

**SHORT FORM AGREEMENT BETWEEN  
THE CITY OF GILLETTE, WYOMING AND HDR ENGINEERING, INC.  
FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the City of Gillette, Wyoming (“OWNER”) a Wyoming municipality, with principal offices at 611 N. Exchange, Gillette, Wyoming 82717, and HDR ENGINEERING, INC., (“ENGINEER”) a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as In-House Training Seminar on Cost-of-Service Ratemaking (“Project”);

**WHEREAS**, OWNER desires to engage ENGINEER to provide professional engineering, consulting and related services (“Services”) in connection with the Project; and

**WHEREAS**, ENGINEER desires to render these Services as described in SECTION I, Scope of Services.

**NOW, THEREFORE**, OWNER and ENGINEER in consideration of the mutual covenants contained herein, agree as follows:

**SECTION I. SCOPE OF SERVICES**

ENGINEER will provide Services for the Project, which consist of the Scope of Services as outlined on the attached Exhibit A.

**SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES**

The “HDR Engineering, Inc. Terms and Conditions for Professional Services,” which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

**SECTION III. RESPONSIBILITIES OF OWNER**

The OWNER shall provide the information set forth in paragraph 6 of the attached “HDR Engineering, Inc. Terms and Conditions for Professional Services.”

**SECTION IV. COMPENSATION**

Compensation for ENGINEER’S services under this Agreement shall be a lump sum. The amount of the lump sum is eleven thousand seven hundred and fifty Dollars (\$11,750.00).

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER’S compensation as Reimbursable Expenses.

Compensation terms are defined as follows:

Lump Sum shall mean a fixed amount which shall be the total compensation agreed upon in advance for Scope of Services.

**SECTION V. PERIOD OF SERVICE**

Upon receipt of written authorization to proceed, ENGINEER shall provide the one-day workshop on Thursday, March 13, 2014. Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER'S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER'S compensation shall be equitably adjusted.

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

\_\_\_\_\_  
"CITY OF GILLETTE"

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

HDR ENGINEERING, INC.

"ENGINEER"

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF SERVICES**

The City of Gillette (City) owns and operates a water utility. Recently, the City entered into a Joint Powers Agreement with a number of Participating Agencies to secure a long-term water supply resource for the City and surrounding Improvement and Service Districts and other water systems. In entering into this agreement, the participants believe that a regional water supply approach will provide high quality water in a cost-effective manner, while providing other significant benefits.

With regional cooperation comes the need for an equitable manner to allocate costs to the various Regional Water Project (the “Project”) participants. The Joint Powers Agreement contains a conceptual overview of the methodology to be used by the Project to establish cost-based rates. To better understand the generally-accepted cost of service ratemaking principles and methodologies used within that conceptual framework, the participants have requested an in-house training seminar to review and discuss the generally-accepted cost of service principles and methodologies, but also to review and discuss them in the context of the Project. To that end, HDR has developed a proposed one-day seminar/workshop on that topic.

#### **Proposed Scope of Services**

An in-house training seminar/workshop will be held on Thursday, March 13, 2014 from 9:00 a.m. to 3:00 p.m. HDR will be responsible for the development of all handout materials for this seminar. Provided below is an overview of the proposed in-house seminar.

**One-Day In-House Training Seminar/Workshop (Thursday, March 13, 2014)** – The intent of this in-house seminar is to provide the City’s management team and Regional Water Panel with a better understanding of the “generally accepted” rate setting techniques. This one-day workshop will be from 9:00 a.m. to 3:00 p.m. and will cover the theory and methodology of setting cost-based water rates. The proposed general outline for the workshop is as follows:

<b>9:00 a.m.</b>	<b>Introductions</b> ✓ Why establish cost-based rates?
<b>9:15 p.m.</b>	<b>Overview of Utility Rate Making</b> ✓ Overview of the Analytical Process ✓ Typical Goals and Objectives
<b>9:45 a.m.</b>	<b>Overview of the Joint Powers Agreement</b> ✓ Review the Key Elements, Principles, Concepts and Requirements of the JPA
<b>10:30 a.m.</b>	<b>Break (15 minutes)</b>
<b>10:45 p.m.</b>	<b>Overview of Financial/Rate Setting Policies</b>

	<ul style="list-style-type: none"> <li>✓ Reasons for Financial/Rate Setting Policies</li> <li>✓ Review of Key Financial Policies Impacting Regional Rate Setting</li> </ul>
<b>11:15 p.m.</b>	<b>Review of Revenue Requirements</b> <ul style="list-style-type: none"> <li>✓ Selection of a Time Period</li> <li>✓ Cash vs. Utility Basis Methodology</li> <li>✓ Capital Improvement Funding/Planning</li> <li>✓ Financial Planning (DSC, Reserves, etc.)</li> <li>✓ Review of the Conceptual Regional Revenue Requirement Methodology (Key Steps and Overall Approach)</li> </ul>
<b>Noon</b>	<b>Lunch</b>
<b>1:00 p.m.</b>	<b>Development of Cost of Service</b> <ul style="list-style-type: none"> <li>✓ Defining a cost of service and key objectives</li> <li>✓ Selection of a Time Period</li> <li>✓ Selection of a Methodology (Cash vs. Utility)</li> <li>✓ Functionalization/Classification and Allocation</li> <li>✓ Summarizing the Results – Allocated Costs/Unit Costs</li> <li>✓ Review of the conceptual methodology for the regional cost allocation method (Key Steps and Overall Approach)</li> </ul>
<b>2:15 p.m.</b>	<b>Rate Design</b> <ul style="list-style-type: none"> <li>✓ Goals and Objectives of Rate Design</li> <li>✓ Classes of Service</li> <li>✓ Other Rate Design Issues (Billing/Administration)</li> <li>✓ Review of Regional Rate Design Issues</li> </ul>
<b>2:45 p.m.</b>	<b>Closing Comments, Questions, Concerns</b>
<b>3:00 p.m.</b>	<b>Conclude Workshop</b>

Where possible, HDR will try and shape the general discussion around the City's/Regions specific rate setting issues and circumstances. HDR will be responsible for developing all materials associated with this workshop. HDR will develop the powerpoint slides to be used in the workshop and the City will be responsible for the copying of all handouts for workshop. The City will also be responsible for coordinating the meeting and determining the meeting location. Finally, HDR will provide a laptop computer for the session, and the City will provide a projector system and screen for use.

## Proposed Project Staffing

These in-house training service will be jointly provided by Tom Gould and John Maxwell. Both Tom and John were involved in the development of the Regional JPA and are knowledgeable of the City and Regional issues.

## Compensation

The following hourly billing rates were used to establish the fees for this study.

<b><u>Individual</u></b>	<b><u>Project Role</u></b>	<b><u>Hourly Rate</u></b>
Tom Gould	Seminar Leader	\$275.00/hour
John Maxwell	Seminar Co-Instructor	\$275.00/hour
Others	Project Administrative Support	\$105.00/hour

Given the above hourly billing rates, HDR determined total fees associated with this project would be as follows:

<b><u>Task Description</u></b>	<b><u>Hours</u></b>	<b><u>Total Cost</u></b>
Preparation of Handout Materials	16	\$4,400.00
Conduct Meetings (1day)	16	4,400.00
Administrative Assistance	4	<u>420.00</u>
Total Labor Costs		\$9,220.00
Plus: Estimated Expenses		
Airfare (2 RT – Seattle to Gillette)		\$1,600.00
Hotel (4 nights @ \$125.00/night)		500.00
Car Rental (2 days @ \$90/day)		180.00
Meals		100.00
Misc. (Airport Parking, Phone, Etc.)		<u>150.00</u>
Total Estimated Expenses		\$2,530.00
Total Labor and Expenses		\$11,750.00

The compensation for this project will be a fixed lump sum amount of \$11,750.00. Should additional services or labor be requested beyond the agreed upon scope of services, the above hourly billing rates will be used. Any out of scope work will be mutually agreed upon in writing.

**EXHIBIT B**

**TERMS AND CONDITIONS**

# HDR Engineering, Inc.

## Terms and Conditions for Professional Services

### 1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

### 2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

### 3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

### 4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

### 5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

### 6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any

OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

### 7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

### 8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

### 9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

### 10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

### 11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support

of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

## **12. CHANGES**

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

## **13. CONTROLLING AGREEMENT**

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

## **14. EQUAL EMPLOYMENT AND NONDISCRIMINATION**

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

## **15. HAZARDOUS MATERIALS**

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate,

remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

## **16. EXECUTION**

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

## **17. ALLOCATION OF RISK**

**OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$100,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.**

## **18. LITIGATION SUPPORT**

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

## **19. UTILITY LOCATION**

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.