

This is **EXHIBIT A**, consisting of 14 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 16, 2013.

## **Engineer's Services**

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Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### *A.1.01 Study and Report Phase*

##### **A. Engineer shall:**

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.~~
- ~~2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. \_\_\_\_\_ Identify and evaluate \_\_\_\_\_ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables:~~
- ~~7. Furnish \_\_\_\_\_ review copies of the Report and any other deliverables to Owner within \_\_\_\_\_ calendar days of authorization to begin services and review it with Owner. Within \_\_\_\_\_ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~

- ~~8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish \_\_\_\_\_ copies of the revised Report and any other deliverables to the Owner within \_\_\_\_\_ calendar days of receipt of Owner's comments.~~
- ~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.~~

*A.1.02 Preliminary Design Phase*

- ~~A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:~~
  - ~~1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.~~
  - ~~2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.~~
  - ~~3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.~~
  - ~~4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.~~
  - ~~5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:~~
    - ~~a. Review, and revise if necessary, the recommendations of "Raw Water Collection System and Pump Station 1 Study" completed by Engineer in December 2007 as they relate to the Pump Station #1 improvements. Specifically:~~
      - ~~1) Re-evaluate capacity considerations for the Fort Union Redrill Wells at their actual design rates;~~
      - ~~2) Change the future well planning number to 1 well on the west end of town, and 4 wells on the south side of town;~~
      - ~~3) Evaluate current and future air stripper capacities and requirements;~~
      - ~~4) Review locations and extents of work required to replace mag meters in manufacturer recommended orientations;~~
      - ~~5) Provide a lead time estimate for air stripping units and a proposed schedule of work to meet Owner's timing requirements;~~
      - ~~6) Provide planning level estimates for the work contained in the revised recommendations.~~



- ~~6. Furnish 4 review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 30 calendar days of authorization to proceed with this phase, and review them with Owner. Within 15 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.~~
- ~~7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner 4 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 15 calendar days after receipt of Owner's comments.~~
- B. ~~Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.~~

#### A.1.03 *Final Design Phase*

- A. ~~After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project Upon Owner-issued Notice to Proceed Engineer shall:~~
  1. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  2. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16 division format of the Construction Specifications Institute, and coordinated with to the City of Gillette 2012 standard specifications.
  3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
  4. ~~Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.~~
  5. Perform or provide the following additional Final Design Phase tasks or deliverables:
    - a) Prepare plans and specifications for:
      1. Mint Avenue; overlay with 75' sanitary sewer extension. (Approximately 480 LF).

2. Milton Street; evaluate replacing existing damaged concrete panels or crack and seat existing concrete with asphalt overlay. (Approximately 1550 LF).
  3. Fox Park Avenue; review property boundary, address drainage issues, intersection design Fox Park and Boxelder. (Approximately 500 LF).
  4. Sammye Avenue; crack and seat existing concrete with asphalt overlay. (Approximately 1310 LF).
  5. Darrell Street; crack and seat existing concrete with asphalt overlay. (Approximately 680 LF).
  6. Fox Park Parking Lot; review property boundary, address drainage issues, parking lot design.
  7. Wigwam Boulevard; review property boundary, address drainage issues, design concrete street, evaluate access to highway 59. (Approximately 250 LF).
  8. Evaluation of drainage issues on Fox Park Ave, Fox Park Parking Lot, and Wigwam Blvd, specifically by:
    - a. Survey existing structures, curb and gutter, and street elevations.
    - b. Estimate storm flows from streets and capacity of existing curb and gutter.
    - c. Propose two alternatives for street runoff points and incorporate one into design.
  9. Research right-of-way boundaries along Fox Park Ave and Wigwam Blvd.
  10. Review previous design for pavement maintenance of cross slope cracking of Sioux Avenue from S. Douglas Hwy to Choctaw. (Approximately 2,170 LF).
  11. Review previous design for sewer rehab Sioux Avenue from S. Douglas Hwy to Choctaw.
- b) Prepare a project design schedule.
  - c) Perform geotechnical exploration and CBR report documenting soil conditions for 15 holes.
  - d) Prepare and conduct 70%, 95%, and 100% design reviews with the Owner.



- e) Prepare City of Gillette permit to construct submittal.
- f) Incorporate City of Gillette comments and any other final changes into 100% plans.
- g) Prepare a cost estimate based on the 100% design documents.

Provide the 10 sets of bid documents referred to in 8) below to City of Gillette Purchasing Department (Purchasing). Coordinate with Purchasing during bid period.

- ~~6. Final Design Documents shall be ready for review by Owner within 90 days of finalization of Preliminary Design documents or written notice to proceed from Owner.~~
  - 7. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 14 days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
  - 8. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit 10 final copies of the Bidding Documents including electronic pdf versions for use with electronic bidding, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 21 calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the bid documents are delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### *A.1.04 Bidding or Negotiating Phase*

- A. After acceptance by Owner of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, conduct pre-Bid conferences, if any, and receive and process contractor deposits or charges for the Bidding Documents.
  2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
  3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
  4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
  5. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:
    - a) Prepare and conduct a pre-bid conference, record minutes of the meeting, and issue addenda if necessary.
    - b) Attend bid opening and assist Owner with bid opening process.
    - c) Review bid proposals received and provide a recommendation of award letter to the City of Gillette.
  6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (~~except as may be required if Exhibit F is a part of this Agreement~~).

#### *A.1.05 Construction Phase*

- A. ~~Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:~~
1. ~~General Administration of Construction Contract. Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act~~



on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.

- ~~2. Resident Project Representative (RPR). Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. Times/coverages for RPR work are discussed in 1.05.A.18.~~
- ~~3. Selecting Independent Testing Laboratory. Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.~~
- ~~4. Pre-Construction Conference. Organize and conduct a Pre-Construction Conference prior to commencement of Work at the Site.~~
- ~~5. Schedules. Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~
- ~~6. Baselines and Benchmarks. As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.~~
- ~~7. Visits to Site and Observation of Construction. In connection with observations of Contractor's Work while it is in progress:
  - ~~a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.~~
  - ~~b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of~~~~



~~confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.~~

- ~~8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.~~
- ~~9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.~~
- ~~10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.~~
- ~~11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.~~
- ~~12. *Substitutes and "or equal."* Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.~~
- ~~13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests,~~



and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

~~14. Disagreements between Owner and Contractor. Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.~~

~~15. Applications for Payment. Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

~~a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation); and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).~~

~~b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to~~



Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

~~16. Contractor's Completion Documents.~~ Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.

~~17. Substantial Completion.~~ Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

~~18. Additional Tasks.~~ Perform or provide the following additional Construction Phase tasks or deliverables:

- ~~a) Assist Purchasing staff as necessary in preparing construction contracts.~~
- ~~b) Setup, prepare agenda for, run and record minutes for a pre-construction conference.~~
- ~~c) Setup, prepare agenda for, run and record minutes for bi-weekly construction meetings.~~
- ~~d) Provide 16 hours per week of Resident Project representative (RPR) time for a construction contract duration of 90 calendar days.~~
- ~~e) Provide testing of wet film thickness, dry film thickness, and observation of Contractor Holiday testing.~~

~~19. Final Notice of Acceptability of the Work.~~ Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

~~B. Duration of Construction Phase.~~ The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon



~~written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.~~

- C. ~~Limitation of Responsibilities.~~ Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

#### *A.1.06 Post-Construction Phase*

- A. ~~Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:~~

- ~~1. Provide assistance in connection with the adjusting of Project equipment and systems.~~
- ~~2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.~~
- ~~3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.~~
- ~~4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.~~
- ~~5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:~~
  - ~~Complete record drawings and deliver 2 copies of 11x17 Mylar drawings and 1 electronic copy to the Owner.~~
- ~~6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.~~

- B. ~~The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's correction period.~~

## **PART 2 – ADDITIONAL SERVICES**

### *A2.01 Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner;



and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, ~~except when such assistance is required by Exhibit F.~~
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the original date for final completion of the Work.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

*A2.02 Additional Services Not Requiring Owner's Written Authorization*

- A. ~~Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.~~

- ~~1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.~~
- ~~2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.~~
- ~~3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
- ~~4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.~~
- ~~5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.~~
- ~~6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.~~
- ~~7. Services during the Construction Phase rendered after the date stated in A1.05.B, or in excess of the times specified in A1.05.A.18.~~

E-500 Exhibit A.Sept 2004



This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 16, 2013.

## **Owner's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 *In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:*

- A. Provide Engineer with all criteria and full information as to Owner'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 Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that

affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
  - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
  - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties,



responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Geotechnical exploration and testing covered in Appendix A will be performed by the Engineer. Any other testing, including further geotechnical testing is covered by this section.
- P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- Q. *No Hire.* ENGINEER and OWNER agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other party's associates or employees until one year after the work of this Agreement is completed or this Agreement is terminated.
- R. *Jobsite Safety.* Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or the ENGINEER's Employees and subconsultants at the construction site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. ENGINEER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The OWNER agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the OWNER's agreement with the Contractor. The OWNER also agrees that the OWNER's agreement with the Contractor shall require the Contractor to indemnify the OWNER, the ENGINEER and the ENGINEER's subconsultants from and against all claims arising out of or resulting from the performance of the Work and shall also require the Contractor to provide a separate policy containing Owner's Protective Liability Coverage, which, in addition to the Contractor's general liability insurance policy, shall name the OWNER, the ENGINEER, and the ENGINEER's subconsultants as insureds and which shall indemnify the OWNER, ENGINEER and the ENGINEER's subconsultants against claims, demands or liability by any person or entity which may arise from the performance of the Contractor and his or her subcontractors on this project.
- S. *Contingency.* The Owner and Engineer acknowledge that changes in design and/or construction of the Project may be required for a variety of reasons during the design and construction phases of the Project. As a result, unforeseen changes may cause the final construction and engineering costs of the Project to exceed the initial Project cost estimates

for construction and engineering. The Owner agrees to set aside sufficient funds as a contingency reserve to be used, as required, to cover any such increased Project costs.

- T. Perform or provide the following additional services:  
None

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