



Request for Proposal (RFP)

Development Consulting

July 11, 2025

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1.0 Proposal Information

Summary:

The transmission system along where the Midcontinent Independent System Operator (“MISO”) and Southwest Power Pool (“SPP”) Regional Transmission Operators (“RTO”) regions meet is at capacity. Big Stone South–Hankinson–Bison (“BSSHB”) will help optimize operations in this area, especially during extreme weather conditions. This is in keeping with the MISO Reliability Imperative.

Otter Tail Power Company (“OTP”), as a co-owner with Xcel Energy, intends to construct, own, and operate a 345-kV transmission line connecting the substations listed above. OTP and Xcel Energy are collectively referred to as the “Owners”. This document intends to describe the scope of work for the development phase only. A separate scope of work will be provided for the execution phase.

The project will provide benefits to customers of both RTOs as we work together to continue to provide a strong, stable electric grid. With two RTOs involved, necessary approvals and project updates will be carefully scrutinized.

This project is partly funded by Federal Grant dollars. This will trigger a National Environmental Protect Act (“NEPA”) Environmental Impact Statement (“EIS”), National Historic Preservation Act (“NHPA”) Section 106 review, Endangered Species Act Section 7 consultation, and potentially other obligations. Additional requirements and reporting regarding budget, costs and impact on communities and the environment will be required by both the Owners and all involved consultants. This includes specific grant compliance terms.

This Request for Proposal (“RFP”) is for the execution of work as described in Section 2.0 Scope of Work.

This RFP is requesting that the recipients of this RFP (each, a “Bidder”) respond in a manner as outlined below.

1.1 Notification, Due Date, and Owner’s Contacts

Bidder shall indicate their intent to bid by brief e-mail to mholmquist@otpc.com (cc: Sourcing@otpc.com) on or before: 5:00 p.m., CT July 25, 2025.

Proposal Due Date: 5:00 p.m., CT August 15, 2025.

Successful Bidder must be willing to enter into the Commercial Terms and Conditions set forth in Section 3.0 of this RFP. Any Purchase Orders and Agreements will be between selected Bidder and Owners.

Completed proposals and questions may be directed to:

Technical questions
George Vinson
gvinson@otpc.com
(218) 739-8738

CC: Nic Olson
(nolson@otpc.com)

Commercial questions
Matt Holmquist
mholmquist@otpc.com
(218) 739-8908

CC: Sourcing Department
(sourcing@otpc.com)

1.2 Disclaimer

The Owners have the right at any time to amend, supplement, or withdraw this RFP, for any reason or no reason, and to enter into discussions or interviews with any one or more bidders, or none. The Owners may, at their discretion and without limitation, refuse any and all proposals.

Issuance of this RFP does not imply that the Owners will be making an offer to do business with any RFP recipient. This RFP is not an offer or commitment and is not capable of being accepted to form a binding agreement. A contractual obligation would arise only if and when definitive agreements have been approved and executed by the appropriate parties having authority to enter into and approve such agreements.

1.3 Incurred costs

The Owners are not responsible for expenses related to the development, submission, or presentation of proposal responses or any follow-up responses.

1.4 Non-Disclosure

Bidder agrees to the terms of the RFP and all other information provided by the Owners in connection with the RFP is to be treated as strictly confidential and proprietary. These materials are to be used by Bidder solely for the purpose of responding to the RFP.

Access shall not be granted to third parties except upon Owners' prior written agreement of the intended third party to treat the materials as confidential.

All responses returned to the Owners shall be considered as confidential business information between the Bidder and Owners.

1.5 Non-Collusive Bidder Certification

By submitting a proposal, the Bidder certifies that; (a) the prices in its proposal have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other Bidder or with any competitor; (b) the prices quoted in its proposal have not been and will not be knowingly disclosed, directly or indirectly, by the Bidder to any other contractors

or competitors prior to the final date for submission of such bid; and (c) no attempt has or will be made by the Bidder to induce any other person, partnership or corporation to submit a proposal or not to submit a proposal (complementary or otherwise) for the purpose of restricting competition.

1.6 Right to Audit

Bidder shall maintain accurate and detailed records, in accordance with generally accepted accounting principles consistently applied, of all expenditures or costs relating to any work performed under any resulting agreement. The Owners shall have the right to inspect, examine, and make copies of any or all books, accounts, records, and other writings of Bidder relating to the performance or cost of any work done under any resulting agreement. These audit rights shall be extended to the Owners or to any representative designated by the Owners for two years after the termination of the agreement. Audits shall take place at times and locations mutually agreed upon by both parties, although Bidder must make the deliverables to be audited available within one (1) week of the request for them. Costs incurred in undertaking the audit will be borne by Owners. Any costs incurred by Bidder as a result of The Owners exercising their right to audit will be borne by Bidder.

1.7 Pricing

Bidder's proposal must be consistent with the framework and terms of the agreement attached as Appendix A to this RFP, including pricing, shall remain firm for a period of 120 days from the date that Owners receive the Bidder's proposal. Bidder shall submit a not to exceed price with firm unit rates that include all applicable taxes for the specified Scope of Work.

For these tasks above, Bidder will be compensated based on actual units used (per detailed rate sheet). It is the responsibility of the Bidder to pay tax on all goods and materials affixed to real property.

1.8 Qualifications

Each Bidder shall include, at a minimum, the following:

- List of the Bidder's and proposed subcontractors' past experiences in similar projects.
- Previous 3 Years Safety Records
- QA/QC Program Documentation
- Provide a listing of lead personnel (Exhibit K – Key Personnel) to be involved in this project. Include resumes or other descriptions indicating professional experience, education, work history, and responsibilities on their project.
- Provide an explanation of the bidder's approach. Include how services will be implemented, the people involved, timelines etc. to complete each aspect of the Scope of Work.

- Work schedule and confirmation that the payment terms in the Agreement attached as Appendix A are acceptable to Bidder.

1.9 Exceptions

Indicate any exceptions to the Commercial Terms and Conditions in Section 3.0 by including a Microsoft Word “redlined” version of exceptions to Commercial Terms and Conditions. Any proposal submitted without “redlines” will be considered incomplete and will not be considered by Owners for evaluation.

Indicate any technical and additional commercial exceptions to the Scope of Work in Section 2.0 by including a copy of the Commercial and Technical Exceptions Form provided as Attachment 4.2 to this RFP.

1.10 Proposal Evaluation Criteria

Generally, proposals will be evaluated using the following criteria:

- Qualification and experience of Bidder.
- Key personnel experience and qualifications
- Quality and completeness of proposal. (Use this as a checklist for RFP Response)
 - Any Additional Commercial exceptions to proposal
 - Any technical exceptions to the specification
 - Completed Bid Units Form with taxes included
 - List of Consultant experience with similar projects, and list of references
 - Last 2 years Audited Financials (if requested)
 - Warranty proposed
 - List of proposed subcontractors and proposed subcontractors' experience on previous projects
 - QA/QC Program Documentation
 - Any additional supplemental documents/information that supports the proposal
 - Sample Field Report
- Project methodology / approach.
- Price/Financial Risk
- Bidder's acceptance of Commercial Terms and Conditions
- Schedule
- Safety (provide previous 3 years of safety records)

1.11 Subcontractors

The Owners reserve the right to approve or disapprove of the subcontractor proposed by the Bidders. Bidders will perform the majority of the work with its own forces and will utilize only subcontractors approved by Owner's. Subcontractors must provide proof of insurance equivalent to limits imposed upon Bidder for work being done on or off site.

Bidder shall be responsible for the acts and omissions of its subcontractors in connection with this proposal.

1.12 Data Security Requirements

As part of our selection process, we require comprehensive information regarding your data security measures. To ensure the protection and integrity of Owner's Data, we request the following documentation from all bidders. Please indicate if you have one of the following vulnerability assessments and or internal data security policies such as: 1) SOC2 Report 2) ISO 27001 Certification, or 3) Recent third-party data security audit reports.

1.13 Grant Contract Publications Acknowledgement and Disclaimer

Acknowledgment: This material is based upon work supported by the Department of Energy, Grid Deployment Office, under Award Number DE-GD0000931.

Disclaimer: This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

2.0 Scope of Work

2.1 General:

Scope of work to be defined per Exhibit B - Scope of Work of the Major Professional Services Agreement (Appendix A).

2.2 Schedule

Project Schedule is found in Exhibit E – Project Milestones of the Major Professional Services Agreement.

2.3 Pricing Summary

Bid form, Exhibit F – Rates and Unit Pricing, is set up for a not to exceed price, based on provided assumptions in Exhibit B – Scope of Work, per category of Work.

2.4 Payment Schedule

Invoices are to be emailed to Owners by the 25th of each month, with payment terms of net forty-five (45) days from Owners' receipt of invoice.

2.5 Approval, Acceptance, and Ownership

OTP's receipt of any Services or its making of any payment does not constitute acceptance of any non-conforming or defective Services. OTP has the right to inspect and test Consultant's Services, and to reject any defective or non-conforming Services. OTP has no obligation to accept rejected Services, it is Consultant's responsibility to arrange for the correction of such Services, and OTP has no obligation to compensate Consultant for such until the Services are accepted by OTP as corrected. Nothing contained in the Agreement relieves Consultant from the responsibility for testing, inspection, and quality control of the Services.

Final designs must be approved by the Owners, in writing, before any construction begins.

All Material ordering and construction prior to Owners' approval will be at consultant's risk.

Approval of the drawings and calculations by the Owners or the Owner's Representative does not relieve the consultant of responsibility for the adequacy of the design, correctness of the dimensions, details on the drawings, and the proper fit of parts.

All final drawings shall become the property of the Owners, who shall have full rights to reproduce drawings and use them as the Owners see fit, including submitting them to other consultants to obtain bids on future RFPs.

All drawings and calculations shall be sealed by an individual who is licensed to practice in applicable jurisdiction.

All drawings and calculations shall be provided to the Owners in electronic .pdf format.

The method of identification shall be approved by the Owners and applied to all drawings and materials.

2.6 Consultant Reporting Requirements

Please see consultant reporting requirements, provided in Exhibit B – Scope of Work, for each category.

3.0 Commercial Agreement and General Terms & Conditions

3.1 Appendix A: Major Professional Services Agreement

4.0 Attachments

4.1 Questions and Answers Template

4.2 Commercial and Technical Exceptions Template

MAJOR PROFESSIONAL SERVICES AGREEMENT

This Major Professional Services Agreement ("**Agreement**") is made this ____ day of _____, ____ ("**Effective Date**") by and between Otter Tail Power Company, a Minnesota corporation, as project manager for the Big Stone South to Hankinson to Bison 345 kV transmission line (**BSSHB**) and agent for: Northern States Power Company, a Minnesota corporation ("**NSPM**") and Otter Tail Power Company ("**OTP**") (OTP and NSPM are collectively referred to as the "Owners"), and _____ ("**Consultant**")

Consultant is:

A corporation of the State of _____, or
A limited liability company of the State of _____, or
An individual doing business as _____, or
A partnership consisting of _____, or
Other _____.

"**Party**" or "**Parties**" refers to Owners and/or Consultant, either individually or collectively, depending on the context in which the terms are used.

Except as otherwise provided in the Contract Documents, all notices required or permitted to be given hereunder shall be in writing, signed by a duly authorized representative of the Party giving such notice and will be deemed given when received by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized express courier) to the other Party at the address designated below:

To Owners: Otter Tail Power Company
215 S. Cascade St.
Fergus Falls, MN 56537
Attn: Nic Olson, Project Manager
nolson@otpc.com

With a copy to: Otter Tail Power Company
215 S. Cascade St.
Fergus Falls, MN 56537
Attn: Matt Holmquist, Sourcing Department
mholmquist@otpc.com

To Consultant:

RECITALS

A. Owners have caused to be prepared specifications and related documents for: Development Consulting for BSSHB (the "Project"), as more fully defined in the Contract Documents and has solicited proposals with respect to Services in connection with the Project, which Services are defined more fully in Section 4 of this Agreement; and

B. Consultant has submitted to Owners in the manner specified, a proposal for providing the Services and has from time to time supplemented such proposal; and

C. The Parties, following discussion, have agreed upon the definitive terms, conditions, prices, specifications and procedures setting forth their agreement for purchase by Owners of the Services to be furnished by Consultant under this Agreement.

AGREEMENT

Owners and Consultant, in consideration of the foregoing Recitals, all other covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree to all that follows below.

1. TERMS AND CONDITIONS.

The terms and conditions that govern this Agreement shall be those expressly contained or referenced herein and in the Contract Documents defined in Section 2 including, without limitation, the General Conditions for this Agreement ("**General Conditions**"). Any other terms and conditions in any exhibits or documents made part of this Agreement do not apply unless noted herein and agreed to in writing by the Parties.

2. CONTRACT DOCUMENTS.

This Agreement consists of the following documents ("**Contract Documents**") and all exhibits and attachments thereto, each of which is incorporated by reference herein. The Contract Documents are listed in their governing order from highest to lowest. In the event a conflict or inconsistency exists between the Contract Documents, such conflict or inconsistency shall be resolved in favor of the higher-ranking document. Any Change Orders or an amendment to a Contract Document shall rank higher than the documents they revise or change to the extent they conflict or are inconsistent with the original documents, and in all other circumstances they shall share the same precedence classification as the original documents they revise or change.

This Major Professional Services Agreement
Exhibit A – General Conditions for Major Professional Services Agreement
Exhibit B – Scope of Work
Exhibit C – Insurance Requirements
Exhibit D – Lien Waiver Form(s)
Exhibit E – Project Milestones
Exhibit F – Rates and Unit Pricing

Exhibit G – Request for Payment
Exhibit H – Completion Forms
Exhibit I – Change Order Form
Exhibit J – Not Used
Exhibit K- Key Personnel
Exhibit L – QA/QC
Exhibit M – Not Used
Exhibit N – Progress Meetings and Reporting

3. **TERM.**

Unless earlier terminated pursuant to the terms and conditions of this Agreement, the term of this Agreement is from the Effective Date through Final Acceptance of all Services required to be provided under the Agreement , subject to Article 42 ("**Survival**") of the General Conditions.

4. **SCOPE OF WORK.**

Consultant agrees to furnish all equipment, materials, and services in accordance with Scope of Work indicated in Exhibit B of this Agreement.

5. **PRICE AND PAYMENTS.**

5.1 The total price for the Services shall be based upon actual units performed by Consultant in accordance with the terms of the Contract Documents at the unit prices identified in Exhibit F. The unit pricing set forth in Exhibit F is firm and fixed and may not be modified unless agreed to by a Change Order approved in writing through the formal Change Order process outlined under this Agreement. If Consultant proposes to modify the unit prices identified in Exhibit F, Consultant shall present its requests for a change in the unit prices, within sixty (60) days prior to the date such pricing changes are to go into effect. Such changes in unit prices will not go into effect unless Consultant's proposal is accepted by Owners in a written Change Order executed by Owners and Consultant. Nothing in this Section 5 requires Owners to accept any increase in the unit prices.

5.2 The payment schedule shall be in accordance with Exhibit G Payment Schedule and Request Forms. Payment terms are net forty-five (45) days from Owners' receipt of invoice.

6. **INVOICES.**

Consultant shall electronically invoice Owners at or after the time of the completed services, to the following email address:

BSSHBinvoices@otpc.com
Attn: BSSHB Project Coordinator

7. **TAXES.**

Consultant shall process and pay all sales, use and other taxes that are lawfully assessed in connection with the Services. The actual amount of sales, use and other taxes paid by Consultant shall be shown as separate items on all invoices. For the avoidance of doubt, all applicable taxes, federal, state, and local, are included within the pricing in Exhibit F.

8. **TITLE.** Title to all Services shall pass to Owners as their interest may appear.

9. **OWNERS' STATUS AND ASSIGNMENT RIGHT.**

9.1 Each Owner has the right to assign all or any portion of its rights or obligations hereunder to another Owner or a third party; provided, however, such assignee assumes the obligations of the assignor from and after the date of assignment. The assignor will remain liable to Owners for all obligations incurred prior to the date of assignment, unless the assignee expressly assumes such obligations, in which case, the assignor will thereafter be released from such liabilities. Any Owner that assigns any or all of its rights or obligations under this Agreement shall give written notice of such assignment to Consultant, together with written evidence, executed by the assignee, of the obligations assumed by the assignee.

9.2 The liability of each of the Owners under this Agreement shall be several, and not joint, in accordance with each Owner's pro-rata percentage interest in the facility. The Owners are not participants in a partnership or joint venture and this Agreement shall not be interpreted to impose any liability attributable to such a relationship upon the Owners collectively.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the duly authorized representative(s) of the Parties hereto has read all the exhibits and Contract Documents referenced herein and executed this Agreement.

ACCEPTED:

CONSULTANT

To Be Determined

By: _____
Authorized Signature

Print Name: _____

Title: _____

ACCEPTED:

OWNER

OTTER TAIL POWER COMPANY

By: _____
Authorized Signature

Print Name: _____

Title: _____

Exhibit A

GENERAL CONDITIONS FOR MAJOR PROFESSIONAL SERVICES AGREEMENT

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**GENERAL CONDITIONS
FOR
MAJOR PROFESSIONAL SERVICES AGREEMENT**

1. **DEFINITIONS AND RULES OF CONSTRUCTION.**

- 1.1 Capitalized words, phrases and other expressions used herein that are not otherwise defined are defined in the Agreement. The capitalized words, phrases or other expressions used herein shall have the following meanings:

"Agreement" shall mean the Major Professional Services Agreement between the Parties hereto, and all documents and instruments thereto or arising therefrom, including the Contract Documents, (Purchase Order(s)/Work Order(s) if applicable) and these General Conditions.

"Applicable Law" or "Applicable Laws" shall mean any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, statutes, treaties, rules, codes, standards, licenses, certificates, franchises, permits, requirements and injunctions that (i) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified person or entity (or the properties or assets of such person or entity), and (ii) are applicable to the Work.

"Applicable Utility Rules" means the rules, orders, regulations, practices, procedures and protocols established by regional transmission organizations (such as the Midcontinent Independent System Operator, Inc.), electric reliability organizations (such as the North American Electric Reliability Corporation and the Midwest Reliability Organization) and comparable Persons that are applicable to the Project and/or its operation by force of Applicable Law or Good Utility Practice.

"Change Order" shall mean a document issued by Owners and agreed to in writing by Consultant to amend the Agreement and/or the Purchase Order/Work Order.

"Claim" or "Claims" shall have the meaning set forth in Section 27.1 of these General Conditions.

"Consultant" shall mean the **"Consultant"** as set forth in the Agreement.

"Data Laws" shall have the meaning set forth in Section 34.3 of these General Conditions.

"Design(s)" shall have the meaning set forth in Section 28.1 of these General Conditions.

"Documents" shall have the meaning set forth in Section 6.1 of these General Conditions.

"Drawings" shall mean all (i) drawings or supplementary drawings furnished by Owners as a basis for soliciting proposals, (ii) drawings, if any, submitted by Consultant with its proposal which are included in the Agreement, (iii) drawings furnished by Owners to Consultant during the progress of the Work, and (iv) engineering data and drawings submitted by Consultant, if any, during the progress of the Work, provided such drawings are acceptable to Owners.

"Final Acceptance" shall occur when Owners have made their reasonable commercial determination that all Work is complete in accordance with the requirements of the Agreement, including these General Conditions.

"Force Majeure" shall have the meaning set forth in Section 9.7 of these General Conditions.

"General Conditions" shall mean this document and the terms and conditions contained or referred to herein.

"Good Utility Practice" means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in the region during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition in a manner that: (i) is consistent with Applicable Law and Applicable Utility Rules, (ii) makes due consideration for reliability, safety and protection of equipment and the Project, and (iii) is consistent with manufacturer's recommendations and warranties. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts generally accepted in the region.

"Governmental Body" shall mean any:

- (i) nation, state, county, city, town, village, district or other jurisdiction of any nature;
- (ii) federal, state, local, municipal, foreign or other government; or
- (iii) governmental or quasi governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over the Agreement, the performance of the Work or the Parties.

"Offshore Locations" shall have the meaning set forth in Section 33.1 of these General Conditions.

"Offshore Personnel" shall have the meaning set forth in Section 33.1 of these General Conditions.

"Owner Data" shall have the meaning set forth in Section 34.1 of these General Conditions.

"Owner Indemnitees" shall have the meaning set forth in Section 27.1 of these General Conditions.

"Owners" shall mean the name of the entity or entities set forth as the Owners in this Agreement. With respect to actions, directives or decisions of Owners, "Owners" will also mean Owners' project manager or its designee.

"Party" or **"Parties"** shall mean Owners and Consultant.

"Personal Data" shall have the meaning set forth in Section 34.2 of these General Conditions.

"Project" shall mean the entirety, or a portion of, the Work being provided by Consultant and its Subcontractors under the Agreement.

"Purchase Order/Work Order" shall mean the specific authorizing document, including all documents attached thereto or referenced therein.

"Sanctions" shall have the meaning set forth in [Section 4.3](#) of these General Conditions.

"Site" shall mean the location(s) of the Project, and may be defined in the Purchase Order / Work Order.

"Subcontractor" shall mean any person, firm, or corporation that performs work for or provides labor, equipment, supplies and/or goods to Consultant in connection with the Work.

"Work" shall mean the work or services Consultant has agreed to furnish pursuant to the Agreement. This may include, but is not limited to, any services, direction of services, technical information, technical consulting or other services, including but not limited to engineering services, design services, analytical services, consulting services, quality assurance, project management or any other specialized services and related work to be furnished under the Agreement.

"Work Schedule" shall have the meaning set forth in [Section 9.2](#) of these General Conditions.

1.2 The Parties further agree that the following rules of construction shall apply in the interpretation of the Agreement, including these General Conditions:

- (i) whenever the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or similar words or phrases are used in the Agreement, they shall mean that the order, direction, requirement, permission or allowance of Owners is intended only to the extent of compliance with the terms of the Agreement;
- (ii) whenever the expression "it is understood and agreed" or a similar expression is used in the Agreement, such expression shall mean the mutual agreement of the Parties;
- (iii) Reference in these General Conditions, the Agreement or any exhibit or Purchase Order/Work Order to the standards of any technical society, organization or association, or to any national, state or local codes or standards (including those of any Governmental Body), shall mean the latest standard or code adopted, as amended from time to time, unless specifically stated otherwise; and
- (iv) The specifications, codes, and standards referenced in the Agreement (including addenda, and amendments) shall govern in all cases where references thereto are made. In case of conflict between the referenced specifications, codes, or standards and the Agreement, the most stringent requirements shall apply to the extent of such differences except in the case where the Agreement acknowledges an exception to a referenced specification, code, or standard. In all but the latter cases, Consultant shall notify the Owners' engineer of conflicts between referenced specifications, codes, or standards and the Agreement.

2. **AGREEMENT DOCUMENTS**

2.1 The Work shall be performed in accordance with the Agreement. Any additional terms proposed or exceptions taken by Consultant to any provision of the Agreement shall become part of the Agreement only if accepted by Owners in writing. In the event of a conflict between the Agreement and other Documents, the Agreement shall govern.

- 2.2 Owners may scan, and preserve electronically, the Agreement and other Documents related to the Agreement. Once scanned, and electronically preserved, Owners may destroy the paper originals of these Documents, with the exception of original sealed engineering Drawings. All such Documents scanned and electronically preserved by Owners, may be treated as original Documents for all purposes, at the discretion of Owners.

3. **OTHER CONTRACTS.**

- 3.1 Owners reserve the right to award other contracts in connection with the Project. Consultant shall cooperate, schedule and coordinate performance of its Work with the work of any other contractors, suppliers and consultants so as not to delay or interfere with their work, or with the timely completion of the Project. Owners also reserve the right to contract with others for the same type of work, as is the subject of the Agreement or to employ their own personnel in the work.

4. **APPLICABLE LAW.**

- 4.1 Consultant and its Subcontractors, and their employees, agents and representatives shall at all times perform the Work in a safe and professional manner and comply with Applicable Laws, Applicable Utility Rules and other legal requirements, as such are amended from time to time. Consultant shall be responsible for the acts and omissions of its Subcontractors in connection with the Agreement.
- 4.2 Consultant and its Subcontractors will conduct all Work under the Agreement in an economically, socially and environmentally responsible manner. Consultant and its Subcontractors further agree to ensure that their employees, agents and representatives perform the Work in accordance with the Contractor Environmental Health and Safety Manual included in Exhibit J - Safety and the Contractor Code of Business Ethics located at [Contractors | Otter Tail Power Company \(otpc.com\)](http://Contractors | Otter Tail Power Company (otpc.com)).
- 4.3 Consultant shall promptly notify Owners if (i) Consultant is served with notice of violation of any Applicable Law or Applicable Utility Rules, or engaged in a settlement agreement, permit, or license relating to its Work hereunder, (ii) near misses or injury occur during the course of performing its obligations under the Agreement, (iii) proceedings are commenced to revoke any certifications, permits or licenses which relate to such Work, (iv) certifications, permits, licenses, or other authorizations by a Governmental Body relating to such Work are revoked, (v) litigation that is related to or could directly affect the Work is commenced against Consultant, or (vi) Consultant becomes aware that its equipment or project related to such Work is not in compliance with Applicable Laws or Applicable Utility Rules ("**Sanctions**"). Consultant shall provide copies of any documents evidencing such Sanctions. Consultant will keep Owners informed on a regular basis of the progress made and resolution of such Sanctions, whether resulting in a requirement by Consultant or its Subcontractors to pay fines, modify operations or comply with said Sanctions in any other manner.
- 4.4 If Owners determine that Consultant is failing to comply with any Applicable Laws, Applicable Utility Rules or other legal requirements, or observe unsafe work practices and/or conditions on the part of Consultant, Consultant's or Subcontractors' employees or agents, Owners may (i) advise Consultant of such and direct Consultant to stop the Work, and (ii) Consultant shall cause all such Work to stop. Consultant shall bear all additional direct costs, including those that affect the Work Schedule which may result from Work stopped in accordance with this Section 4.4. In the event that such work stoppage is ultimately deemed by Owners to have been unnecessary, Owners shall bear the additional cost of such work stoppage and shall afford Consultant a reasonable extension in the Work Schedule for completion of the Work.

- 4.5 Consultant warrants that neither it nor any of its Subcontractors have transferred, nor will it or they, transfer anything of value to any employee, agent or other representative of Owners, where such was or is made with the intent and/or understanding of obtaining favorable treatment with respect to the Agreement and/or the Work.
- 4.6 Any material changes in Applicable Laws or Applicable Utility Rules or Owners' standard specifications after the date of execution of the Agreement, which have more than a de minimus effect on the cost or schedule of Consultant's Work, may be the subject of a request for a Change Order, subject to Article 14.

5. **SECURITY AND SITE AREA LIMITS**

- 5.1 Consultant shall comply with Owners' training, screening and security requirements applicable to Consultant personnel entering the Site, including persons working in security sensitive positions, and persons to be granted electronic or physical access to Owners Data. Security sensitive positions include positions having access to Owners' computer systems, Site, equipment, material, Owners' property or the issuance of an access card or keys to Owners' facilities, or as otherwise defined by applicable law or applicable Utility Rules. Consultant personnel includes: Consultant personnel and the personnel of Subcontractors engaged by Consultant (as such Subcontractors are approved by Owners pursuant to the process set forth in Section 32.2).
- 5.2 Owners' screening and security requirements may, among other standards, require Consultant and/or its Subcontractors to perform criminal background checks, verify Social Security numbers, and perform drug testing on their employees.
- 5.3 Detailed results of the background screening will only be discussed with the individual screened. The screened individual's employer will be notified only that the individual has been granted or denied a security clearance. Those denied a security clearance may not work in a security sensitive position at any of the Owners' properties nor enter Owners' Site.
- 5.4 Consultant shall notify Owner within 12 hours of any change in the employment status of any Consultant or Subcontractor personnel having physical or electronic access to Owners' sites or working in security sensitive positions.

6. **OWNERSHIP OF WORK DOCUMENTS.**

- 6.1 All Drawings, Designs, estimates, data, summaries, materials, information, plans, specifications, calculations, reports and other documents ("**Documents**") whether in hard copy or electronic media prepared pursuant to the Agreement shall become the sole and exclusive property of Owners and title thereto shall pass to Owners upon transmittal to Owners.
- 6.2 Owners reserve the right to reproduce, modify and use in any manner, any and all Documents. To the extent that any Documents are for any reason determined not to be owned by Owners, Consultant hereby licenses Owners on a royalty-free perpetual basis for use in the operation and maintenance of the Site. Consultant is responsible for obtaining necessary permission and releases with respect to any third party ownership and/or licenses with respect to the Documents for and on behalf of Owners.
- 6.3 Consultant shall, and shall cause its employees, representatives, agents and Subcontractors to execute and deliver any and all forms and instruments necessary or desirable to transfer the Documents such that Owners shall have of record all of their, as

applicable, rights, interests, title and ownership in and to the Documents, free and clear of all third party encumbrances and interests.

- 6.4 Consultant agrees that it and its employees, agents, representatives and Subcontractors, shall promptly communicate and disclose to Owners all computer programs, documentation, software and other copyrightable works, discoveries, improvements and inventions conceived, reduced to practice, written or made by Consultant or by its employees, agents, representatives and Subcontractors, whether solely or jointly with others, during the term of the Agreement and for one (1) year thereafter, as a result of performing services to the extent that such: (i) relate to Owners' business products or are applicable to or useful therewith, or (ii) relate to Owners' processes or procedures, or (iii) result from or relate to any services Consultant or its employees, agents, representatives and Subcontractors performs or performed.

7. CERTIFICATION OF DOCUMENTS.

- 7.1 Any and/or all Documents and contract documents (as defined in the Agreement) shall be certified by Consultant if required by Applicable Law or Applicable Utility Rules, and if so required a professional engineer licensed to practice within the state of applicable jurisdiction shall provide such certification.
- 7.2 Consultant shall maintain at its office at the Site, up-to-date copies of all Drawings, specifications, and other contract Documents and supplementary data, complete with latest revisions thereto. Consultant's records shall be submitted in an electronic editable format approved by the Owners. In addition, Consultant shall maintain a continuous record of all field changes, and at the conclusion of the Work, shall incorporate all such changes on the Drawings and other engineering records. Drawing changes shall be recorded in a neat, orderly manner, drawn to scale, and dimensioned as a qualified draftsman would show the revisions. Field drafting of these revisions shall be of equal quality and detail as the original Drawings. Additions shall be shown in green, and deletions shall be shown in red. Upon completion of the revisions, two (2) copies shall be submitted to Owners. Consultant's records consisting of marked Drawings, engineering data, and sketches shall be submitted prior to official acceptance, but no later than ten (10) days after completion of the Work covered by the Agreement.

8. CONSULTANT'S RESPONSIBILITIES.

- 8.1 Consultant shall give all notices related to the Work to applicable Governmental Bodies and obtain and pay for all licenses, permits and inspections required for the Work. The foregoing shall not include general permits obtained by Owners for the Site. If applicable and, notwithstanding the above, Owners may obtain any easements or right-of-ways associated with the Work. Owners shall have the right to inspect and obtain copies of all written licenses, permits or approvals, issued by any Governmental Body to Consultant or its Subcontractors that are applicable to the performance of the Agreement. Consultant shall not be bound to provide such notices for Design Work submitted to Owners, if such Work is limited solely to Designs.
- 8.2 In the event Consultant performs services on or at the Site, Consultant and its employees and Subcontractors shall comply with all applicable provisions of Owners' Project Site, policies and procedures, including but not limited to any instructions and procedures pertaining to the Project or Site security, industrial safety, environmental directives, work authorization, equipment control and hazardous materials. In addition, Consultant, its employees and Subcontractors shall comply with and enforce among Consultant's employees and Subcontractors Project and Site conditions and job work rules which affect the performance of the Work, including but not limited to work hours, smoking regulations,

check-in and check-out procedures, job Site safety and security regulations, and emergency plans and procedures.

- 8.3 Consultant shall remove or cause to be removed from the Site or Project, any person employed or engaged by Consultant or any of its Subcontractors whom Owners deem unfit. Owners shall notify Consultant of any such demand and Consultant shall promptly provide another person to perform the Work.
- 8.4 Consultant will furnish licensed personnel to perform engineering, design, architectural or other services as specifically required in the proper performance of the Work.
- 8.5 The construction entity or entities installing the Project shall be responsible for the construction means, methods, sequencing and safety precautions taken or omitted during construction. Consultant and its Subcontractors shall be responsible for compliance with all such safety precautions for the safety of Consultant's and Subcontractor's employees performing Work on or around the Project. With respect to Consultant's on-Site Work, if any, Consultant shall promptly report to Owners any safety violations with respect to the Site(s) of the Project, regardless of the source of fault, particularly in the event of an emergency.
- 8.6 Consultant shall be responsible for and shall bear any and all risk of loss or damage to the Work in progress and to all materials delivered to the Site of the Work until Final Acceptance, including owner-furnished equipment and materials. Consultant shall also at all times conduct the Work in a manner to avoid risk of loss, theft or damage by vandalism, sabotage or other means to Owners' property and the Project.
- 8.7 At Owners' discretion and at Consultant's risk, Consultant may be allowed to park and/or store vehicles, equipment, tools, materials, or any other items owned, leased, or rented by Consultant at the Site. Consultant shall store materials and supplies in locations which will not block access ways to the Site area. Consultant shall furnish cranes necessary for the execution of its Work. Consultant shall hold Owners harmless from any loss, damage, or destruction of such equipment, tools, materials or the like.
- 8.8 At Owners' discretion and at Consultant's risk, Consultant may be allowed to use Owners' equipment. However, Consultant shall indemnify and hold Owners harmless from any loss, damage, or destruction of such equipment, tools, materials or the like.

9. **SCHEDULING.**

- 9.1 Consultant agrees that time is a significant factor in Owners' decision to engage Consultant to perform the Work, including Consultant's agreement to adhere to the Work Schedule.
- 9.2 Owners and Consultant shall agree on a schedule of the Work (the "**Work Schedule**") indicating the dates for the start and completion dates of various stages of the Work. Consultant shall strictly adhere to the Work Schedule. Owners reserve the right to direct Consultant to reschedule the order and rate of progress of performance of the Work so as not to interfere with the performance of work by Owners and/or other contractors and suppliers. If any such rescheduling of the Work outside Consultant's control hinders Consultant's ability to adhere to the Work Schedule, the Work Schedule and any increases or decreases in Consultant's costs may be equitably adjusted by a Change Order.
- 9.3 If requested by Owners, Consultant shall promptly submit regular progress data as to the Work. If requested by Owners, Consultant shall participate in the Work Schedule update meetings.

- 9.4 If at any time during the performance of the Work Consultant's progress does not keep pace with the requirements of the Work Schedule, Owners may order Consultant to take steps to improve its progress without additional cost to Owners; provided, however, that Consultant shall have five (5) days to develop and implement its recovery plan for the Work Schedule (in consultation with Owners) from and after the date notified by Owners. Consultant's recovery plan will be diligently and continuously pursued by Consultant. Failure of Consultant to comply with such notice of Owners may be grounds for determination by Owners that Consultant is not pursuing the Work with such diligence as shall assure completion within the times specified. Upon such determination, Owners may terminate for default pursuant to Article 24 of these General Conditions.
- 9.5 Consultant shall make available to Owners any and all data and reports, related to performance of the Work. Owners' review of any such data shall in no way relieve Consultant of its responsibility for the professional quality, technical accuracy and completeness of such data.
- 9.6 Should the actions of Owners cause a significant delay of the Work, Consultant shall notify Owners in writing within ten (10) business days from the beginning of such delay. If Owners and Consultant determine the facts justify an extension of time and/or additional compensation and no remaining float time exists in the Work Schedule, the Agreement will be modified in writing as appropriate. Owners may, in their sole discretion and in lieu of granting an extension of time, require Consultant to regain the Work Schedule, and Owners shall compensate Consultant for any required additional charges; provided, however, that no adjustment shall be made for any delay to the extent that performance would have otherwise been delayed by any other cause, including the fault or negligence of Consultant.
- 9.7 With respect to events of Force Majeure:
- 9.7.1 Owners and Consultant shall be excused from performing in accordance with the Work Schedule in the event of an occurrence of "**Force Majeure**." Force Majeure, is defined as fire, floods, earthquake, hurricane, tornado, explosion, catastrophe, accident, war or war-like operations (whether or not a state of war is declared), riot, acts of God, acts of terrorism, insurrection, order of a Governmental Body and Applicable Laws that prevent performance, to the extent (i) such event of Force Majeure is beyond the reasonable control of the Party claiming Force Majeure, and (ii) the Party claiming Force Majeure gives prompt written notice to Owners within 14 calendar days of the same to the other Party. Labor strikes are not Force Majeure events.
- 9.7.2 In the event of any such delay, Consultant's sole remedy shall be a time extension for the completion dates required by the Work Schedule, which extension shall be the time period lost by reason of the Force Majeure.

10. **FAMILIARITY WITH THE WORK**

- 10.1 By executing the Agreement, Consultant represents that it understands the scope of the Work under which the Agreement is to be performed and has correlated its understanding with the requirements of the Work and the Work Schedule.
- 10.2 No pleas of ignorance of conditions that exist or hereafter may exist, or of conditions or difficulties that may be encountered in the execution of the Work will be accepted as an excuse for failure or omission on the part of Consultant to fulfill in every detail all requirements of the Agreement, nor will they be a basis for any Claim whatsoever for extra compensation or time.

11. **RESPONSIBILITY AS TO OTHER CONTRACTORS.**

- 11.1 Consultant shall properly coordinate its Work with other contractors, Subcontractors and suppliers working on the Project to assure that each such other contractor or Subcontractors may carry out their respective work assignments within the Project.
- 11.2 If any part of Consultant's performance of the Work depends upon the work of any of Owners' other contractors or Owners, Consultant shall coordinate its efforts with those of other contractors or Owners to the extent reasonably practical and perform a visual inspection of the work. Should Consultant discover any defects in that work, Consultant shall promptly report to Owners in writing any discrepancies or defects in such work; provided, however, Consultant shall not have any affirmative obligation to discover any such errors or defects.
- 11.3 Consultant shall have no control or right of control over Owners or any of Owners' other Subcontractors or suppliers, or their agents, employees, or invitees, in connection with the means, methods, techniques, sequences, procedures, programs and construction equipment or safety procedures used or not used by Owners or such other subcontractors or suppliers in their performance of any phase of the contract Work, except when specifically engaged to do so.

12. **INSPECTION.**

- 12.1 The Work and all portions thereof shall be subject to inspection by Owners or their designee at all times. Any such inspection shall not relieve Consultant of the responsibility to strictly comply with its performance requirements and other obligations under the Agreement, it being understood that any such inspection by Owners shall in no way (i) be construed as constituting or implying either a waiver or acceptance of the work, or (ii) affect any of Owners' rights or remedies under the Agreement.
- 12.2 Consultant shall make available to Owners any and all data, including but not limited to, test results, reports, drawings related to performance of the Work. Owners' review of any such data shall in no way relieve Consultant of its responsibility for the professional quality, technical accuracy and completeness of such data.

13. **USE OF COMPLETED SEGMENTS OF WORK.**

- 13.1 Whenever, as determined by Owners, any segment of the Work performed by Consultant is in a stage suitable for utilization by Owners, Owners may at their sole option take possession of or use such segment. Such use by Owners shall in no case be construed as constituting Final Acceptance, and shall not relieve Consultant of any of its responsibilities under the Agreement.

14. **WORK CHANGES.**

- 14.1 Owners, without invalidating the Agreement, may at any time make changes to or deviations from the scope of the Work with a Change Order issued by an authorized representative of Owners to Consultant.
- 14.2 If Consultant claims that the Change Order causes an increase or decrease in the cost of or the time required for performance of the Work, Consultant shall give Owners written notice of such increase or decrease within ten (10) business days following the receipt of such a request. Consultant shall also provide sufficient documentation to Owners to justify the increase or decrease in the cost of or the time required for performance of the Work.

- 14.3 If accepted in writing by an authorized Owners' representative, an equitable adjustment may be made in the price or Work Schedule, or both, and the Change Order shall be deemed to modify the Agreement. In the event the Parties do not agree that a change would give rise to a Change Order, the matter will be subject to Article 30, Disputes.
- 14.4 Consultant's failure to comply with Section 14.2 of these General Conditions shall constitute Consultant's agreement to perform any such Change Order in accordance with the price and schedule specified in the original order and/or subsequent revisions thereto.

15. **SUSPENSION OF WORK.**

- 15.1 Owners may, by notice to Consultant, suspend at any time the performance of all or any portion of the Work. During the period of suspension, Consultant shall use its commercially reasonable efforts to minimize costs associated with suspension.
- 15.2 Upon receipt of any such written notice, Consultant shall, unless such notice requires otherwise:
- 15.2.1 Immediately discontinue the Work on the date and to the extent specified in the notice;
- 15.2.2 Place no further orders or subcontracts with respect to suspended Work other than to the extent required in the notice;
- 15.2.3 Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Owners of all orders, subcontracts, rental agreements and the like to the extent they relate to performance of the Work suspended; and
- 15.2.4 Promptly make every reasonable effort upon terms satisfactory to Owners to protect or maintain the Work.
- 15.3 As full compensation for such suspension, Consultant shall be reimbursed for the following costs, to the extent reasonable and if such costs directly result from the suspension of the Work:
- 15.3.1 A standby charge based upon the period of suspension of the Work, which standby charge shall be sufficient to reimburse Consultant for its actual costs of keeping its organization committed to the Work in a standby status;
- 15.3.2 The actual costs associated with actual mobilization and demobilization of Consultant's resources; and
- 15.3.3 Any actual increased cost of the Work incurred by Consultant.
- All costs to be reimbursed must be requested within forty-five (45) days following termination of the suspension. Any such costs shall be documented and evidenced by all supporting documentation requested by Owners and shall be subject to the audit rights of Owners as set forth in these General Conditions.
- 15.4 Upon receipt of notice to resume suspended Work, Consultant shall promptly resume performance of the suspended Work to the extent required in the notice. Consultant hereby expressly waives any claim it may have for additional time or extra compensation because of any suspension of the Work unless such claim along with a revised Work Schedule (with respect to the Work suspended) is presented to Owners in writing within ten (10) calendar days after Consultant's receipt of notice to resume the Work. No compensation or

extension of time shall be granted if the suspension results from Consultant's noncompliance with the requirements of the Agreement or from any cause other than Owners' suspension order pursuant to this Article 15.

16. **CONSULTANT WARRANTIES.**

- 16.1 Consultant represents and warrants that it has the experience necessary to adequately and competently perform the Services. Consultant warrants that it shall perform its services in accordance with the Agreement and with care, skill and diligence in accordance with applicable professional standards currently recognized by such profession and that all Work shall be free from defects in design and workmanship. Consultant shall be responsible for and warrants for a period of twelve (12) months after Final Acceptance the professional quality, technical accuracy, completeness and coordination of the Work and other services furnished under the Agreement.
- 16.2 Upon receipt of notice from Owners of any failure to comply with the terms of the Agreement including these General Conditions and, without limitation, any defect with respect to the Work, both prior to or after Final Acceptance, Consultant shall without additional compensation correct any such defects within a time acceptable to Owners and reimburse Owners for any resulting costs, expenses or damages suffered by Owners, including but not limited to costs of removal, reinstallation, re-procurement and any other third party costs, damages and losses incurred by Owners. If Consultant fails to timely replace any such defective Work, Owners may cause such defective Work to be replaced by another and the direct and indirect expense thereof shall be the responsibility of Consultant. Owners shall be entitled to deduct this expense and the resulting damages from amounts otherwise due to Consultant. For purposes of this Section 16.2, indirect costs do not include loss of profits or revenue, cost of capital, loss of use or equipment or facilities, cost of purchased or replacement power, or claims of customers due to loss of service. The warranties hereunder shall benefit Owners and the third party beneficiaries to the Agreement pursuant to the operation of the Agreement.
- 16.3 THE WARRANTIES SET FORTH IN THIS ARTICLE 16 ARE IN LIEU OF ALL OTHER WARRANTIES RELATING TO THE WORK WHETHER STATUTORY, EXPRESS OR IMPLIED AND CONSULTANT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING AND/OR USAGE OF TRADE. The warranties and obligations contained in this Article 16 are Consultant's sole warranties and Owners' exclusive remedy with respect to the warranty of the Work described above; provided, however, the foregoing shall not in any manner affect Owners' rights of indemnification or direct damages for breach of, under or pursuant to the Agreement, including these General Conditions. No failure on the part of Owners in the exercise of any right or remedy shall operate as a waiver of or by Owners of their right to exercise any other right or remedy.

17. **INSURANCE.**

- 17.1 Consultant and its Subcontractors shall comply with the insurance provisions of Exhibit C.

18. **FINAL ACCEPTANCE.**

- 18.1 Consultant shall notify Owners in writing when it believes the conditions of Final Acceptance are deemed achieved by Consultant.
- 18.2 After receipt of Consultant's notification pursuant to Section 18.1 above, Owners shall be deemed to have determined their Final Acceptance of the Work performed by Consultant

by Owners' payment of the final invoice submitted by Consultant for the Project. Payments made hereunder do not excuse non-conforming Work under the Agreement.

19. **PRICE AND PAYMENT TERMS.**

- 19.1 Payments shall be made as stated in the Agreement. Unless a different term is agreed to between the Parties, payments will be made forty-five (45) days after receipt of an invoice approved by Owners in accordance with the payment terms herein, of the Agreement and Owners' then-current policies and procedures. If Owners object to all or any portion of an invoice, Owners shall notify Consultant within fifteen (15) business days of invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute so long as Owners' invoice procedures are met.
- 19.2 Payments otherwise due may be withheld on account of defective Work not remedied, Claims made or liens filed, damage by Consultant to Owners or others not adjusted, failure to make payments to Subcontractors, or for any other failure to perform in accordance with the Agreement; provided, however, that the amount of payments withheld shall not exceed the reasonably estimated amount of the matter in dispute. Work under the Agreement must be performed prior to payment by Owners, other than customary mobilization costs.
- 19.3 All Consultant invoices shall reference (i) the Agreement, (ii) the Purchase Order/Work Order, and (iii) any other applicable reference numbers. Such invoices shall also contain a complete description of all charges submitted in the format requested by Owners. Each invoice or other application for payment must be accompanied by a lien waiver for the Work for which payment is to be made. All lien waivers shall be in the form attached as Exhibit D. Consultant shall provide Owners a final invoice within sixty (60) days of Final Acceptance.
- 19.4 In making payments hereunder, Owners shall be entitled to conclusively presume that payment information furnished by Consultant is accurate, including account number(s) and name of payee. In no event shall Owners make a subsequent payment where the first payment is made in accordance with such information, unless the first payment has been returned in full to Owners. All payments shall be in U.S. dollars.
- 19.5 When requested, Consultant shall provide to Owners an itemized schedule of quantities and values of the various functions necessary to perform the Work. Consultant shall use Owners' system of accounts to submit any itemized cost breakdown requested by Owners.
- 19.6 Consultant irrevocably agrees that acceptance by Consultant of final payment shall fully and completely release Owners from all Claims and demands that Consultant may have or has against Owners and/or their corporate affiliates and their respective officers, directors, employees, agents, representatives and customers arising out of, resulting from, or in any way connected with the Work performed by Consultant pursuant to the Agreement, including any Purchase Order(s)/Work Order(s). Consultant further acknowledges and agrees that such final payment, together with all payments made prior to the final payment, constitutes full payment of all amounts due Consultant under the Agreement, including under any Purchase Order(s)/Work Order(s) and all amounts due for all claims of any type and all extra Work. In accepting the final payment, Consultant further warrants and represents that all claims, bills, payrolls, expenses, costs, taxes, and other indebtedness incurred in connection with the Work performed pursuant to the Agreement, including Purchase Order(s)/Work Order(s) have been paid in full.

20. **RIGHT TO AUDIT.**

- 20.1 Consultant shall maintain during the course of the Work, and retain not less than seven (7) years after completion thereof, complete and accurate records of all Consultant's records arising from, in connection with or incident to the Work and the Project, including without limitation, all (i) costs which are chargeable to Owners under the Agreement, and (ii) Documents, granted authority, permits and other evidentiary data that evidences compliance with the Agreement (including these General Conditions) and all Applicable Laws. Owners shall have the right, during normal working hours, to inspect, reproduce, and audit such records of Consultant by authorized representatives of their own or any third party contract compliance-auditing firm selected by Owners. The records to be thus maintained and retained by Consultant must provide sufficient detail to evidence the propriety of all such chargeable costs and compliance with the Agreement (including these General Conditions) and all Applicable Laws. Consultant shall cause all of its Subcontractors to adhere to and comply with the requirements set forth above.
- 20.2 The foregoing shall not be applicable to the fixed-price portion of the Work, but shall include all Work performed pursuant to a Change Order or on a time-and-material basis. Notwithstanding the foregoing, Consultant shall cooperate with and provide documents in connection with any inquiry, audit or other investigation by or pursuant to the authority of a Governmental Body.

21. **TAXES.**

- 21.1 Unless otherwise specified in these General Conditions or in the Agreement, Consultant shall process and pay all sales, use and other taxes that are lawfully assessed in connection with the Work. The actual amount of sales, use and other taxes paid by Consultant shall be shown as separate items on all invoices.

22. **TRAVEL EXPENSES.**

- 22.1 For agreed to reimbursable travel, Consultant shall make its own travel arrangements and must utilize the lowest cost method available taking into account the exigencies of the Work and the circumstances requiring such travel. Consultant's invoice must provide documentation to substantiate all charges. Owners will pay no additional amounts for travel related expenses in connection with firm price agreements.

23. **TERMINATION FOR CONVENIENCE.**

- 23.1 Owners may, at their option, terminate the Agreement in whole or in part at any time by written notice thereof to Consultant, whether or not Consultant is in default.
- 23.2 Upon any such termination, Owners shall pay for all Work completed and the reasonable cost of demobilization to the reasonable satisfaction of Owners, not to exceed the total price of the Agreement as amended by Change Orders. No amount shall be allowed for anticipated profit on unperformed Work or overhead. Upon receipt of any such notice and unless the notice requires otherwise, Consultant shall forthwith:
- 23.2.1 Discontinue the Work (including the removal of personnel from Owners' premises) on the date and to the extent specified in the notice; and
- 23.2.2 Deliver to Owners all Documents whether completed or in process, accumulated by Consultant in performance of the Work. Owners shall have the right, at their sole option, to purchase and take possession of any unused materials, supplies,

or property acquired by Consultant pursuant to the Agreement at the price paid by Consultant.

24. **TERMINATION FOR DEFAULT.**

24.1 Owners may, by written notice of default to Consultant terminate the whole or any part of the Agreement if:

24.1.1 Consultant or its Subcontractors fail to perform any of their material obligations under the Agreement or fail to make progress so as to endanger timely completion of the Work, and Consultant does not cure such failure within five (5) business days after receipt of notice by Owners, or provide a plan that is acceptable to Owners, in the sole discretion of Owners, to commence a cure within five (5) business days after receipt of notice and diligently and continuously pursue a cure thereafter; or

24.1.2 Consultant is generally unable to pay its debts as they come due, or makes an assignment for the benefit of creditors; or Consultant applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property, or such a receiver, trustee or similar officer is appointed without the application or consent of Consultant, and such appointment continues undischarged for a period of thirty (30) days; or Consultant institutes (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceeding under the Applicable Law of any jurisdiction, or any such proceeding is instituted against Consultant.

24.2 In the event Owners terminate the Agreement as provided in this Article 24, Owners may at their option arrange for completion of the Work. Consultant shall be liable to Owners for all direct costs incurred by Owners to cure Consultant's default.

24.3 Unless otherwise stated in the notice, upon receipt of notice of termination for default, Consultant shall:

24.3.1 Immediately discontinue the Work on the date and to the extent specified in the notice; and

24.3.2 Deliver to Owners all Documents, Drawings, reports, plans, specifications, data, estimates, summaries or other material and information whether completed or in process, related to the Work. Owners shall have the right, at their sole option, to purchase and take possession of any unused materials, supplies, or property acquired by Consultant pursuant to the Agreement at the price paid by Consultant.

24.4 If it is determined for any reason that Consultant was not in default or that there has been a wrongful termination, Consultant's sole and exclusive remedy shall be the same as if Owners had terminated the Agreement for convenience pursuant to Article 23 of these General Conditions.

24.5 The rights and remedies of Owners provided in this Article 24 shall be in addition to the rights and remedies provided at law or equity or otherwise under the Agreement. No failure or delay on the part of Owners in exercising any right shall operate as a waiver thereof.

24.6 Each subcontract agreement between Consultant and its Subcontractors for the Work is hereby assigned by Consultant to the Owners, provided that such assignment is effective only after termination of the Agreement for any reason and only for those subcontract

agreements that Owners accept by notifying the Subcontractor and Consultant in writing. Consultant shall include a provision in all of its subcontracts providing that such subcontracts are assigned to Owners in accordance with these General Conditions. Consultant shall provide and sign such documents as may be required by the Owners to effect or evidence any such assignment.

25. **CONFIDENTIAL INFORMATION.**

- 25.1 The Parties shall maintain the confidentiality of all information secured from the other Party in connection with the Agreement. Such confidential information of the other Party, which includes but is not limited to records, books, financial data, projections, and customer, employee and consultant information furnished to or by a Party, together with any analyses, compilations, studies, reports or other documents based in whole or in part upon such information, shall not be divulged to any third party and shall not otherwise be exploited commercially by the non-disclosing Party, except with prior written consent of the disclosing Party or as compelled by Applicable Law. If either Party is or could be legally compelled to make disclosure of confidential information, the non-disclosing Party will notify the disclosing Party prior to making such disclosure and take all reasonably available steps to limit the effects of such disclosure and if possible, require the Parties to whom the information is disclosed to maintain the confidentiality of such information.
- 25.2 This Article 25 and the restrictions contained herein shall not apply to any data and documentation:
- 25.2.1 Which is in the public domain at the time it was disclosed or at any time thereafter;
- 25.2.2 Which was already known to the non-disclosing Party at the time of disclosure;
- 25.2.3 After three (3) years from the date of execution of the Agreement unless (i) the restriction applies to a trade secret, in which case the restriction shall not expire, and/or (ii) is subject to a longer restriction by a third party;
- 25.2.4 Which is independently developed by the non-disclosing Party; or
- 25.2.5 Which becomes known to the Party from an independent source, where such source has not violated an agreement of confidentiality.
- 25.3 Notwithstanding the preceding, Owners may disclose or otherwise make available such Consultant proprietary data (i) to their attorneys, employees, agents and representatives, (ii) pursuant to Applicable Law, including, without limitation, court order, subpoena and regulatory rules or advice, and (iii) to a third party with whom Owners contract for maintenance, operation, training, modification, construction, repair or consultation, provided that said third party agrees to be bound in writing by similar limitations on use and disclosure of such data as contained herein. Owners agree to take all reasonable action by instruction to their employees who are permitted access to Consultant proprietary data to satisfy their obligations under this Article 25.
- 25.4 In addition to the requirements of Section 25.1 regarding Consultant's treatment of confidential information of Owners, Consultant agrees that:
- 25.4.1 Owners are public utilities subject to Federal Energy Regulatory Commission (FERC) standards of conduct rules regarding non-public disclosure of transmission function information to their marketing function or wholesale function personnel (18 C.F.R. Part 358 effective October 27, 2008, and as may be amended from time to time).

- 25.4.2 If the Work involves the transmission assets of Owners, Consultant will not reveal any non-public transmission information to any person employed by Owners in a sales or marketing function of any of the Owners or by an energy affiliate (as those terms are defined in 18 C.F.R. Part 358). Consultant shall strictly comply with any communication protocols established by Owners to prevent the disclosure of non-public transmission information with respect to the performance of Work; and
- 25.4.3 Consultant certifies on behalf of itself and its employees, agents and representatives that it and they are aware of the requirements of 18 C.F.R. Part 388.113. Consultant further certifies that after diligent review of 18 C.F.R. Part 388.113, it has no reason to believe that it or any of its employees, agents or representatives who may be granted access to confidential information that is also Critical Energy Infrastructure Information would be restricted from access to such Critical Energy Infrastructure Information pursuant to 18 C.F.R. Part 388.113.
- 25.4.4 **"Critical Energy Infrastructure Information"** (CEII) as used in these General Conditions means information that has been previously designated as CEII when filed with the FERC, or all information disclosed to Consultant or its representatives, by Owners in connection with the Work, including information about proposed or existing Critical Infrastructure that: (i) relates to the production, generation, transportation, transmission, or distribution of energy, (ii) could be useful to a person in planning an attack on Critical Infrastructure, (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, and (iv) does not simply give the location of the Critical Infrastructure. **"Critical Infrastructure"** as used in these General Conditions means systems and assets, whether physical or virtual, that are so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on the security, national economic security, national public health or safety, or any combination of those matters. Consultant agrees not to use CEII that is confidential information for purposes other than in connection with the Work.

26. **NOTICE OF CLAIMS AND LIENS.**

- 26.1 Consultant agrees not to assert or pursue any Claim against Owners for damages of any kind or nature unless written notice thereof shall have been given to Owners within ten (10) days after the occurrence giving rise to such damages.
- 26.2 The Work performed by Consultant shall pass to Owners and be free and clear of all liens, encumbrances and third party interests (other than a Claim made by Consultant pursuant to Section 26.1). In the event Owners are notified in writing of a third party Claim or Claims arising from the Work performed by Consultant, Owners shall notify Consultant of such Claim or Claims and Consultant shall appoint a representative who will have the authority to settle any Claims, subject to the prior approval of any settlement terms by Owners. If Consultant fails to appoint a representative to settle such Claims, Owners shall have the right to make settlement thereof and charge the same to Consultant.

27. **INDEMNITY.**

- 27.1 Consultant agrees to defend, indemnify and hold harmless Owners and their shareholders, members, partners, affiliates, employees, representatives and agents (including Owners' third party beneficiaries and Owners' project manager and engineer) (collectively, the **"Owner Indemnitees"**) from and against all liability (including any strict liability) arising from a third party Claim, including Claims, suits, actions, costs (including reasonable attorneys fees and costs of investigation), expenses, damages, losses, fines, interest, penalties, assessments, judgments, demands, causes of action and litigation/arbitration of

any kind or character (individually, a "**Claim**" and collectively, "**Claims**") arising from Consultant's (A) willful or negligent acts or omissions or those of Consultant's officers, employees, representatives, agents, affiliates or Subcontractors, or (B) breach of the Agreement, including passage of good and marketable title to the Work, that may be imposed on, incurred by or asserted by a third party against any Owner Indemnitee. Consultant shall have the sole authority to direct the defense or settle any Claim indemnified by Consultant; provided, that Owners may monitor such matters through counsel of their choice and at their own cost; and provided, further, that Consultant may not settle any indemnified Claim unless such settlement includes a release of, and the consent of (not to be unreasonably withheld) Owners and the other Owner Indemnitees. The foregoing indemnity will be applicable whether or not materials, equipment or property were or are owned by Owners. The indemnification obligations hereunder are not limited by insurance coverage.

With respect to third party Claims of negligence, (i) Consultant shall be responsible for that portion of any award by way of judgment in which it is determined that Consultant was negligent, but only to the amount represented by the percentage of such negligence so determined against Consultant and any joint tortfeasor in the action (other than Owners and the other Owner Indemnitees), and (ii) if Owners or any of the other Owner Indemnitees are determined in such judgment award to have been negligent and any have a percentage of such negligence allocated to them, Owners and the other Owner Indemnitees shall be responsible solely for the amount represented by the percentage of their respective negligence so determined; provided, however, the foregoing shall not be deemed to relieve Consultant of its obligation to (A) defend Owners and the other Owner Indemnitees in any such third party Claim, and (B) indemnify and hold Owners and the other Owner Indemnitees harmless from and against (1) all legal and associated fees arising from, in connection with or incident to the third party Claim, and (2) the allocated negligence liability of Consultant and any other person or entity for their negligent and other acts or omissions. No matter the outcome of the third party Claim, Consultant shall not have the right to seek payment of (and Owners and the other Owner Indemnitees shall not have any obligation to pay) the legal and other defense fees and costs of Owners and the other Owner Indemnitees which arise in connection with any such third party Claim. No settlement of any such third party Claim against Owners or any of the other Owner Indemnitees shall be made unless consented to in writing in advance by Owners, which consent shall not be unreasonably withheld.

28. **INFRINGEMENT.**

- 28.1 Royalties and fees for patents, trademarks, copyrights or trade secrets related to designs, materials, articles, apparatus, devices, equipment or processes and the like ("**Design(s)**") used in or created pursuant to the Agreement, are included in the Agreement price. Consultant shall, at its own expense, hold harmless and defend Owners against any Claim, suit or proceeding brought against Owners which is based upon any Claim that manufacture, sale or use of any such Design, material, article, apparatus, device, equipment or process, or any part thereof, constitutes an infringement of any patent, trademark, copyright, trade secret or any other proprietary right of a third party, and Consultant shall pay all defense costs and damages and costs awarded against Owners, including attorneys' fees resulting therefrom.
- 28.2 If any Design(s), or any part thereof, is found to constitute infringement and/or its use is enjoined, Consultant shall, at its own expense, subject to the following provisions, either: (i) procure for Owners an irrevocable, royalty-free license to continue Owners' use of the Design(s), (ii) with Owners' prior written approval, replace the same with equal but noninfringing Design(s), or (iii) with Owners' prior written approval modify the Design(s) so it becomes noninfringing, provided that no such replacement or modification shall in any

way amend or relieve Consultant of its obligations set forth in the Agreement, including these General Conditions.

- 28.3 Notwithstanding any proprietary legends or Claims of copyright, Owners may copy or reproduce Documents and information furnished by Consultant and distribute such copies or reproduction to others in connection with the Project. Consultant is responsible for obtaining necessary permission and releases from any third parties and shall, at its own expense, hold harmless and defend Owners against any and all Claims, suits or proceedings based upon any Claim that a proprietary right or copyright has been infringed.

29. **LIMITATION OF LIABILITY.**

- 29.1 In no event shall Owners or any third party beneficiary to the Agreement be liable to Consultant for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Owners, their employees, or agents. This exclusion of liability for special incidental, indirect, punitive or consequential loss or damage includes, but is not limited to, loss of profits or revenue, cost of capital, loss of use of equipment or facilities, loss of financing, business or reputation. Owners' liability on any Claim of any kind for any loss or damage arising out of or in connection with or resulting from the Agreement or from performance or breach thereof shall in no case exceed the contract price of the Work, as adjusted by any applicable Change Orders.
- 29.2 In no event shall Consultant be liable to Owners or any third party beneficiary to the Agreement for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Consultant, its employees, agents or Subcontractors. This exclusion of liability for special, incidental, indirect, punitive or consequential loss or damage applies to loss of profits or revenue, cost of capital, loss of use of equipment or facilities, cost of purchased or replacement power or Claims of customers due to loss of service. This exclusion does not apply to third party Claims requiring indemnification under Articles 27 and 28 of these General Conditions or if the Agreement is terminated by Owners for default pursuant to the Agreement, including Article 24 of these General Conditions.

30. **DISPUTES.**

- 30.1 The Parties agree that all disputes arising out of the Agreement shall be subject to this Article 30.
- 30.2 In the event of a dispute, authorized representatives from each Party familiar with the Work will meet to resolve the dispute. If these representatives fail to resolve the dispute within seven (7) days, senior representatives from each Party will meet to resolve the dispute. If the senior representatives are unable to resolve the dispute in seven (7) days, such dispute shall be subject to the remaining provisions below.
- 30.3 Any disputes under the Agreement will be governed by the internal laws of the State of North Dakota, without regard to conflict of laws provisions, and any action brought with respect to the Agreement shall be venued in State Court, Strutsman County, North Dakota.

31. **INDEPENDENT CONTRACTOR.**

- 31.1 The Parties expressly agree that Consultant is an independent contractor and is not an employee, partner or joint venturer of Owners. Consultant shall (i) exercise its independent professional judgment in the performance of the Agreement, and (ii) supply the manner

and means of performance of the Work hereunder. Consultant, its Subcontractors and their respective employees, agents and other representatives shall not have the right to represent or bind Owners in any manner.

- 31.2 Consultant and its Subcontractors are directly and solely responsible for the safety of their respective agents, employees and other representatives. Owners in no way assume any of the duties, obligations or liabilities attributed to Consultant under the Agreement. Consultant shall immediately report via telephone and in writing to an Owners' representative all accidents in connection with the Work that result in death, personal injury, or property damage.
- 31.3 Any and all agents, employees and Subcontractors of Consultant provided to perform the Work shall be the agent, employee or Subcontractor of Consultant. Consultant shall be solely responsible for the wages, salary, overtime, taxes, benefits (if any) and any and all other payments or benefits owed to an agent, employee or Subcontractor of Consultant for Work provided under or pursuant to the Agreement. No Consultant's employee shall be entitled to any retirement, welfare, fringe or other benefit provided by Owners to their employees.
- 31.4 If for any reason an investigation is conducted or a proceeding commenced by any Governmental Body, the purpose of which is to determine whether for any reason a Consultant's employee is an employee of Owners, Consultant shall assist and cooperate with Owners in preparing a response to or defending against, as the case may be, any such investigation or proceeding or the appeal of any such investigation or proceeding. Consultant shall reimburse Owners for any and all reasonable costs Owners incur in the preparation and presentation of their response to any such investigation or proceeding; provided, however, that Consultant shall not be responsible for such costs to the extent such costs are caused by a breach by Owners of the Agreement.
- 31.5 If it is determined by a Governmental Body, that a Consultant's employee is an employee of any of the Owners and Owners elect not to appeal such determination or such determination shall not be appealable, Consultant shall reimburse Owners for any damages or costs or penalties of any kind which Owners are ordered to pay by the Governmental Body. The Parties further agree that if a Governmental Body determines that a Consultant's employee is an employee of any of the Owners, such Consultant's employee shall be considered to be an employee of such Owner or Owners only and solely to the extent set forth in the determination of the Governmental Body and for no other purpose.

32. **ASSIGNMENT AND SUBCONTRACTING.**

- 32.1 Consultant shall not assign the Agreement, or any part thereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of Owners. Unless otherwise agreed to in writing by Owners, no assignment will release or discharge Consultant from any obligations under the Agreement.
- 32.2 Consultant may not subcontract its responsibilities under the Agreement without the prior written permission of Owners. To the extent Owners agree to allow Consultant to subcontract any portion of the Work, Consultant shall ensure that all Subcontractors are bound by the terms of the Agreement, including these General Conditions, in a writing executed by Consultant and Subcontractor. Furthermore, the agreement between the Consultant and Consultant's Subcontractor shall be subject to the review and approval by the Owners. Owners shall be and are intended third party beneficiaries of any Subcontractor agreement. Any delegation of the Work through subcontracting shall not relieve Consultant of its responsibilities under the Agreement nor result in extra cost or liability to Owners.

- 32.3 It is the intent of these General Conditions that Consultant shall perform the majority of the Work with its own forces and under the management of its own organization. Specific portions of the Work may be subcontracted only to Subcontractors who have been listed in the proposal data and who are accepted by Owners.

33. **OFFSHORE WORK AND DATA TRANSFER.**

- 33.1 Consultant shall not perform any portion of this Agreement (i) in locations outside the United States ("**Offshore Locations**"), or (ii) by personnel, agents or Subcontractors located outside the United States (collectively "**Offshore Personnel**"), without first obtaining Owners' prior written consent. Consultant shall not (i) transfer Owners Data to Offshore Locations, or (ii) access Owners Data or systems from Offshore Locations and/or by Offshore Personnel, without first obtaining Owners' prior written consent. All requests for consent shall (a) be in writing, (b) identify the Offshore Personnel and specify the Offshore Locations, and (c) be sent to the Owners' representative listed in the notice section of this Agreement. Any written consent issued by Owners shall only apply to the identified Offshore Personnel and specified Offshore Locations. Any desired changes of Offshore Personnel or Offshore Locations shall require a new consent from Owners. Owners' consent may be conditioned on Consultant complying with additional and/or different terms (e.g. additional security screening).

34. **DATA SECURITY.**

- 34.1 **Ownership and Use of Owners Data.** " Owners Data" means (i) non-public data and information regarding Owners' business provided to, accessed, or used by Consultant in connection with this Agreement (collectively "business data"), and (ii) non-public data and information concerning Owners' customers and employees (an "individual") provided to, accessed or used by Consultant in connection with this Agreement that can be used to distinguish or trace the identity of an individual alone, or when combined with other personal or identifying information which is linked or linkable to the individual (collectively "personal data"). As between the Parties, Owners Data shall be and remain the property of Owners. Consultant shall hold and maintain Owners Data in strict confidence, and not share or disclose Owners Data to any third party without Owners' advance written consent. Consultant will use Owners Data only for the purpose of performing this Agreement.
- 34.2 **Protection of Owners Data.** Consultant shall exercise all due care with respect to Owners Data and the collection, handling, delivery, processing and transmission thereof. Consultant will maintain appropriate physical, technical and general measures to protect Owners Data against accidental loss or unauthorized access, use, disclosure, alteration, or destruction. Consultant acknowledges that the level of security that is appropriate will depend on the sensitivity of the information, the risks represented by the processing, the harm that is likely to result from a breach of security, industry standards and applicable law, including all Data Laws (as defined below). Consultant will in all cases limit access to Owners Data to those employees, officers, subcontractors and agents ("Consultant Personnel") who need such access to perform the Services, having first informed and bound Consultant Personnel to Owners' obligations. Consultant will remain responsible for the acts and omissions of all Consultant Personnel.
- 34.3 **Treatment in Accordance with Data Laws.** Consultant will treat, handle, store, access and use Owners Data in accordance with applicable law; including privacy laws, orders of courts and regulatory agencies, and other laws applicable to the use, unauthorized access, confidentiality and security of Owners Data, and procedures relating to the foregoing, including the international transfer of Owners Data (collectively "Data Laws").

- 34.4 **Security Breach.** For purposes of this section, “Security Breach” means any actual, suspected or potential unauthorized or accidental theft, loss, alteration, destruction, or unauthorized use or disclosure of any Owners Data or a breach of Consultant's security or information systems that could reasonably be expected to expose Owners Data to unauthorized or accidental access or use. Consultant will (i) notify Owners within twenty four (24) hours of any Security Breach; (ii) cooperate fully with Owners in facilitating investigation and remediation of a Security Breach to prevent reoccurrence, and mitigate any harmful effects that are reasonably likely to arise out of the Security Breach; (iii) at its expense, provide such access, information, and assistance as is necessary for Owners and/or its designee(s) and law enforcement or forensics experts to complete the investigation of the Security Breach; (iv) pay all out-of-pocket costs and expenses, including without limitation, reasonable attorney's fees and forensic experts' fees, incurred by Owners in connection with any such investigation (or review of Consultant's investigation); (v) at Owners' request, promptly provide to Owners such information as may be necessary to permit Owners to comply with applicable Data Laws and security breach notification requirements; and (vi) pay all out-of-pocket costs and expenses, including without limitation, reasonable attorney's fees and forensic experts' fees, incurred by Owners in connection with (1) providing such notifications to appropriate law enforcement agencies, governmental regulatory authorities, and affected or potentially affected persons as may be required by applicable Data Laws or otherwise reasonable under the circumstances and (2) providing, during the twelve months following Owners' receipt of notice of the Security Breach, such identity theft assistance, including credit monitoring and other identity theft prevention services, to potentially affected or affected persons as may be reasonable under the circumstances to mitigate the harm or risk of harm arising out of the Security Breach.
- 34.5 **Audit and Verification.** Consultant shall permit Owners to reasonably audit and verify Consultant's data security systems and procedures to confirm Consultant's compliance with these provisions and any applicable Data Laws, or in lieu thereof to provide an SSAE no. 16 SOC 2 report.
- 34.6 **Disclosure Required by Law.** Consultant may disclose Owners Data as required by law. In the event of any such required disclosure, Consultant will notify Owners sufficiently in advance of the disclosure to permit Owners to seek a protective order and Consultant shall cooperate with Owners in connection with obtaining a protective order. Consultant shall release only the minimum amount of Owners Data necessary to comply with law.
- 34.7 **Amendment as a Result of Change in Data Laws.** The Parties in good faith agree to revisit and amend Section 34 from time to time as necessary to comply with changes to relevant Data Laws.
- 34.8 **Return or Destruction of Owner Data.** Upon termination or expiration of this Agreement, Consultant shall return or destroy Owners Data in Consultant's possession or control, as requested by Owners, and provide written certification to Owners regarding the same. At any time during the term of this Agreement Consultant will, upon Owners' request, return or destroy Owners Data not required for Consultant's performance of this Agreement.
- 34.9 **Continuing Obligation.** Consultant's obligations under this Section entitled “Data Security” shall apply during and after termination or expiration of the Agreement.

35. **EQUAL EMPLOYMENT OPPORTUNITY.**

- 35.1 As part of Owners' compliance with federal Equal Employment Opportunity and Affirmative Action regulations, we hereby notify Consultant that Owners are an equal opportunity employer that makes employment decisions without regard to race, national origin, religion, age, color, sex, sexual orientation, gender identity, disability, or protected veteran status, or any other characteristic protected by local, state, or federal laws, rules, or regulations. Owners take affirmative steps to employ and advance in employment qualified individuals without regard to race, national origin, religion, age, color, sex, sexual orientation, gender identity, disability, or protected veteran status, or any other characteristic protected by local, state, or federal laws, rules, or regulations. Owners further notifies Consultant that as an entity supplying goods or services to Owners, your organization may be subject and required to take action pursuant to the following laws and accompanying regulations:

Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60-1.4(a)); and

The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-300.5(a)); and

Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R 60-741.5(a)); and

Executive Order 13496 (and its implementing regulations at 29 C.F.R. part 471, Appendix A to Subpart A).

36. **THIRD PARTY BENEFICIARIES.**

- 36.1 Except for the third parties described or named in the Agreement, including these General Conditions, no provision of the Agreement shall in any way inure to the benefit of any third person so as to make any such person a third party beneficiary of the Agreement or of any one or more of the terms of these General Conditions.

37. **PUBLICITY.**

- 37.1 Consultant shall not make any announcement or release any information, publicity or photographs concerning the Agreement or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from Owners.

38. **HEADINGS.**

- 38.1 Article headings and titles are included for the convenience of the Parties and shall not affect the meanings of the terms or conditions hereof.

39. **SEVERABILITY.**

- 39.1 In the event any words, phrases, clauses, sentences or other provisions hereof are invalid or violate any Applicable Law, such offending provision(s) shall be ineffective to the extent of such violation without invalidating the remainder of the Agreement, and the remaining provisions of the Agreement shall be construed consistent with the intent of the Parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect.

40. **ENTIRE AGREEMENT AND WAIVER; JOINT EFFORT.**

40.1 The Agreement constitutes the entire and sole agreement between the Parties concerning the subject matter of the Agreement and all prior negotiations, representations, understandings or agreements are not part of the Agreement and shall have no force or effect. Any waiver by either Party of any provision or condition of the Agreement must be in writing and signed by the Party to be bound. No such waiver shall be construed or deemed to be a waiver of any other provision or condition of the Agreement, nor a waiver of subsequent breach of the same provision or condition. Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion) is not to be construed more severely against one of the Parties than against the other.

41. **AUTHORITY OF OWNERS AND THEIR REPRESENTATIVES.**

41.1 Owners' construction manager and its other designated representative(s) will direct and coordinate all Project contracts except those activities specified elsewhere in the Contract Documents to be directed and coordinated by a representative designated by Owners. Owners and their construction manager or such designated representative(s) at all times shall have reasonable access to the work or the shops of Consultant for inspection of the Work or any part thereof. Except as otherwise specified in the Contract Documents, such representative shall make all explanations and directions which shall be necessary to the performance of the Work required, including interpretation of the Contract Documents; however, Consultant's right of dispute resolution shall apply to all decisions and directions of such representative.

42. **SURVIVAL.**

42.1 In the event of termination or expiration of the Agreement, the following sections (in their entirety) and subsections of these General Conditions shall survive any such termination or expiration: Articles 16 (Consultant Warranties), 17 (Insurance), 20 (Right to Audit), 21 (Taxes), 25 (Confidential Information), 27 (Indemnity), 28 (Infringement), 29 (Limitation of Liability), 30 (Disputes), 33 (Offshore Work and Data Transfer), 34 (Data Security), 36 (Third Party Beneficiaries), 37 (Publicity), 38 (Headings), 39 (Severability), 40 (Entire Agreement and Waiver; Joint Effort), 41 (Authority of Owners and Their Representatives) and 42 (Survival).

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Exhibit B - Scope of Work

Big Stone South-Hankinson-Bison

345-kV transmission line

Vision:

To empower communities and foster sustainable growth by continuing to ensure a safe, reliable, and cost-effective electric grid. We believe in creating a future where energy is accessible, affordable, and resilient, enhancing the quality of life for all stakeholders involved.

Mission:

To build a transmission line that connects substations near Big Stone City, South Dakota; Hankinson, North Dakota; and Mapleton, North Dakota, with a commitment to transparency, collaboration, and innovation. We aim to engage stakeholders actively, ensuring we are doing this project with them, not to them, while maintaining the highest standards of safety, reliability, and cost-effectiveness.

Project Description:

The transmission system along where the Midcontinent Independent System Operator (“MISO”) and Southwest Power Pool (“SPP”) Regional Transmission Operators (“RTO”) regions meet is at capacity. Big Stone South–Hankinson–Bison (“BSSHB”), one of five projects identified by MISO and SPP in the Joint Targeted Interconnection Queue (“JTIQ”) study, will resolve transmission constraints and provide substantial reliability benefits. This is in keeping with the [MISO Reliability Imperative](#).

Otter Tail Power Company, as a co-owner with Xcel Energy, intends to construct, own, and operate a 345-kV transmission line connecting the substations listed above. This document intends to describe the scope of work for the development phase only. A separate scope of work will be provided for the execution phase.

The project will provide benefits to customers of both RTOs as we work together to continue to provide a strong, stable electric grid. With two RTOs involved, necessary approvals and project updates will be scrutinized carefully.

This project was awarded partial funding under the Department of Energy’s Grid Resilience and Innovation Partnerships (“GRIP”) Program. This will trigger a National Environmental Protect Act (“NEPA”) Environmental Impact Statement (“EIS”), National Historic Preservation Act (“NHPA”) Section 106 review, Endangered Species Act Section 7 consultation, and potentially other obligations. Additional requirements and reporting

regarding budget, costs and impact on communities and the environment will be required by both the Owners and all involved consultants. This includes specific grant compliance terms.

Consultant Requirements:

- Minimum:
 1. Skill and experience on staff to self-perform scope described below
 2. Project manager on-staff with experience in large complex projects

- Preferred:
 1. Recently applied for permits to build transmission line in North Dakota and South Dakota
 2. Staff availability and bandwidth to perform land rights deliverables, activities, and milestones in both North Dakota and South Dakota simultaneously
 3. Land rights team with demonstrated ability to establish public trust and local credibility
 4. Project Management Information System (“PMIS”) to manage project. Will allow admin access to Owner users.
 5. Experience with federal grant compliance requirements
 6. Experience completing NEPA EIS

Assumptions:

- 75 miles from Big Stone South (BSS) to Hankinson
- 75 miles from Hankinson to Bison
- 250 parcels from BSS to Hankinson
- 250 parcels from Hankinson to Bison
- 150’ right of way needed
- 56 crossing exhibits

1. Scope of Services Provided by Consultant:

- 1.1. The following scope of services is intended to be the minimum requirements
Owners expect the Consultant to provide as part of routing the Hankinson to Bison 345 kV Transmission Line (H-B) and the Big Stone South to Hankinson 345 kV transmission line (BSS-H). In line with the Owners’ vision and mission, Consultant shall administrate, track, and document all routing activities necessary to deliver a

complete route permit application that will result in an approved route in all impacted states.

- 1.2. The Owners will retain ownership of data collected by Consultant throughout the Project after the Project is complete. This data, where possible, will be collected and maintained in a central collection point, such as ESRI, PLS CAD or Microsoft Office products, and shall be maintained by the Consultant. Consultants are expected to utilize data collection and storage platforms which are compatible with, and may facilitate easy access and transfer to, these products.
- 1.3. All final drawings shall become the property of the Owners, who shall have full rights to reproduce drawings and use them as the Owners see fit, including submitting them to other consultants to obtain bids on future RFPs.
- 1.4. All drawings and calculations shall be sealed by an individual who is licensed to practice in applicable jurisdiction.
- 1.5. All drawings and calculations shall be provided to Owners in electronic .pdf format.
- 1.6. The method of identification shall be approved by the Owners and applied to all drawings and materials.
- 1.7. Approval of the drawings and calculations by the Owners or the Owner's Representative does not relieve the consultant of responsibility for the adequacy of the design, correctness of the dimensions, details on the drawings, and the proper fit of parts.
- 1.8. If the Consultant plans to use a subcontractor to complete any of the scope of Services, the Consultant shall identify to Owners in writing the specific scope of work to be subcontracted and the proposed subcontractor(s). Owners shall have the right to reject any proposed subcontractor. Consultant shall not engage any subcontractor to perform Services without Owners' prior written approval.

2. Routing

- 2.1. The route for the transmission line shall be developed in accordance with pertinent state laws and regulations. A study area has been defined and attached. The Consultant will perform route refinement to identify the final route.
- 2.2. The route shall adhere to specific exclusion areas provided by law including but not limited to: national and state parks, historical sites and landmarks, monuments, archaeological sites, wilderness areas, wildlife areas, wild, scenic, or

recreational rivers, game refuges, and nature preserves. The route should also exclude areas such as county parks, threatened and endangered species habitat.

- 2.3. The route should avoid areas including, but not limited to: historical resources not designated as exclusion areas, designated or registered national or state historic districts, wildlife areas, wildlife refuges, grasslands, game management areas, reservoirs and municipal water supplies, water sources for organized rural water districts, irrigated land, areas within city limits or a military installation, 100 year floodplains, geologically unstable areas, woodlands and wetlands and areas of recreational significance not designated as an exclusion area and areas within five hundred feet of a residence, school or place of business.
- 2.4. Additionally, the final route can be selected based on the following criteria, including but not limited to: the impact on agriculture production, family farms, wetlands, woodlands and wooded areas, radio and television reception or other communication or electronic control facility, human health and safety, animal health and safety and plant life.
- 2.5. During preliminary route development, the Owners will submit route refinement requests of the transmission line with input from subject matter experts both internally and with Consultants focusing on environmental constraints, landowner preferences, engineering capabilities, cost and other impacts on people, animals, habitat and the environment. After the route is presented to the public, a Route Change Request log will be kept to update route GIS, inform stakeholders, and manage list of route criteria. The Owners will make the final decision on the route which will be included in permit applications.

Deliverables

- 2.6. Stakeholder contact list (including tracking returned mail to update addresses)
- 2.7. Comment management protocol to track and respond to all stakeholder comments received via web, email, or phone
- 2.8. Hosting, development, and maintenance of toll-free phone number
- 2.9. Content for ND PSC Application
- 2.10. Content for SD PUC Application
- 2.11. Content for all supporting permits and applicable consultations

Activities

- 2.12. Meet with Owners and other stakeholders as frequently as necessary to maintain clear and open communication to achieve deliverables and milestones
- 2.13. Document impact of Route Change Requests including impact of the null hypothesis compared to the impact of accepting proposed change

- 2.14. Document impact of change requests to scope, schedule, and cost showing the impact of the null hypothesis compared to impact of at least two alternatives
- 2.15. Respond to web, email, and phone comments within two business days with content scripted in partnership with Owners
- 2.16. Identify and advise on potential risks to stakeholder engagement
- 2.17. Identify and advise on potential risks to project brand

3. Environmental

Deliverables

- 3.1. Field survey reports
- 3.2. Two rounds of public information meetings
- 3.3. Content for ND PSC Application
- 3.4. Content for SD PUC Application
- 3.5. Content for all supporting permits and applicable consultations
- 3.6. Permits and approvals required for project construction

Activities

- 3.7. GIS shapefiles for all data collected/used for the project
- 3.8. Identify necessary permits and surveys needed to construct
- 3.9. Acquire all necessary data for permit applications for the project
- 3.10. Participate and/or lead in outreach and negotiation with public and private agencies, survey support, design support by providing all content information
- 3.11. Participate with preparation of applications for the SD PUC and ND PSC
- 3.12. Participate with permitting strategy
- 3.13. Create and maintain a GIS platform to capture all information needed to support State permit application efforts. Any additional layers needed are a direct expense to Owners.
- 3.14. Keep and maintain an outreach log with public and private agencies in a cloud sharable format
- 3.15. Develop and participate in two rounds of public information meetings including meeting logistics and a meeting plan to present information to the public.
- 3.16. Create and refine a rating table to compare route corridors. The rating table shall include exclusion and avoidance areas identified in law as well as items of importance identified by public agencies, landowners and the Owners

4. Land Rights

Deliverables

- 4.1. Title report that identifies ownership and encumbrances
- 4.2. Landowner Right of Entry permission forms signed
- 4.3. Digital contact logs for all communications with landowners integrated with GIS parcel data accessible to the Owners. All additional layers needed are a direct expense to the Owners.
- 4.4. Easements or options for easement executed, notarized and recorded

- 4.5. Tracking and reporting right of entry status, acquisition offers, acceptance and denials
- 4.6. Market valuation and compensation plan proposal
- 4.7. Crossing permits such as road crossings, railroad crossings, and other utility crossings
- 4.8. Sales book sorted by land use, type and county

Activities

- 4.9. Acquire landowner data along the route updated every 90 days
- 4.10. Landowner outreach for relationship building, provide project and contact information
- 4.11. Participate in routing analysis
- 4.12. Participate with Owners on permitting efforts
- 4.13. Validate accuracy and completeness of acquisition agreement packages including the associated survey exhibit(s) for each landowner
- 4.14. Schedule initial in-person visit with landowners within 15 days of first contact to avoid miscommunication
- 4.15. Interact with landowners to provide information packets, deliver agreements, and answer questions to enable landowner decision on easements or options
- 4.16. Analyze recent land sales to determine land values to create a sales book
- 4.17. Update sales book annually
- 4.18. Summarize sales book information and suggest current land values based on data

5. Survey

Deliverables

- 5.1. Survey Control Points (.csv)
- 5.2. Survey Point Files (.csv)
- 5.3. Property Legal Descriptions (.docx or .pdf)
- 5.4. Easement/Option legal descriptions within exhibits, signed and stamped by licensed surveyor (.docx or .pdf)
- 5.5. Access Easement Exhibits on non-encumbered parcel
- 5.6. Temporary and Laydown Easement Exhibits
- 5.7. At conclusion of the Project, upload GIS work product in a format specified and as required by Owners

Activities

- 5.8. Perform cadastral surveys of areas directed by Owners
- 5.9. Collaborate with Owners' project engineer to develop project alignment
- 5.10. Provide crossing exhibits

6. Engineering

Deliverables

- 6.1. Results of studies as requested by Owners including but not limited to reactive studies, EMF calculations, transient recovery voltage analysis, noise, etc. to complete necessary permit applications
- 6.2. Structure and assembly drawings sufficient to complete studies
- 6.3. Three laydown yard designs for environmental impact
- 6.4. Tract maps of properties affected by easements or options for easement including but not limited to, easement/option boundaries, temporary workspaces, and access roads
- 6.5. Create exhibits, drawings and provide data necessary for permit application
- 6.6. Turn over package for detail design engineer that includes all necessary drawings, documents, and information to ensure final design will meet final route permit requirements.

Activities

- 6.7. Support routing, structure siting and constructability analysis using publicly available data
- 6.8. Obtain and/or analyze necessary information for route and permit development including but not limited to survey information and LiDAR information
- 6.9. Support Owners as a subject matter expert during public engagement, including public information meetings
- 6.10. Identify critical crossing locations for consideration in route selection including but not limited to utility, railroad and highway crossings

7. Federal Grant Compliance

Activities

- 7.1. Consultant acknowledges that the Project is partially funded with federal grant funds and that Owners are subject to one or more sub-recipient agreements with governmental entities in connection with such funding (collectively, the "Grant Agreements"). Consultant shall perform its services under this Agreement in full compliance with all applicable requirements of the Grant Agreements and with all laws, regulations, rules, executive orders, and guidance applicable to recipients or sub-recipients of federal funds, including but not limited to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR Part 200.

Consultant shall not take any action, or fail to take any action, that would result in a violation or breach by Owner of the Grant Agreements or any condition of federal funding. Consultant shall cooperate fully with Owner in ensuring ongoing

compliance with the Grant Agreements and shall timely provide all certifications documentation, reports, and access to records or personnel reasonably required by Owners or any governmental entity to evidence such compliance.

Consultant shall ensure that all subcontractor or subconsultants performing work in connection with this Agreement are bound in writing to the same obligations imposed on Consultant under the Contract Documents, including without limitation this Section 7.1. Consultant shall promptly notify Owner in writing upon becoming aware of any actual or potential noncompliance related to federal grant requirement or any action or inaction that would be in breach of the Grant Agreements, whether by Consultant or any subconsultant, and shall immediately take steps to cure or mitigate such noncompliance at Consultant's sole cost and expense.

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Owners, their affiliates, and their respective officer, director, employees, and agents from and against any and all claims, liabilities, damages, penalties, costs, and expenses (including reasonably attorneys' fees and costs of enforcement) arriving out of or related to any failure by Consultant or its subconsultants to comply with the obligations of this Article 7.

- 7.2. Perform all project activities to meet federal grant compliance and sub-recipient agreement requirements, including without limitation compliance with the following:
 - 7.2.1. Buy America Build America (2 CFR 200.322)
 - 7.2.2. Ensure performance is in accord with all contract provisions that must be included in contracts for projects that are federally funded, including the provisions set forth in Appendix II to CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
 - 7.2.3. Comply with all consultant subcontractor pass down requirements required for projects receiving federal funding
 - 7.2.4. Davis Bacon Act/Prevailing Wages where applicable
 - 7.2.5. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR Part 200.216)
 - 7.2.6. Procurement on recovered materials (2 CFR Part 200.232)
 - 7.2.7. Comply with competitive bidding requirements
 - 7.2.8. Qualified and available to complete all Federal processes, including but not limited to the NEPA, NHPA, ESA, and processes triggered by federal funding. Including an Environmental Impact Statement and NEPA reports and all coordination, documentation, and scope for the entire route.

- 7.2.9. Provide necessary documentation to Owners for NEPA, NHPA, and ESA compliance
- 7.2.10. Comply with grant sub-recipient requirements between Owners and prime grant recipient

8. Project Management and Controls:

Deliverables

- 8.1. Refer to Exhibit N – Progress Meetings and Reporting
- 8.2. Description of key personnel capability and experience of supporting and/or executing similar project's development execution activities in Exhibit K- Key Personnel
- 8.3. Résumés of key personnel in Exhibit K- Key Personnel (must include Project Manager)

9. Scope Provided by Owner(s):

Deliverables

- 9.1. Preliminary study area map

Activities

- 9.2. Project legal counsel will lead drafting and submit route permit applications
- 9.3. Lead project brand
- 9.4. Manage Consultant deliverables
- 9.5. Review, provide feedback, and approve (within 30 calendar days) Consultant proposed baselines before baseline is accepted
- 9.6. Lead stakeholder engagement
- 9.7. Collaborate with Consultant in each subject matter category to ensure route permit application meets Owners' expectations so that route permit is issued
- 9.8. Oversee and manage overall project financial controls and reporting for both transmission line segments
- 9.9. Maintain relationship between Owners
- 9.10. Maintain overall project schedule including key milestones
- 9.11. Payment of all permit fees, easement/options, and damage settlements as a direct cost to Owners
- 9.12. Hosting, development, and maintenance of public-facing website and email

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

- 1.1 Consultant shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, which may arise out of Work or operations by the Consultant or its agents or by any Subcontractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable, and shall furnish “Certificates of Insurance” evidencing such insurance prior to beginning Work. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state where Work or operations will be performed by Consultant and with a “Best’s” rating of not less than A:VII. Consultant acknowledges and agrees that Owners may institute an owners controlled insurance program or other wrap-up insurance program (“OCIP Program”) in connection with the Project. If Owners institute an OCIP Program for the Project while Consultant is performing on-site Services, Consultant shall comply with the terms, conditions, and requirements of the OCIP Program. Upon implementation of the OCIP Program, Consultant agrees to execute a change order providing the Owners with a corresponding reduction in the unit prices identified in the Contract Documents to account for any savings realized as a result of the Consultant’s participation in the OCIP Program.
- 1.2 Consultant shall maintain, and shall cause its Subcontractor to maintain, at a minimum, the following limits of insurance:

Workers’ Compensation	Statutory Limits – Consultant shall maintain Statutory Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction over their employees while engaged in the performance of the Work.
Employer’s Liability	\$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee
Commercial General Liability, including Stop Gap coverage if applicable.	\$2,000,000 each occurrence \$4,000,000 products/completed operations aggregate \$5,000,000 general aggregate (per project)
Commercial Automobile Liability	\$1,000,000 any one accident or loss
Umbrella/Excess Liability	\$25,000,000
Professional Liability	\$5,000,000 each wrongful act \$5,000,000 policy aggregate

- 1.3 Commercial General Liability insurance required under this paragraph shall include coverage for Products/Completed Operations for a period of three (3) years after completion of the Service or such longer period as the contract documents may require and shall cover as “insured contracts”, subject to the standard terms and conditions of the policy, Consultant’s indemnity obligations under this contract and other contractual indemnities assumed by Consultant under the contract documents. Contractor shall name the Owners (each, by name) as “additional insured” using ISO forms CG 20 10 10 01 and CG 20 37 10 01 (or equivalent). Such insurance afforded to the Owners as “additional insured” shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Owners.
- 1.4 Commercial Automobile Liability insurance required under this paragraph shall cover liability for bodily injury and property damage arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of Consultant. Consultant shall name the Owners (each, by name) as “additional insured”. Such insurance afforded to the Owners as “additional insured” shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Owners.
- 1.5 Employer’s Liability, Commercial General Liability and Automobile Liability insurance may be arranged under single policies for the full limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
- 1.6 Professional Liability coverage must remain in force and effect for a minimum of three years after completion of the Work being performed or termination. Any retroactive date on such insurance shall be prior to the commencement of the Work.
- 1.7 All insurance policies and coverage afforded herein shall not be cancelled or non-renewed, without Consultant providing thirty (30) days prior written notice to the Owners. Certificates of Insurance shall be filed with Owners prior to the start of Consultant’s Work. Such Certificates of Insurance shall specifically designate the name of the project for which the certificate is required, and shall provide satisfactory evidence that Consultant has complied with all insurance requirements, including evidence that Owners have been added as “additional insured.”
- 1.8 Waiver of Subrogation/Rights of Recovery: Consultant and its Subcontractors of every tier and their respective insurers providing the Commercial General Liability, Automobile, Liability, Workers Compensation/Employers Liability and Umbrella/Excess Liability policies shall waive all rights of recovery against the Owners and their respective parent companies, subsidiaries, related and affiliated companies of each, and the officers, directors, agents, and employees.
- 1.9 No Representation of Coverage Adequacy. In specifying Consultant insurance requirements, Owners do not represent that such insurance is adequate to protect Consultant for loss, damage or liability arising from its Work. Consultant is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself. These insurance requirements shall not be construed to relieve Consultant for liability in excess of such coverage, nor shall it preclude Owners from taking such other actions as is available to

it under any other provision of the Agreement. To the extent Consultant maintains insurance greater than these minimum requirements; Consultant agrees that such insurance shall be applicable to any of Consultant's liability obligations. Any acceptance of Certificates of Insurance by Owners shall in no way limit or relieve Consultant of its duties and responsibilities under this Agreement, including the duty to indemnify and hold harmless Owners.

- 1.10 Compliance. Failure of Consultant to maintain the required insurance shall constitute a default under this Agreement and, at Owners' option, shall allow Owners to terminate this Agreement for default, withhold payment and/or purchase the required insurance at Consultant's expense.
- 1.11 Subcontractors. All Subcontractors are subject to the same insurance requirements as Consultant. Consultant shall cause each Subcontractor employed by Consultant to purchase and maintain such insurance. Upon request, Consultant shall furnish Owners with copies of Certificates of Insurance evidencing coverage for each Subcontractor.

EXHIBIT D

CONSULTANT LIEN WAIVER FORM(S)

THIS CONSULTANT FULL LIEN WAIVER AND RELEASE, (this "Consultant Full Lien Waiver and Release") is made this ____ day of _____, 20____, by _____ a _____ corporation, ("Consultant"), on behalf of itself and all parties claiming any interest in or through Consultant and for Consultant's and their successors and assigns, and those acting by or through any of the foregoing, for and in consideration of the sum of _____ and ____/100 U.S. DOLLARS (U.S. \$_____) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full and final payment on account of all labor, materials, and services furnished to _____ ("Owner") for parts supplied and services performed at the _____ (the "Project"), pursuant to that certain contract (Terms and Conditions for Purchase Order) executed by and between Consultant and Owner, dated as of _____, 20____ (the "Contract"), does hereby unconditionally and irrevocably waive, release, remise, relinquish, quit-claim and forever discharge all actions, claims and demands, related to the Contract or related to or arising from the labor, materials or services performed by or through Consultant pursuant to the Contract, which Consultant ever had, now has, or may have in the future, known or unknown, against the Project, the property on which the Project is located, or against the owner(s) of the Project and the property on which the Project is located, Owner, their lenders, including any party providing financing for the construction of the Project, their partners, their parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all persons and entities acting for any of them (collectively the "Releasee Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Consultant agrees that it will not file, enforce or claim any lien (whether contractual, statutory, constitutional or otherwise) against the Project or the property on which the Project is located. Consultant also agrees that it will release any and all liens or claims (whether contractual, statutory, constitutional, or otherwise) that it has filed, claimed, or otherwise attempted to enforce against the Project or the property on which the Project is located.

Consultant warrants and represents that: (a) Consultant has no knowledge of any claims it has against Owner; (b) Consultant has no knowledge of any filed mechanics or material or materialman's liens with respect to the Work (as such term is defined in the Contract and referred to herein as the "Work") or the Project; (c) Consultant has not assigned or pledged any rights or claims in any amount due or to become due from Owner; (d) payment has been made to all consultants, agents, employees, sub-contractors, vendors, laborers and material suppliers, at all tiers, and all other entities, for all labor or services furnished by or through Consultant for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project; (e) no claims from consultants, sub-contractors, vendors, laborers or material suppliers

have been submitted to Consultant with respect to the Contract or remain unsatisfied as of the date of this Consultant Full Lien Waiver and Release; and (f) all contracts with consultants and sub-contractors employed, used or engaged by Consultant in connection with the Project have been completed or have been terminated.

Consultant agrees to defend, indemnify and hold the Releasee Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Releasee Entities may suffer by reason of: (a) any claim made against the Project or any of the Releasee Entities relating to labor or services furnished by or through Consultant; or (b) any breach of any representation or warranty contained herein.

Consultant acknowledges and agrees that: (a) Owner is relying upon the representations and warranties made herein as a material inducement for Owner to make payment to Consultant; (b) this Consultant Full Lien Waiver and Release is freely and voluntarily given by Consultant and Consultant has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Consultant Full Lien Waiver and Release and Consultant has voluntarily accepted the terms of this Consultant Full Lien Waiver and Release for the consideration recited above; and (c) the tendering of payment by Owner and the receipt of payment and the execution of this Consultant Full Lien Waiver and Release by Consultant shall not, in any manner whatsoever, release Consultant from: (i) its continuing obligations with respect to the completion of any Work at the Project that remains incomplete, including punch list work or warranty work, or the correction of defective, deficient or non-conforming Work, all in accordance with the terms and conditions of the Contract; (ii) any contractual, statutory or common law obligations of Consultant with respect to any of the Releasee Entities; or (iii) any other obligations of Consultant with respect to any of the Releasee Entities.

This Consultant Full Lien Waiver and Release may be delivered by facsimile and executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGE]**

The person executing this Consultant Full Lien Waiver and Release on behalf of Consultant has been duly authorized by Consultant to execute and deliver same.

WITNESSES:

CONSULTANT:

Name: _____

Name: _____

By: _____

Name: _____

Title: _____

Address: _____

STATE OF _____

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, by _____ in his/her capacity as _____ of _____, a _____ corporation. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

Notary Public

Stamped, typewritten or printed name:

Commission # _____

EXHIBIT D

CONSULTANT'S PARTIAL LIEN WAIVER AND RELEASE

THIS CONSULTANT PARTIAL LIEN WAIVER AND RELEASE (this "Consultant Partial Lien Waiver and Release") is made this ____ day of _____, _____, by _____, a _____ corporation ("Consultant"), on behalf of itself and all parties claiming any interest in or through Consultant and for Consultant's and their successors and assigns, and those acting by or through any of the foregoing, for and in consideration of _____ and ____/100 U.S. Dollars (U.S.\$ _____), does hereby unconditionally and irrevocably waive, release, remise, relinquish, quit-claim and forever discharge all actions, claims and demands, related to compensation payable to Consultant under the Contract or arising from compensation payable to Consultant for the labor, materials, or services furnished through the ____ day of _____, 200__, by or through Consultant to _____ ("Owner") for parts supplied and services performed at the _____ (the "Project"), pursuant to that certain contract (_____) executed by and between Consultant and Owner, dated as of _____ (the "Contract"), which Consultant ever had, or now has, against the Project, the property on which the Project is located, or against owner(s) of the Project and the property on which the Project is located, Owner, their lenders, including any party providing financing for the construction of the Project, their partners, their parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all persons acting for any of them (collectively the "Releasee Entities"), including, without limitation, all claims related to, in connection with, or arising out of all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Consultant warrants and represents that: (a) Consultant has no knowledge of any claims it has against Owner; (b) Consultant has no knowledge of any filed mechanics or material or materialman's liens with respect to the Work (as such term is defined in the Contract and referred to herein as the "Work") or the Project; (c) Consultant has not assigned or pledged any rights or claims in any amount due or to become due from Owner; (d) payment has been made to all consultants, employees, sub-contractors, vendors, laborers and material suppliers, at all tiers, and all other entities, for all labor and services furnished by or through Consultant for the Project through the date hereof, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project; and (e) no claims from consultants, sub-contractors, vendors, laborers or material suppliers have been submitted to Consultant with respect to the Contract or remain unsatisfied as of the date of this Consultant Partial Lien Waiver and Release.

Consultant agrees to defend, indemnify and hold the Releasee Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Releasee Entities may suffer by reason of: (a) any claim made against

any of the Releasee Entities or the Project relating to Consultant's failure to pay for labor or services furnished by or through Consultant through the date hereof; or (b) any breach of any representation or warranty contained herein.

Consultant acknowledges and agrees that: (a) this Consultant Partial Lien Waiver and Release is freely and voluntarily given by Consultant and Consultant has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Consultant Partial Lien Waiver and Release and Consultant has voluntarily accepted the terms of this Consultant Partial Lien Waiver and Release for the consideration recited above; and (b) the tendering of payment by Owner and the receipt of payment and the execution of this Consultant Partial Lien Waiver and Release by Consultant shall not, in any manner whatsoever, release Consultant from: (i) its continuing obligations with respect to the completion of any Work at the Project that remains incomplete, including, punch list work or warranty work, or the correction of defective, deficient or nonconforming Work, all in accordance with the terms and conditions of the Contract; (ii) any contractual, statutory or common law obligations of Consultant with respect to any of the Releasee Entities; or (iii) any other obligations of Consultant with respect to any of the Releasee Entities.

This Consultant Partial Lien Waiver and Release may be delivered by facsimile and executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;

SIGNATURES APPEAR ON FOLLOWING PAGE]

The person executing this Consultant Full Lien Waiver and Release on behalf of Consultant has been duly authorized by Consultant to execute and deliver same.

WITNESSES:

CONSULTANT:

Name: _____

Name: _____

By: _____

Name: _____

Title: _____

Address: _____

STATE OF _____

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, by _____ in his/her capacity as _____ of _____, a _____ corporation. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

Notary Public:

Stamped, typewritten or printed name:

Commission # _____

My Commision Expires :

(SEAL)

Exhibit E - Project Milestones

Milestone	Target Date
SOUTH DAKOTA	
70% SD Land Rights Secured	7/1/27
File SD Facility Permit	2/10/28
SD Facility Permit Approval	8/1/28
NORTH DAKOTA	
70% ND Land Rights Secured	4/1/28
File ND Route Permit	5/1/28
ROUTE DEVELOPMENT	
Route Corridors Identified	2/1/26
First Round of Open Houses	4/1/26
Route Options Identified	9/1/26
Second Round of Open Houses	11/1/26
Bidder to Supply Target Dates	
EIS Notice of Intent	Bidder to Supply
Draft EIS	Bidder to Supply
Final EIS	Bidder to Supply
EPA Comment on EIS	Bidder to Supply

EXHIBIT F - RATES AND UNIT PRICING

<u>Category</u>	<u># of hours</u>	<u>Total</u>
1 Routing		
2 Environmental		
3 Land Rights		
4 Survey		
5 Engineering		
6 Project Controls		
7 Subcontractor (bidder to provide list of subcontractors and scope)		
TOTAL BID		<hr/> \$ - <hr/>

*Bidder to provide Rate Sheets per the instructions to bidder and commercial terms

Exhibit G
PROJECT
Form of Application for Payment

Name of Company Requesting Payment

TO: Otter Tail Power Company
Attn: _____
P.O. Box 496
Fergus Falls, MN 56538
E-mail: _____@otpc.com

APPLICATION FOR PAYMENT

Contractor's Invoice No.: _____ Date: _____ Prepared by: _____

Application is made for payment as shown below in connection with the contract.

Attached hereto, Contractor provides attachments reflecting the breakdowns for labor and material as required.

ORIGINAL CONTRACT PRICE	\$ _____	
Net Change by Change Orders	\$ _____	
CONTRACT PRICE TO DATE	\$ _____	
Less Prior Applications for Payment	\$ _____	
<u>Current</u> Application for Payment:	\$ _____	(Amount of Contractor Invoice)
BALANCE OF CONTRACT:	\$ _____	

*Please complete documentation on reverse side of this form. Payment will not be issued without this information.

Please complete the following as part of **required documentation** for payment:

(Complete for the period of time this Request for Payment applies to.)

1. Total Labor Hours for this reporting period: _____
2. Contractor cost for this reporting period for employment of Tribal Members: \$ _____
3. Dollars spent on purchases from Tribal Member Businesses: \$ _____
4. Number of Safety Incidents: _____ Incident Reports attached? _____ (Y/N)

Other Required Attachments:

- Monthly Progress Report
- Partial Lien Waiver
- With Final Application for Payment: Full Lien Waiver

EXHIBIT H
COMPLETION FORMS

Form of
Final Acceptance Certificate

(Page 1 of 2)

DATE: _____

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Agreement.
2. Consultant certifies and represents that the following statements are true as of the date of services hereof to Owners:
 - a) The Consultant has satisfied all of the requirements for the achievement of Final Acceptance in accordance with the Agreement.
 - b) Consultant has delivered this form, completed except for signature by Owners, to Owners' duly authorized agent on the above date.
3. The person signing below is authorized to submit this form to Owners for and on behalf of Consultant.

Consultant:

By: _____
Name: _____
Title: _____

EXHIBIT H
FINAL ACCEPTANCE CERTIFICATE
BSSHB PROJECT

(Page 2 of 2)

Owners to cross through one (1) of the following statements:

- A. To the best of Owners' knowledge as of the date of the certificate, Owners agree that the Consultant has achieved Final Acceptance as defined under the Agreement. This Certificate was received by Owners on the date first written above and is effective as of that date. Nothing in this certificate is intended to waive the Owners' rights under the Agreement, including any existing unresolved claims it may have against Consultant or for latent or unknown defects.
- B. Owners do not agree that the Consultant has achieved Final Acceptance as defined under the Agreement due to the omissions, liens, or defects listed below and/or the incomplete nature of the specified portions of the Work listed below or on the attached sheet.

Owners:

The person signing below is authorized to sign the Final Acceptance Certificate for and on behalf of Owners.

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT I

CHANGE ORDER FORM

Date: _____ Change Order: # _____
(Assigned by OTP)

This Change Order modifies the Major Professional Services Agreement for Big Stone South to Hankinson to Bison 345kV (BSSHB) transmission line, dated as of _____, 20__ (the "Agreement"), between **OTTER TAIL POWER COMPANY**, a Minnesota corporation, as project manager for the Big Stone South to Hankinson to Bison 345 kV transmission line (**BSSHB**), as agent for: Northern States Power Company, , a Minnesota Company ("**NSPM**") and OTTER TAIL POWER COMPANY ("**OTP**") (OTP and NSMP are collectively referred to as the "Owners") and _____ ("**Consultant**").

The changes described in this Change Order constitute an amendment to the Agreement. Except as otherwise set forth in this Change Order, the change(s) described in this Change Order do not relieve the Consultant or its Subcontractor of their responsibilities described in the Agreement. The Change Order constitutes full and complete settlement for the changes described in the Change Order, including full compensation for all impacts and direct effects of the Change Order. There shall be no further increase in the compensation or time requirements as a result of the items covered by this Change Order, including compensation to any Subcontractors impacted by the change. Capitalized terms used in this Change Order that are not defined in the Change Order shall have the meaning assigned to them in the Agreement.

Description of the Change: _____

Impact of changing/not changing: _____

The change in the Contract Price is:	\$ _____
The current Contract Price is:	\$ _____
The revised Contract Price, including this change, is:	\$ _____

Except as modified by this Change Order, the Agreement remains in full force and effect, and the Consultant and Owners ratify and affirm the Agreement in all respects.

CONSULTANT

[ENTER CONSULTANT NAME]

By: _____
Authorized Signature

Print Name: _____

Title: _____

OWNERS

OTTER TAIL POWER COMPANY

By: _____
Authorized Signature

Print Name: _____

Title: _____

EXHIBIT K

KEY PERSONNEL

To Be Provided by Consultant, including, at a minimum, the following:

1. Project Manager
2. Land Rights/ROW
3. Engineering
4. Environmental/NEPA
5. Survey
6. Routing

EXHIBIT L
QA/QC PLAN

To Be Provided By Supplier

EXHIBIT N

PROGRESS MEETINGS AND REPORTING

SUMMARY

- 1.1 This section includes requirements for original baseline submittal, expected meeting and reporting frequency and information to be included so that the Owner can accurately evaluate the Contractor's planned and actual performance of the schedule, cost and performance of the Work being performed.
- 1.2 **General conditions**
- A. Contractor will be responsible for having proper representation in required attendance to support and updated as needed.
 - B. The Contractor shall provide the required methods and experienced personnel to support the Project Controls requirements. These practices relate to Planning and Scheduling, Safety, Inventory, Progress Measurement and Earned Value, Cost Control and Change Management.
 - C. The Contractor is responsible to the Owner for the provision of accurate, timely information regarding the Project status associated with Contractors' SOW
 - D. Contractor shall schedule, administer, make physical arrangements for, and preside over weekly Work status, coordination and project schedule meetings.
 - E. Contractor shall prepare agendas and meeting minutes for all meetings over which they preside unless directed otherwise by the Owners. Written notice and agendas shall be distributed 24 hrs in advance of the meeting date. Meeting minutes, including significant proceedings and decisions, shall be recorded by the Contractor and copies of minutes distributed to participants within 24 hrs after meetings. Meeting minutes shall be maintained by the Contractor for record for the duration of the project and for turnover prior to demobilizing. Conferencing capability shall be provided for meetings as needed and arranged by the Contractor
 - F. The Contractor may be required to attend additional meetings as deemed necessary by the Owners.
 - G. The Contractor shall update and/or produce electronic information associated with project progress, cash flows, personnel, materials, safety or any additional adhoc reports or other information requested by owner.
- 1.3 **Schedule**
- A. **Proposal Schedule-** Submit Gantt-type Work schedule with the Proposal showing major activities associated with SOW for Mobilization, foundation, erection, stringing, inspections and turn-over sequences to the Owner
 - B. **Post Award (Startup Schedules)**
 - 1. Contractor shall submit its Detailed CPM Project Schedule within four (4) weeks of contract.
 - 2. Start to finish duration and logic for all WBS activities associated with SOW. Example: field surveys, easements, and crossings by county.
 - 3. Resource and cost load the activities. The total cost loaded schedule shall match the Contractor's bid price for each line segment.

4. The Project Schedule shall be submitted by Contractor as an export file in an electronic form acceptable to Owners (example: Primavera P6/XER).
5. Contractor schedule forecast shall include:
 - a. scheduled in units of Days to complete each WBS activity with no open ends
 - b. All installation (WBS) activities shall be tied to a project completion milestone. Schedule activities shall be sequenced together in a logical order to form schedule activity. Once baselined, individual work activity calendars shall not be change without notification to the Owner, including the reasons for this change.
 - c. Early and late dates for the schedule activities.
 - d. Planned durations and total float for the schedule activities.
 - e. The critical path and near critical paths.

C.

1. The Owner will review the Contractor's Project schedule, which will be used to coordinate the Work thereafter throughout the length of the Project. The Contractor's schedule will be incorporated into the (IPMS) Integrated Project Master Schedule that will include all WBS activities, Once approved by the Owner, the approved Contractor Project Schedule file shall be preserved and designated as the "Baseline Schedule." The Project Baseline Schedule, or subsequently approved Project Baseline.
2. The Contractor's schedule will be incorporated into the Owners (IPMS) Integrated Project Master Schedule that will include all activities of other manufacturers, sub-contractors and other parties working on the Project
3. Contractor shall provide a scheduler to provide planning, evaluation, and reporting using CPM scheduling. The scheduler shall attend all meetings related to Project progress, alleged delays, and time impact.
4. The Contractor shall update the schedule on a frequency as directed by the Owner to track actual progress against the established Project Baseline schedule.

1.4 **Recovery Plan/Schedule:**

- A. If at any time during the performance of the Work Contractor's progress does not keep pace with the requirements of the baseline Project Schedule, Owners may order Contractor to take steps to improve its progress without additional cost to Owners; provided, however, that Contractor shall have five (5) business days to develop and implement its recovery plan for the Project Schedule (in consultation with Owners) from and after the date notified by Owners. Contractor's recovery plan will be diligently and continuously pursued by Contractor. Neither such notice by Owners, nor Owners' failure to issue such notice, shall relieve Contractor of its obligation to perform in accordance with the Agreement, including completion of quality Work in the timeframe required by the Project Schedule. Failure of Contractor to comply with the notice of Owners may be grounds for determination by Owners that Contractor is not pursuing the Work with such diligence as shall assure completion within the times specified. Upon such determination, Owners may terminate for default pursuant to Article 24 of these General Conditions.
- B. Should the actions of Owners cause a significant delay of the Work, Contractor shall notify Owners in writing within five (5) business days from the beginning of such delay. If Owners and Contractor determine the facts justify an extension of time and/or additional compensation and no remaining float time exists in the Project Schedule, the Agreement will be modified in writing as appropriate. Any adjustment to the Contract Sum resulting from delays caused by the Owners shall be limited to reimbursement of Contractor at Contractor's standby rates, which shall in no event exceed 50% of Contractor's actual equipment rental and labor rates. Contractor shall at all

times mitigate any delay expenses and shall not be entitled to additional compensation for delay costs that could have been avoided by performing Work in other areas of the Project. Contractor shall not be entitled to recover inefficiency and impact damages in the event of a delay. Owners may, in their sole discretion and in lieu of granting an extension of time, require Contractor to regain the Project Schedule, and Owners shall compensate Contractor for any required additional charges; provided, however, that no adjustment shall be made for any delay to the extent that performance would have otherwise been delayed by any other cause, including the fault or negligence of Contractor.

- C. With respect to events of "Force Majeure": Owners and Contractor shall be excused from performing in accordance with the Project Schedule in the event of an occurrence of Force Majeure. Force Majeure is defined as fire, floods, earthquake, hurricane, tornado, explosion, catastrophe, accident, war or war-like operations (whether or not a state of war is declared), riot, acts of God, acts of terrorism, insurrection, orders of a Governmental Body and Applicable Laws and Applicable Utility Rules that prevent performance, to the extent (i) such event of Force Majeure is beyond the reasonable control of the Party claiming Force Majeure, and (ii) the Party claiming Force Majeure gives prompt written notice of the same to the other Party.
1. In the event of any such delay, Contractor's sole remedy shall be a time extension for the completion dates required by the Project Schedule, which extension shall be the time period lost by reason of the Force Majeure.
 2. Delays caused by unfavorable weather (that is not abnormal for the season and geographic area), unsuitable ground conditions, inadequate work force, strikes or labor disturbances involving the personnel of Contractor or any of its Subcontractors on the Project, market conditions, or the failure of either Party to place orders for equipment or materials sufficiently in advance to ensure delivery when needed shall not be considered a Force Majeure. Labor strikes are not Force Majeure events.

1.5 Coordination & Scheduling Meetings

- A. **Kickoff meetings:** Conduct conference at Project site to comply with requirements in Division 01 Section "Project Management and Coordination." Review methods and procedures related to the preliminary Work schedule and Contractor's Work schedule, including, but not limited to, the following:
1. Project overview-Summarize the project plan and discuss how to meet objectives
 2. Review Project goals: Discuss the project's objectives, approach, and expectations
 3. Review Project Risks: Discuss risks, issues, and other challenges to the project's success
 4. Review Communication plan: Establish communication flows and discuss how to communicate with the client
 5. Review Roles and responsibilities: Discuss roles and responsibilities
 6. Review software limitations and content and format for reports.
 7. Verify availability of qualified personnel needed to develop and update schedule.
 8. Discuss constraints, including phasing, Work stages, and interim milestones.
 9. Review delivery dates for Owner-furnished products.
 10. Review schedule for Work of Owner's separate contracts.
 11. Review submittal requirements and procedures.
 12. Review time required for review of submittals and re-submittals.

13. Review requirements for tests and inspections by independent testing and inspecting agencies.
14. Review time required for Project closeout and startup procedures, including commissioning activities.
15. Review and finalize list of Work activities to be included in schedule.
16. Review procedures for updating schedule.

B. Weekly Status Meetings

1. Contractor shall schedule a weekly coordination/progress meeting, the day and time to be agreed upon by the Owners and Contractor site management.
2. The weekly coordination meetings shall be attended by the Contractor, major subcontractors, the Owners Representative, the Consulting Engineer and the site safety representative(s).
3. Weekly meeting agenda shall include at a minimum the following topics:
 - a. **Safety**; including OSHA hours worked report, injuries for the period and the status of same, near misses for the period and their status, any training completed for the period and any upcoming training, special concerns i.e, Hazmat issues, etc. security issues or concerns.
 - b. **Personnel**: This will include all resources allocated or working on project
 - c. **Material Control**; including list of major components received for the period, damages noted, upcoming deliveries, and potential impacts.
 - d. **Engineering**; including open RFI's, submittals open and upcoming, drawing releases, field changes, and upcoming needs.
 - e. **Work status/progress** including status by discipline by area.
 - f. **Schedule**; review progress of each WBS item in regard to start date, end date, percent complete based on baseline and notes any specific changes for the past week and a three week look ahead that would include but not limited to Safety, Personnel, Materials, Engineering, Weather, etc or other items as Owner directs.
 - g. **Action item list**; including items which cannot be resolved in the meeting and should indicate the date opened, person responsible for response, description of issue with enough clarity to be understood by all, required by date, and a priority of importance to the project.

C. MONTHLY PROGRESS MEETINGS

1. Contractor shall schedule monthly progress meetings to summarize the previous month's progress based on SOW and present the project status. The report prepared for the meeting shall include schedule detail showing earned value versus base plan. The time and date for this meeting will be agreed upon by the Owners and Contractor site management.
2. The monthly progress meetings shall be attended by the Owners, the Consulting Engineer, the Contractor corporate Management, Major Subcontractor corporate Management, and Site Safety Representative.
3. Monthly progress meeting agenda will include at a minimum the following topics:
 - a. **Safety**; include injuries for the period and the status of same, near misses for the period and their status, with charts illustrating the safety records by contractor and for the project as a whole

- b. **Material Control;** including list of major components received for the period, damages noted, upcoming deliveries, and potential impacts.
- c. **Engineering;** including open RFI's, submittals open and upcoming, drawing releases, field changes, and upcoming needs.
- d. **Work status/progress;** including status by discipline by area. Completed milestones for the period and upcoming milestones. Include progress photos presentation.
- e. **Schedule;** review total project progress of each WBS item in regard to start date, end date, percent complete based on baseline and notes any specific changes for the past month and a three month look ahead that would include but not limited to Safety, Personnel, Materials, Engineering, Weather, etc or other items as Owner directs.
- f. **Cost;** including baseline, current budget numbers and projections of cost to complete, provide graphs illustrating productivity for the contractor and subcontractors. Review pending work scope changes and potential impact on budget, schedule and projections.

1.6 **Reporting and Documentation**

D. Reporting Contained in this Section are the type of report requirement for the overall execution of Project to include but not limited to:

E. **Plan of Day (POD)**

- 1. Contractor shall create and submit Daily (POD) reports to the Owners by 8 am every day prior to Work commencing.
- 2. The Contractor's daily reporting template shall be reviewed and accepted by the Owners prior to submittal of the first Contractor's weekly report of the project.
- 3. At a minimum, the content of the Contractor's Daily report (POD) shall include all resources to be utilized for that day to include safety, weather, personnel, work being performed (WBS) and equipment,

F. **Weekly Reporting**

- 1. The Contractor's weekly reporting template shall be reviewed and accepted by the Owners prior to submittal of the first Contractor's weekly report of the project.
- 2. Contractor shall create and submit weekly reports to the Owners by 12:00pm every Monday once Work commences.
- 3. At a minimum, the content of the Contractor's weekly report shall match the weekly meeting agenda items listed in article 1.5B (Weekly Status Meetings)

G. **Monthly Reporting**

- 1. The Contractor's monthly progress report template shall be reviewed and accepted by the Owners prior to submittal of the first Contractor's monthly progress report of the project.
- 2. Contractor shall create and submit monthly progress reports to the Owners within 5 days of the month-end financial close.
- 3. At a minimum, the content of the Contractor's monthly progress report shall match the monthly meeting agenda items listed in article 1.4f above and include written narratives to accompany associated data information provided. Specific schedule and cost reporting requirements to be included in the monthly progress report are referenced (Monthly Status Meetings)in Section 1.5C

4. Financial progress reporting will include baseline, actual and Monthly forecasted cost for duration of SOW.

H. Other Reporting

1. Adhoc Reporting

- a. The Contractor shall create adhoc reports or submit project data at the request of the Owners that may be required to effectively manage or assist in making key project management decisions throughout the duration of the project. Such reports may include detailed critical path analysis and recovery plans as needed.

2. Weekly Safety Report

- a. Description of any reportable Incidents or Near Misses
- b. Statistics, including previous month and Project-to-date reporting of the number of First Aid cases, OSHA Recordable Incidents, and Lost Workday Incidents. Also previous month and project-to-date results for project Total Recordable Incident rate and DART rate.
- c. Known or suspected problem or risk areas.

3. Material Location Reports: Prepare and submit a comprehensive list of materials delivered to and stored at Project site. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items of equipment fabricated or stored away from Project site. Indicate the following categories for stored materials:

- a. Material stored prior to previous report and remaining in storage.
- b. Material stored prior to previous report and since removed from storage and installed.
- c. Material stored following previous report and remaining in storage.

4. SPECIAL REPORTS

- a. General: Submit special reports directly to Construction Manager within one day of an occurrence. Distribute copies of report to parties affected by the occurrence.
- b. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, response by Contractor's personnel, evaluation of results or effects, and similar pertinent information. Advise Construction Manager in advance when these events are known or predictable.

Schedule: a plan for carrying out a process or procedure, giving lists of intended events and times.

Baseline Schedule: fixed project timeline that owner and vendor determined as baseline and does not allow for variance

Cost Performance Index (CPI): The Cost Performance Index (CPI) is a measure of the cost efficiency of budgeted resources, expressed as a ratio of earned value to actual cost.

Critical path method(CPM): which is a method of planning and scheduling a construction Project where activities are arranged based on activity relationships. Network calculations determine when activities can be performed and the critical path of Project.

Critical Path: The longest connected chain of interdependent activities through the network schedule that establishes the minimum overall Project duration and contains no float.

Float: The measure of leeway in starting and completing an activity. Float time is not for the exclusive use or benefit of either Owner or Contractor, but is jointly owned.

Resource Loading: The allocation of manpower and equipment necessary for the completion of an activity as scheduled.

Integrated Project Master Schedule (IPMS) overall schedule (IMS) includes calendar dates for each wbs as well as details about how your team will execute the project steps

Schedule Performance Index (SPI): is a measure of the conformance of actual progress (earned value) to the planned progress

Work Breakdown Structure(WBS): a hierarchical decomposition of the work to be completed by the vendor to accomplish the project objectives and create the required deliverables

Labor performance index(LPI): is a performance indicator that measures the relative productivity of the labor force in completing a specific amount of work within a given time frame.

4.0 Attachments

4.1 Questions and Answers Template

4.2 Commercial and Technical Exceptions Template

Attachment 4.1 - Questions and Answers Template

Instructions

Consultants to fill out Project Name, Consultant Name below. All questions should include the following information: Date of Question, Question and RFP Section/Document Reference using the template format below and send to **mholmquist@otpc.com**

Project Name:	Big Stone South to Hankinson to Bison (BSSHB)
Consultant Name:	
Questions Due back to Owners by	8/1/2025

		Questions	
	Receive Date	Question or Clarification	RFP Section Reference
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Attachment 4.2
BSSHB Commerical Exceptions

Instructions for Commerical Exceptions

Consultants to fill out yellow highlighted sections for any Commerical Exceptions/Clarifications/Assumptions taking to RFP, indicatiting page, paragraph, RFP document they are referencing. Please be sure to fill out Project Name, consultant Name, Date and Proposal Number below. Consultants will be asked to assign a Risk Level to each Exception (see Risk Ledger for how to assign). This document should be included with RFP Response. If this document is not returned, it is assumed there are no exceptions to the RFP.

Project Name:	BSSHB
Consultant Name:	
Date:	
Proposal Number:	

[illegible]

BSSHB Technical Exceptions

Instructions for Technical Exceptions

Consultants to fill out yellow highlighted sections for any Technical Exceptions/Clarifications/Assumptions taking to RFP, indicating page, paragraph, RFP document they are referencing. Please be sure to fill out Project Name, Consultant Name, Date and Proposal Number below. Consultants will be asked to assign a Risk Level to each Exception (see Risk Ledger for how to assign). This document should be included with RFP Response. If this document is not returned, it is assumed there are no exceptions to the RFP.

Project Name:	BSSHB
Consultant Name:	
Date:	
Proposal Number:	

Consultant's Technical Exceptions										
Item	Page	Paragraph	RFP Requirement	Consultant Comment	Owners Response 1	Consultant Response 2	Owners Response 2	Resolution	Status (Open/Closed)	Risk Level
1									Open	
2									Open	
3									Open	
4									Open	
5									Open	
6									Open	
7									Open	
8									Open	
9									Open	
10									Open	
11									Open	
12									Open	
13									Open	
14									Open	
15									Open	
16									Open	
17									Open	
18									Open	
19									Open	
20									Open	
Owners Technical Comments/Clarifications on Consultant's Proposal										
Item	Page	Paragraph	RFP Requirement	Consultant Reference	Owners Comment	Consultant Response	Owners Response 2	Resolution	Status (Open/Closed)	Risk Level
1									Open	
2									Open	
3									Open	
4									Open	
5									Open	
6									Open	
7									Open	
8									Open	
9									Open	
10									Open	