

Legal Remedy

Legal remedy is provided by the physical incorporation of ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION E – COMPLIANCE WITH LAWS and enforcement of the Agreement as governed by the laws of the State of Wyoming.

Administrative Procedures, Sanctions, and Penalties

[LPA Name] concerns with consultant performance and/or adherence to Agreement Services will most often be resolved through the coordination and resolution efforts as outline in SECTION XIII – AGREEMENT ADMINISTRATION of this document. The authorized representative/primary contact of the *[LPA Name]* should document all administrative issues and subsequent resolutions, from start to completion of the Agreement.

There may be an occurrence when a cooperative and acceptable resolution cannot be reached between the *[LPA Name]* and the Consultant. At those occurrences, the *[LPA Name]* will typically make the determination that the Consultant has failed to perform Agreement-required acceptable work, has failed to progress in the performance of Agreement Services, or has not and will not comply with General Provisions. When that determination concludes that the Agreement Services cannot be completed and the *[LPA Name]* will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables, the threshold for a material breach of agreement has been reached and will invoke ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION C – BREACH OF AGREEMENT and the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

A *[LPA Name]* determination that the Consultant has failed to perform Agreement-required acceptable work, has failed to progress in the performance of Agreement Services, or has not and will not comply with General Provisions will need to be supported by the *[LPA Name]* documentation of monitoring activities as allowed by ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION N – MONITORING ACTIVITIES. Issues concerning the Consultant's billing of allowable costs should be evaluated in accordance with ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION B – AUDITING AND ACCESS TO RECORDS.

The threshold for a material breach of agreement requires that the Consultant has failed to perform Agreement Services and that the *[LPA Name]* has or will incur additional cost, lost opportunity, or additional time to obtain the same or equal Agreement deliverables. Both represent a high threshold to assure an acceptable outcome and, as a result, the *[LPA Name]* representative through monitoring activities must identify and document unresolved issues early in the Agreement, before either the Consultant or the *[LPA Name]* has incurred substantial cost or time. All unresolved issues should be promptly addressed, either reaching resolution, arriving

at reasonable penalties/sanctions, or concluding breach of agreement with the resultant remedies, including ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT.

Penalties and/or sanctions typically available to the *[LPA Name]* would be structured as 1) compensatory damages, 2) specific performance, or 3) termination.

Damages, based on additional cost or time incurred by the *[LPA Name]*, could be quantified and pursued. Damages, based on lost opportunity incurred by the *[LPA Name]*, may be more difficult to quantify. Lost opportunity could include *[LPA Name]* delays in the delivery of supplemental work or successor agreements for work, or delay in the year of project construction and the related increased construction costs. Other lost opportunities may be identified and quantified.

Specific performance would require the Consultant to pursue Agreement Services, with adjustment to allowable costs. Specific performance would be used as a remedy, either prior to or for breach of agreement, if the work required by the Agreement required special expertise, is an emergency, or is only available from a single or restricted number of firms. In those cases, damages would not suffice to place the *[LPA Name]* in as good a position as it would have been had the breach not occurred.

Termination of the Agreement is presented in ATTACHMENT 1, FEDERAL GENERAL PROVISIONS, SECTION T – TERMINATION OF AGREEMENT. The *[LPA Name]* may terminate the Agreement, and either pursue restitution or not pursue restitution. Restitution, as a remedy, means that the *[LPA Name]* is put back in the position it was in prior to the breach; without restitution, the Agreement is terminated with both the Consultant and the *[LPA Name]* no longer under any Agreement obligation.