March 30, 2023 Landmark Job No.: TBD

David Torgler
Town Administrator / Clerk
Town of Oak Creek, Colorado
david@townofoakcreek.com

RE: **Town of Oak Creek Floodplain Administration**
Professional Engineering Services Probable Fee Summary

Dear David,

Landmark Consultants, Inc. (Landmark) is pleased to provide the following probable fee summary for Professional Engineering Services in connection with providing Floodplain Administration Services for the Town of Oak Creek.

We appreciate your confidence in us and will do our best to continue to merit it. In establishing our relationship, we believe that it is good practice to set forth in detail and in writing (for future reference from time to time) the elements of our mutual understanding as to the scope of our services and the terms of our engagement. We also believe that since performance of our services will require you and your consulting team's joint effort and cooperation, the better our mutual understanding of our respective roles, responsibilities and contributions, the more efficient, effective and economical our work for you can be.

Supervision and Delegation:

For your convenience, it is beneficial to have a designated person within our firm serve as the primary contact and manager for this Project and as such, Mr. Jeff Gustafson, L.S. will be our project manager and Ms. Deb Spaustat, P.E. will be our engineer working on your behalf. We routinely delegate selected responsibilities to other persons in our firm when, because of special experience, time availability or other reasons, they are in a better position to carry them out. In addition, we will try, where feasible, to delegate tasks to persons who can properly perform them at the least cost to you.

Scope of Work (Basic Services):

The Scope of Work below outlines our understanding of the Project requirements based on our conversations, our general knowledge and our experience with the DHS-FEMA National Flood Insurance Program, and our understanding of the requirements contained within the Town of Oak Creek Code of Ordinances.

Please note that changes to the project will cause our estimated fees to change. Our fees are subject to decrease or increase based on a more refined scope of work.

Our ability to provide the services described herein requires orderly and efficient cooperation among the Team participants. Our probable fees were established to provide the Client with a minimum budget. This budget may not be enough to provide the requested scope of work based on things beyond our control.

We understand that while we may from time to time be engaged on other matters in the future, our present engagement is limited to the following:

1. Preliminary Coordination with Town Floodplain Administrator:
This is a one-time service.

1.1 Landmark will review Chapter 17.06 – Floodplain of the Town of Oak Creek Code of Ordinances for conformance with FEMA National Flood Insurance Program CFR Title 44 60.3 Flood plain management criteria for flood-prone areas. Landmark will discuss any discrepancies and suggest any modifications to the current ordinance to bring it into compliance if necessary.

1.2 Landmark will review the Town's Floodplain Development Permit Application and process for clarity and conformance with the Town's Floodplain Ordinance and suggest modifications that may bring the application/process in compliance with the Ordinance and/or clarify the process for the applicant.

Preliminary Coordination Cost: $ 8,900

2. On-going Services for Floodplain Development Permit Review
These services will be provided for each Floodplain Development project.

2.1 **Pre-application Review (required for all applications)**:
The applicant will supply the Town of Oak Creek with a conceptual site plan showing the proposed project in relation to property boundaries and the flooding source.

Landmark will conduct a preapplication review of the proposed project that will include reviewing the projects' location within the Town Limits, the effective FEMA Flood Insurance Rate Map and conceptual site plan for the proposed project. Landmark will determine if the project is located in a regulatory Floodway or Special Flood Hazard Area (SFHA) zone AE (base flood elevation, BFE, determined) or A (no BFE determined). Landmark will determine what level of review the application will be subject to, Simple or Complex, and will indicate what additional information, documentation of certification may be needed to complete Floodplain Development Application, which may include:

- Floodproofing Certification
- Elevation Certificate
- No-Rise Certification
- Letter of map change (LOMC) from FEMA.

This information will be provided to the Floodplain Administrator to convey to the applicant. Should Landmark determine special circumstances exist that may require a unique level of review the Town will be informed.

Pre-application Review Cost: $ 425

2.2 **Floodplain Development Permit Application review**
Projects requiring a floodplain development permit will range in complexity depending on where they are located within the Special Flood Hazard Area, if there is a base flood

determined already, and what is being proposed. Applications will require either a Simple or Complex Review as indicated by the Pre-Application Review:

2.2.1 **Simple**:

The Floodplain Administrator will provide Landmark with submitted Floodplain Development Permit applications. Landmark will review the applications for:

- Completeness, i.e. all forms requested are submitted and signed/sealed as required
- Conformance to the Town's Floodplain Ordinance, i.e. no-rise is sufficiently demonstrated, floodproofing is sufficiently documented, first floor of structure is at least 1-ft above BFE, etc.

Landmark will provide the Floodplain Administrator with either a recommendation to approve the application or a description of deficiencies in the application that will need to be corrected to comply with the Town's Floodplain Ordinance. A "Simple" application will be for projects where a base flood is already determined in the FIS and the project is simply elevating or floodproofing the structure.

Simple Floodplain Development Application Review –Cost: $ 1,788

2.2.2 **Complex:**

In addition to the review for a "Simple" application, Landmark will provide engineering review of technical support documentation for more complex projects. A "Complex" project may require hydraulic modeling to determine a base flood elevation or show no-rise on the base flood elevation.

Complex Floodplain Development Application Review –Cost: $ 2,988

2.3 **Continued Application review as necessary:**

Landmark will continue to review additional information submitted by the applicant via the Floodplain Administrator as necessary to complete the process. Landmark will be available to meet with the project's owners and/or representatives to discuss Landmarks comments and review recommendations in further detail as appropriate and necessary.

Continued Application Review Cost: $ 200/ hour

2.4 **Post Review Documentation:**

Post review documentation for Landmark and client records.

Post Review Documentation Cost: Included above

Landmark Fees:

The Town will be billed for services based on the above. Landmark will invoice the Town at the conclusion of any of the above described services (Pre-Application Review, Simple or Complex Application Review) for any given application. Continued Application Review costs will be billed on an hourly basis for any time spent in the previous month, in accordance with the current Rate Schedule and Reimbursable Expenses. If, for reasons outside the control of Landmark, you require an accelerated schedule, overtime

premiums may be applied in addition to the fee described herein. This premium will simply reflect the additional compensation we will provide our employees to reward their efforts and sacrifices.

Additional Services:

All services and deliverables not explicitly listed above are considered Additional Services. The compensation for these services will be in addition to this proposal and will be negotiated when requested.

The following list is not intended to be all-encompassing or exhaustive. It outlines items excluded from this contract, which are to be considered as Additional Services or to be provided by others as necessary:

1. Attending meetings in person or on-line.

2. Providing services in preparation for or attendance at public meetings, homeowners associations, other meetings, or legal proceedings other than those clearly described in the Scope of Work.

Your Responsibilities:

1. Provide a signed copy of this proposal;

2. Furnish all documents related to the Town's Floodplain Ordinance and application process;

3. Designate a person(s) to act as a representative with respect to professional and contractual services of Landmark. Based on our direct involvement with your project representatives, we are assuming that they are authorized to direct us and request services, both Basic and Additional;

4. Designate a person(s) to act as a liaison between Landmark and the person(s) or their representative applying for a Floodplain Development Permit with the Town of Oak Creek.

5. Give prompt notice to Landmark of any development that affects the scope and/or timing of Landmark's services;

6. Complete information as to the requirements and objectives for the Project.

Please be advised that Landmark Consultants, Inc. cannot be held responsible for the accuracy or completeness of information provided by others.

Terms:

We have enclosed our standard General Provisions that is a part of this contract. Please read it carefully, so that you will fully understand the financial commitments you are making. If anything in the financial arrangements presents a problem, or is unclear, please advise us promptly so that we may discuss it and reach a full understanding.

Landmark's rates for the work by its engineers and surveyors vary based on the experience and expertise of the individuals involved. Typically, we adjust these rates from time to time, generally at year end, to

reflect changing economic conditions. If we increase rates during this engagement, we will provide you written notice of those changes for the personnel working on this engagement and we will charge at the adjusted rates for work performed after the change. Such changes will be reflected on our invoices.

You will be billed monthly for services based on actual time spent, in accordance with the current Rate Schedule and Reimbursable Expenses. If, for reasons outside the control of Landmark, you require an accelerated schedule, overtime premiums may be applied in addition to the fee described herein. This premium will simply reflect the additional compensation we will provide our employees to reward their efforts and sacrifices.

If there are extended delays for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of our compensation taking into consideration the impact of such delays, including but not limited to, changes in price indices and pay scales applicable to the period when services are in fact being rendered.

Please be advised that Landmark cannot and does not guarantee project approvals by reviewing and governing agencies. Due to the unpredictable circumstances during planning and review, the above services are not guaranteed to be sufficient to guarantee the approval of the Project.

Additional Services which are agreed upon by both Landmark and yourself and as outlined in the attached General Provision will be charged on the basis of time and materials according to our current Rate Schedule. Reimbursable Expenses incurred in connection with all Basic and Additional Services will be charged on the basis of actual cost plus ten-percent (10%).

We are pleased to have this opportunity to have you as a client and look forward to a mutually satisfactory and beneficial relationship. Our effectiveness and your best interest are enhanced by an atmosphere of candor and confidence. We hope that you will not hesitate to discuss with us any question or concern you might have about either.

Owner:

BY:

By: _____

Date:_____

Sincerely,
Landmark Consultants, Inc.

Jeffry A. Gustafson, L.S.
Principal

RATE SCHEDULE
SUBJECT TO CHANGE

HOURLY RATE

PRINCIPAL	$ 225.00
REGISTERED ENGINEER	$ 200.00
PROJECT MANAGER	$ 175.00
FIELD ENGINEER	$ 165.00
DESIGN ENGINEER	$ 150.00

REGISTERED LAND SURVEYOR	$ 200.00
PROJECT SURVEYOR	$ 175.00
FIELD SURVEY PARTY	$ 190.00
LIDAR SCANNING	$ 300.00

AUTOCAD TECHNICIAN	$ 125.00

CLERICAL	$ 60.00

REPRODUCTION

PLOTS PER SHEET	$ 2.00

MISCELLANEOUS

10% WILL BE ADDED TO ALL DIRECT EXPENSES INCLUDING, BUT NOT LIMITED TO, DELIVERIES, OUTSIDE PRINTING, SUB-CONSULTANTS, LABORATORIES, AIRFARE, LODGING, MEALS, CAR RENTAL, TELEPHONE, ETC.

*A 20% INCREASE MAY BE ADDED AS A SURCHARGE FOR ANY AUTHORIZED OVERTIME WORK PERFORMED OVER EIGHT HOURS IN ONE DAY OR WORK PERFORMED ON SATURDAYS, SUNDAYS, AND HOLIDAYS.

GENERAL PROVISIONS

ARTICLE 1 - SERVICES OF LANDMARK

1.1 BASIC SERVICES

LANDMARK shall provide for CLIENT professional consulting services pursuant to the performance of the work described in this work order. The services rendered shall be consistent with the generally accepted standards of the consulting profession and shall represent LANDMARK's professional efforts consistent with project limitations such as time, budget, accessibility, local conditions, reasonable assumptions, etc. Upon this Agreement becoming effective, LANDMARK is authorized to begin services.

1.2 ADDITIONAL SERVICES

If authorized verbally or in writing by CLIENT, CONTRACTOR, or other project consultant, LANDMARK shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by CLIENT.

1.2.1 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of other information requested by CLIENT or CONTRACTOR.

1.2.2 Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by LANDMARK or its design requirements including, but not limited to, changes in size, complexity, CLIENT's schedule, character of construction, or method of financing; and revising previously accepted calculations, studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws, Regulations, or review agencies, enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond LANDMARK's control.

1.2.3 Services required as a result of CLIENT or CLIENT'S representative(s) providing incomplete or incorrect Project information.

1.2.4 Furnishing services of LANDMARK's Consultants for other than Basic Services.

1.2.5 Services during out-of-town travel required of LANDMARK other than for visits to the Site or CLIENT's or CLIENT'S representative's office.

1.2.6 Preparing to serve or serving as a consultant or witness for CLIENT in any litigation, arbitration or other dispute resolution process related to the Project.

1.2.7 Other services performed or furnished by LANDMARK not otherwise provided for in this Agreement.

1.3 REIMBURSABLE EXPENSES

Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items and, if authorized in advance by CLIENT, overtime work requiring higher than regular rates. The amounts payable to LANDMARK for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by LANDMARK plus all invoiced Reimbursable Expenses allocable to the Project multiplied by a factor of 1.1 (Cost plus 10%).

1.4 STANDARD OF CARE

LANDMARK's services shall be performed in a manner consistent with the care and skill ordinarily exercised by professionals practicing in the same locality and specialty under the same or similar conditions, subject to site conditions and time limits and financial and physical constraints imposed by CLIENT. LANDMARK makes no warranties or guaranties, either express or implied, of any kind, nature or type whatsoever (including those of condition, merchantability, suitability and fitness for a particular purpose or use) regarding the services.

ARTICLE 2 - CLIENT'S RESPONSIBILITIES

2.1 Provide LANDMARK with all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications.

2.2 Furnish to LANDMARK any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site. Furnish or otherwise make available such additional Project related information and data as is reasonably required to enable LANDMARK to complete its Basic and Additional Services.

2.3 Arrange for safe access to and make all provisions for LANDMARK to enter upon public and private property as required for LANDMARK to perform services under the Agreement.

2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by LANDMARK (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CLIENT deems appropriate with respect to such examination) and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of LANDMARK.

2.5 Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by LANDMARK and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

2.6 CLIENT agrees to include in any other project related contracts appropriate language for CONTRACTOR and any subcontractors of any tier stating "Construction survey stakes provided by LANDMARK are reference points to assist the contractor during construction. Staking information provided by LANDMARK does not relieve the CONTRACTOR from following the requirements and design parameters included in the construction documents. Construction stakes are subject to construction tolerances and disturbances by construction activities, project activities, and vandalism. Contractor should verify elevations and notify LANDMARK of discrepancies between construction documents and construction stakes. No matter where stakes are set or placed, the contractor is still responsible for ways, means and methods of construction and is not relieved of their responsibility to construct the project according to the plans and specifications". The CLIENT and CONTRACTOR have an obligation to confirm dimensions and elevations to the fullest extent practicable and to notify LANDMARK of any discovered discrepancies in a timely fashion. LANDMARK shall not be held liable for staking errors unless the original stakes or marks alleged to be in error are preserved in their original position.

ARTICLE 3 - GENERAL CONSIDERATIONS

3.1 USE OF DOCUMENTS

All documents and electronic files prepared by LANDMARK as instruments of service and shall remain the property of LANDMARK.

Copies of LANDMARK-furnished data that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are delivered to CLIENT. Files in electronic media format of text, data, graphics, or of other types that are furnished by LANDMARK to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. CLIENT may make and retain copies of Documents for information and reference in connection with use on the Project by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by LANDMARK, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to LANDMARK or to LANDMARK's Consultants. CLIENT shall indemnify and hold harmless LANDMARK and

LANDMARK's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle LANDMARK to further compensation at rates to be agreed upon by CLIENT and LANDMARK.

3.2 TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been repaired before expiration of the period specified in the written notice. In the event of termination, LANDMARK shall be paid for services performed to the termination notice date plus reasonable termination expenses.

3.3 CONTROLLING LAW

This Agreement is to be governed by the law of the state in which the Project is located.

3.4 SUCCESSORS AND ASSIGNS

Neither CLIENT nor LANDMARK may assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the other.

3.5 LIMITATION OF LIABILITY

CLIENT and LANDMARK agree that, to the fullest extent permitted by law, LANDMARK's total liability to CLIENT and all construction contractors and subcontractors for any and all injuries, claims, losses, expenses, damages, or similar expenses arising out of the work performed pursuant to this contract from any cause or causes, shall not exceed the fee charged. Such causes included but are not limited to LANDMARK's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

3.6 INDEMNIFICATION

The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless LANDMARK, its officers, directors, employees and sub-consultants (collectively, LANDMARK) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CLIENT's acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the CLIENT is legally liable. Neither the CLIENT nor LANDMARK shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

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

3.7 OTHER PROVISIONS CONCERNING PAYMENT

Invoices are due and payable upon receipt. All invoices not paid within 45-days after invoiced will be subject to the greater of a minimum $75 late payment penalty per month or 1.5% of unpaid balance per month, (or the maximum rate of interest permitted by law, if less). If it becomes necessary for LANDMARK to pursue legal action to assist with collecting any outstanding balance, it is agreed that CLIENT is responsible for payment of all reasonable attorney's fees and collection fees that may be incurred. LANDMARK reserves the right to suspend services without penalty until payment has been received.