of the solicitation for use by the utility or for review by regulators. Records include, but are not limited to, Exchange with Interested Parties before the Bid Date, Bidder Conference Presentation, Bids, and Post-Bid Exchange. Access Logs contain information on Successful and Failed Log-On Attempts and track User, Date, Time, IP Address, Pages Visited, Documents Posted, and Site Content Edits. All of these records are date-stamped. These records detail bidder activity and how the utility conducted the solicitation in the event the utility is challenged regarding the fairness of the procurement process.

**Public communication**

An announcement board is provided for posting Information to the general public and to bidders, and a calendar is provided to post events scheduled for the RFP. Registered users can elect to be automatically notified by email when documents, announcements, or calendar events are posted.

**Handling of multiple RFPs simultaneously**

Multiple procurements can be run simultaneously on the website. User access can be limited to one RFP, or access to specific RFPs can be determined during registration.

**Secure platform for uploading sensitive documents and data**

Consultant's procurement website is a secure platform that allows bidders to directly upload documents, by-passing the need to transmit data over unsecured email servers. To the extent permitted under the state RFP rules, Owner will have the ability to upload materials directly to the Site, thereby avoiding delay and the possibility for misdirection of sensitive Information. Thanks to Consultant's secure solicitation platform, Owner personnel will have secure, 24/7 access to data from any place with Internet access.

**Limited demand on Owner's personnel**

Managing a solicitation requires the dedication of personnel. Our procurement website facilitates anonymous Exchange between personnel and bidders. As a result, a more efficient and secure process is created, as Owner personnel are not fielding numerous telephone calls or email requests. Since all transactions and communications are logged in the website records, claims alleging that Information or correspondence was not shared with the bidders are avoided. Additionally, since the website can easily be used to receive data as uploaded documents, as previously done for Owner, the quantity of printing and filing required is limited.

**Customized Site tailored to Owner's needs**

Consultant's solicitation website platform is entirely customizable to meet Owner's individual needs, including the ability to accept online applications in place of traditional paper proposals. Consultant provides two customized options for a paperless Bid process:

- I. Proposal materials can be uploaded to secure folders, accessible only to the proposing entity, Owner, and the Independent Evaluator. This paperless bidding method was successfully employed in Owner's previous RFP solicitation website, built by Consultant's team.
- II. A standardized application can be used to solicit proposals, where all bidders are required to complete an online application with the details of their proposal. Consultant's online application allows all desired proposal data to be consistently organized and collected in real-time. When a bidder completes an application, the details of their proposal can be automatically organized and made available for review to Owner. Only one click is required for Owner to create Microsoft Excel reports that compare and rank any application data (for example, capacity, location, maximum energy output, cost proposal, or technology).

Opting for an online application for Owner's procurement processes also allows Owner to restrict data to any desired parameters; the application can be designed to only accept data for certain technologies, locations, sizes, or any other desired criteria.

Consultant will execute the procurement website's design and coding, using Owner-provided graphics and file system criteria. If desired by Owner, direct access to the procurement website and RFP materials can be provided through a link on Owner's

main website. Consultant also provides domain name registration, web hosting, a 128 MB security certificate, and comprehensive website support services. Data is stored, and backups are performed twice daily, on a secure server in a climate- controlled, locked and guarded facility.

### **Site Mapping**

The online application includes advanced features not possible with a traditional bid document. For example, bidders have the ability to precisely locate their site on a simple point and click map. Consultant's site location tool is invaluable in collecting straightforward, accurate site location data, saving the Owner many hours of work by accurately determining site locations. Administrators can see each site's location on the map, and view information about that site with one click.

### **Message Board**

A secure and confidential Message Board is provided for exchanges between Owner and individual bidders. This creates a complete record, in one place, of exchanges. This is a great time saver and avoids trying to maintain telephone or email logs.

## **I. COST SECTION**

This cost proposal recognizes the different phases and responsibilities between the RFP Monitor and the Independent Evaluator. In this section we estimate those services separately.

Consultant standard services rate schedule will be applicable for both engagements.

### **HOURLY RATES FOR EACH INDIVIDUAL ASSIGNED TO THE PROJECT**

NAME	CLASSIFICATION	HOURL
Harold Judd	Project Manager	\$350
F. Harris Burpee,	Vice President	\$175
Kevin Carden	Senior Financial Analyst	\$275
Nick	Consultant	\$275
Marcus Jackson	Senior Engineer	\$295
Philip Layfield	Senior Transmission	\$295
Sheri Vincent-	Consultant/ Researcher	\$125
Jeremiah King	Designer/ Researcher	\$95

### **INDEPENDENT EVALUATOR SERVICES**

We estimate that the total for Services and Expenses will not exceed **\$180,000**. The following tables provide detail on Consultant's cost estimate.

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Total IE Services			
Task A		Task B	
Hours	\$	Hours	\$
60	21,000	68	23,800
20	5,900	32	9,440
40	11,000	136	37,400
40	3,800	40	3,800
160	41,700	276	74,440
	<b>Total</b>		<b>\$116,140</b>

UNDERLYING DETAILS FOR CONSULTANT COST PROPOSAL									
		A1		A2		A3		Total	
Category	\$/hour	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Director	350	24	8,400	4	1,400	32	11,200	60	21,000
Senior Consultant	295	4	1,180	0	0	16	4,720	20	5,900
Consultant	275	4	1,100	4	1,100	32	8,800	40	11,000
Technicians	95	0	0	0	0	40	3,800	40	3,800
<b>Total</b>		<b>32</b>	<b>10,680</b>	<b>8</b>	<b>2,500</b>	<b>120</b>	<b>28,520</b>	<b>160</b>	<b>41,700</b>

Tasks:

- A1. Develop RFP Design and Documents
- A2. Bidders' Conference. Manage Bidder inquiries.
- A3. IE Reports.

UNDERLYING DETAILS FOR CONSULTANT COST PROPOSAL									
		B1		B2		B3		Total	
Category	\$/hour	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Director	350	24	8,400	8	2,800	0	0	32	11,200
Senior Consultant	295	16	4,720	0	0	0	0	16	4,720
Consultant	275	16	4,400	8	2,200	0	0	24	6,600
Researcher	95	0	0	0	0	8	760	8	760
<b>Total</b>		<b>56</b>	<b>17,520</b>	<b>16</b>	<b>5,000</b>	<b>8</b>	<b>760</b>	<b>80</b>	<b>23,280</b>

Tasks:

- B 1. Confer with Owner, including review of engineering and transmission specifications and Staff
- B 2. Additional meetings, including meeting with interested parties, regulators, and Owner personnel
- B 3. Establish Communications Protocols

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UNDERLYING DETAILS FOR CONSULTANT COST PROPOSAL									
		B4		B5		B6		Total	
Category	\$/hour	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Director	350	0	0	0	0	4	1,400	4	1,400
Senior Consultant	295	0	0	0	0	0	0	0	0
Consultant	275	0	0	0	0	0	0	0	0
Researcher	95	8	760	0	0	24	2,280	32	3,040
Total		8	760	0	0	28	3,680	36	4,440

Tasks:

B 4. Evaluate Codes of Conduct Compliance

B 5. Model Development and Expansion Plans to be provided by Owner

B 6. Manage Bidder information Process

UNDERLYING DETAILS FOR ACCION COST PROPOSAL											
		B7		B8		B9		B10		Total	
Category	\$/hour	Hours	\$	Hours	\$	Hours	\$	Hours	\$	Hours	\$
Director	350	4	1,400	8	2,800	4	1,400	16	22,400	32	11,200
Senior Consultant	295	0	0	8	2,360	8	2,360	0	0	16	4,720
Consultant	275	32	8,800	40	11,000	32	8,800	8	70,400	112	30,800
Researcher	95	0	0	0	0	0	0	0	0	0	0
Total		36	10,200	56	16,160	44	12,560	24	92,800	160	46,720

Tasks:

B 7. Mock Bids

B 8. Evaluation of Bids

B 9. Non-Price Evaluation

B 10. Address issues for Regulators

**CONSTULTANT WEBSITE:**

<b>CONSULTANT PROCUREMENT WEB SITE COST PROPOSAL</b>			
<b>Activity</b>	<b>Unit Price</b>	<b>Months</b>	<b>Total</b>
Monthly Hosting	\$500	12	\$6,000
Website design and customization	\$30,000	1	\$30,000
Monthly support service charge: 12 hours/month. Services exceeding this amount to be provided at the rate of \$150/hour.	\$1,800	12	\$21,600
<b>Subtotal</b>			<b>\$57,600</b>

**EXPENSES:**

<b>Expenses</b>	
<b>Supplies</b>	\$10
<b>Other Direct Costs</b>	\$50
<b>Transportation</b>	\$3,000
<b>Lodging</b>	\$1,800
<b>Meals</b>	\$1,000
<b>Miscellaneous</b> (rental cars, parking, etc.)	\$400
<b>Total</b>	<b>\$6,260</b>

**CATEGORIES OF EXPENSES EXPECTED TO BE INCURRED**

**1. Fees:** Fees are charged on an hourly basis. Consultant does not charge for travel time or secretarial services. Our standard rates used when preparing a proposal.

**2. Cost of Supplies:** Supplies procured at the request of the Owner are charged on an actual cost basis.

**3. Other Direct Costs:** We charge clients for printing and production costs at 10 cents per page. In the event that we must use outside services to copy or produce materials, these costs will be billed at actual charges incurred. We do not charge for faxes, Internet usage, or other overhead items. Telephone, postage, and express delivery charges are billed at cost.

**4. Transportation and Subsistence Costs:** Travel costs are charged at actual cost, with all discount rates passed on to the Owner and without additional overhead charges. Our policy is to purchase the lowest cost, non-stop/direct tickets available for all air travel. Use of personal vehicles is charged at the authorized IRS rate. Rental cars are typically mid-size. We estimate the cost of lodging and meals based on rates available during November 2016. Consultant employs the meals and costs standards established by the Commission if applicable.

**5. Completion of Services:** If project is completed earlier than stated term, Owner will not be responsible for any recurring monthly charges.

**B. Commencement Date:** 5-8-2017

**C. Completion Date:** 12-31-2018

**D. Service Fee: Time and Materials Not to Exceed.**

Owner shall pay Consultant for the satisfactory performance of the Services, subject to additions and deductions allowed by Change Orders, on a time and material not to exceed basis in

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accordance with the attached rates ("Fee"). Tax is not included in the attached rates. A minimum amount of compensation is not guaranteed.

IE Services	\$116,180
Web Site Costs	\$57,600
Expenses	\$6,260
<b>Total</b>	<b>\$180,000.00</b>

- E. This Statement of Services and the above-referenced Agreement constitute the complete understanding of the parties with respect to the Services specified herein.

*IN WITNESS WHEREOF*, the parties have executed this Statement of Services on the date(s) indicated below.

**OWNER**

Brad Bond  
(signature)

Brad Bond  
(name printed)

Contracts + Sourcing Mgr.  
(title)

5-8-17  
(date)

**CONSULTANT**

Harold T. Judd  
(signature)

Harold T. Judd  
(name printed)

President  
(title)

5/8/2017  
(date)

Agreement No. \_\_\_\_\_

## **EXHIBIT 2**

### **CHANGE ORDER**

**OWNER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**CONSULTANT:** \_\_\_\_\_

**CONTRACT NO.:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**CHANGE ORDER:** \_\_\_\_\_

<u>DESCRIPTION</u>	<u>AGREED AMOUNT</u>
--------------------	--------------------------

Original Contract Award Value: \_\_\_\_\_

Change Orders to Date: \_\_\_\_\_

Value of this Change Order: \_\_\_\_\_

Currently Approved Contract Amount: \_\_\_\_\_

<u>SCHEDULE IMPACT</u>
------------------------

Calendar Days Added to Term: \_\_\_\_\_

Calendar Days Deducted from Term: \_\_\_\_\_

Date of Completion of Services: \_\_\_\_\_

The Agreement, with any amendments to date, is hereby modified to the extent and in the manner described herein. By accepting this Change Order, Consultant acknowledges that it has taken into consideration the cumulative effect of this Change Order and all prior Change Orders and Consultant agrees that all incremental costs resulting therefrom are included in the pricing of this Change Order.

ACCEPTED BY CONSULTANT: \_\_\_\_\_ DATE \_\_\_\_\_

AUTHORIZED BY OWNER: \_\_\_\_\_ DATE \_\_\_\_\_



### **EXHIBIT 3**

1. Coverage. Consultant shall maintain at its sole cost and expense during the Term of this Agreement, with insurers satisfactory to Owner and licensed to do business in the jurisdiction where Services are to be performed, the minimum insurance coverage set forth in this Exhibit 3.
  - 1.1 Workers Compensation Insurance. Consultant shall maintain both workers compensation as required under any workers compensation or similar law in the jurisdiction where the Services are performed and Employers Liability insurance. Employers liability limits cannot be less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. If Wyoming is the jurisdiction where the Services are performed and Consultant's employees are subject to benefits under the Wyoming Safety and Workers Compensation Division, a "Stop Gap" endorsement to the Commercial General Liability policy is acceptable in lieu of Employers Liability Insurance.
  - 1.2 Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Completed Operations coverage is to extend for two (2) years following the last to occur of the following events: (i) termination of this Agreement; or (ii) termination of all outstanding Services.
  - 1.3 Professional Service Insurance. Consultant shall maintain professional services, errors and omissions liability coverage appropriate to the service being provided. Coverage must apply to economic damages resulting from a professional error, act, or omission arising out of the scope of services defined in this contract, irrespective of negligence. Coverage must be maintained in an amount of at least \$1,000,000 per occurrence and aggregate.
2. Policy Requirements. All policies, with the exception of workers' compensation insurance policies, shall name Owner, its affiliates, officers, directors, shareholders, agents, employees, and representatives as an additional insured and shall contain a severability of interest provision. All policies shall waive subrogation except per New Hampshire statute on worker's compensation. The insurance applies on a primary and non-contributory basis with respect to any other insurance or self-insurance available to Owner. Any deductibles or self-insured retentions carried by Consultant are the sole responsibility of Consultant.
3. Evidence of Insurance. Prior to the commencement of Services and upon any change in insurers or material change to policies, Consultant shall furnish Owner with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. Consultant shall deliver the certificate to the Administrative Representative.
4. Notice. Consultant shall provide a minimum of thirty (30) days advance written notice to Owner in the event of cancellation, material change or non-renewal of the policy.
5. Subcontractors. Consultant shall require all Subcontractors to furnish the same insurance as required of Consultant.