

MASTER PROFESSIONAL SERVICES AGREEMENT

This **MASTER PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is dated September 29, 2014 by and between **Leidos Engineering, LLC** ("Consultant"), with offices at 1000 Broadway, Suite 600, Oakland, CA and **The City of Gillette, Wyoming** ("Client"), with offices at 611 N Exchange Ave. Gillette, WY, collectively the "Parties" and each a "Party".

NOW, THEREFORE in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Scope of Services:** Consultant and Client agree Consultant will perform consulting, engineering, and owner's advisory services as requested by Client from time to time. The services to be provided by Consultant shall be agreed to by the parties and authorized in a Task Authorization to this Agreement which sets forth the scope of services including the intended purpose of the services, schedule, budget, payment provisions and other special provisions, if any, related to the Scope of Services. Task Authorizations shall be incorporated into this Agreement and subject to its terms and shall be generally in the form shown in Exhibit A to this Agreement. The Parties agree that notwithstanding anything in this document or an exhibit hereto that refers to "Independent Engineering Report," or engineering "review," consultant is not required to perform "engineering services" or prepare engineering work products as those terms are defined by the applicable engineering board.
2. **Independent Contractor:** Consultant is an independent contractor and is not an employee of Client. Services performed by Consultant under this Agreement are solely for the benefit of Client. Nothing contained in this Agreement creates any duties on the part of Consultant toward any person not a party to this Agreement.
3. **Standard of Care:** Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.
4. **Changes/Amendments:** This Agreement and its exhibits constitute the entire agreement between the Parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment, or through Task Authorizations for individual tasks, signed by the Parties. The estimate of the level of effort, schedule and payment required to complete the Scope of Services, as Consultant understands it, will be in Task Authorizations for individual tasks. Services not expressly set forth therein are excluded. Consultant shall promptly notify Client if changes to the Scope of Services affect the schedule, level of effort or payment to Consultant and the schedule and payment shall be equitably adjusted. If Consultant is delayed in performing its services due to an event beyond its control, including but not



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limited to fire, flood, earthquake, explosion, strike, transportation or equipment delays, act of war, or act of God, then the schedule or payment under individual Task Authorizations shall be equitably adjusted, if necessary, to compensate Consultant for any additional costs due to the delay.

5. **Fee for Services:** The fee for services under a Task Authorization will be based on the actual hours of services furnished multiplied by Consultant's billing rates as of the date of its monthly invoice plus all reasonable expenses directly related to the services furnished under a Task Authorization, or as otherwise set forth in a Task Authorization.

For the avoidance of doubt, the amounts set forth in a particular Task Authorization are a good faith estimate and not a fixed fee nor an authorization ceiling unless specifically called as such in the particular Task Authorization.

6. **Payment:** Unless otherwise indicated in a Task Authorization, Client shall pay Consultant for services furnished under a Task Authorization upon submission of monthly invoices in an amount equal to actual hours of services furnished multiplied by Consultant's current billing rates, attached as Exhibit B. Additionally, Client shall reimburse Consultant monthly for reasonable expenses at cost and at cost plus 10% for the services of any Subconsultant.

Client shall pay Consultant in U.S. dollars within thirty (30) days of receipt of invoices less any disputed amounts. If Client disputes any portion of the invoice, the undisputed portion will be paid and Consultant will be notified in writing, within ten (10) days of receipt of the invoice of the exceptions taken. Consultant and Client will attempt to resolve the payment dispute within sixty (60) days or the matter may be submitted to arbitration as provided below. Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law, whichever is lower) on the unpaid, undisputed invoiced amounts. Any interest charges due from Client on past due invoices are outside any amounts otherwise due under this Agreement. If Client fails to pay undisputed invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may suspend services hereunder or may initiate collections proceedings, including mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.

Notwithstanding the above, Client shall pay the amount, if any, that is set forth in each Task Authorization as being due upon signing and before commencement of any work under such Task Authorization by Consultant as an advance payment, which shall be held as progress payment security and shall be applied to the last invoice submitted by Consultant for services provided under such Task Authorization. Client agrees to make additional Advance Payment as and if required from time to time in Consultant's sole discretion.

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7. **Indemnity:** To the extent permitted by law, Consultant agrees to indemnify, defend and hold harmless Client and its directors, officers, shareholders and employees from and against any liability (including without limitation, reasonable costs and attorneys' fees) incurred by Client to the extent caused by Consultant's negligent acts, errors or omissions, including judgments in favor of any third party.

To the extent permitted by law, Client agrees to indemnify, defend and hold harmless Consultant and its directors, officers, shareholders, employees and subconsultants from and against any liability (including, without limitation, reasonable costs and attorney's fees) incurred by Consultant to the extent caused by Client's negligent acts, errors or omissions, including judgments in favor of any third party.

Each Party (the "First Party") specifically and expressly waives its immunity under applicable worker's compensation and industrial insurance laws regarding liability against the other Party (the "Second Party") for actions brought by any of the First Party's employees against the Second Party, to the extent the liability is caused by the First Party's negligent acts, errors or omissions.

If Consultant provides services at a construction site, Client shall endeavor to have language acceptable to Consultant included in all third party procurement, construction and/or EPC contracts relating to services furnished under this Agreement, including but not limited to terms which provide that: (i) each and every contractor shall indemnify and hold harmless Client and Consultant from any and all loss, damage, claim, or liability (including, without limitation, reasonable attorneys' fees) incurred by Client or contractor and arising from work performed for Client by contractor or its subcontractors; provided, however, that Client and Consultant shall not be indemnified for any loss, damage, claim, or liability resulting solely from the negligent acts, errors, or omissions of Client or Consultant; and (ii) each and every contractor purchases and maintains Commercial General Liability Insurance in limits appropriate for the size of the contract and name the Client and Consultant as additional insureds using ISO Endorsement CG2032 0798 or equivalent.

8. **Reperformance of Services:** If Client believes any of the services provided under this Agreement do not comply with the terms of this Agreement, Client shall promptly notify Consultant to permit Consultant an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly reperform the services at no additional cost to Client, including assisting Client in selecting remedial actions. If Client fails to provide Consultant with prompt notice of non-compliance and an opportunity to investigate and reperform its services, Consultant's total obligation to Client will be limited to the costs Consultant would have incurred to reperform the services.
9. Section Intentionally Left Blank.

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10. **Insurance:** Consultant shall maintain insurance with the following required coverages and limits and upon request, will provide a Memorandum of Insurance to Client:

| | |
|------------------------------|---|
| Worker's Compensation | Statutory |
| Employer's Liability | U.S. \$1,000,000 |
| Commercial General Liability | U.S. \$1,000,000 per occurrence |
| | U.S. \$1,000,000 aggregate |
| Commercial Auto Liability | U.S. \$1,000,000 combined single limit |
| Professional Liability | U.S. \$1,000,000 per claim and in the aggregate |

11. **Work Product:** Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ("Work Products"); provided, however Client shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or third party use.

12. **Limitation of Liability:** No employee of Consultant shall have individual liability to Client. To the extent permitted by law, the total liability of Consultant, its officers, directors, shareholders, employees and subconsultants for any and all claims arising out of a Task Authorization, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed in the aggregate, the revenue received by Consultant under such Task Authorization or One Hundred Fifty Thousand Dollars (U.S. \$150,000.00), whichever is greater, unless expressly identified otherwise in such Task Authorization. Such Task Authorization limitation of liability shall apply only to the services performed under each Task Authorization and shall not apply to or affect the liability for services performed under any other Task Authorization.

Due to the limited scope and level of effort of any construction phase services of Consultant (if applicable), the Parties agree that the construction contractors and vendors will remain exclusively responsible for compliance with contract requirements. Any construction phase observation or inspection by Consultant is intended solely to provide greater assurance that deficiencies in the contractor's work are discovered as early as possible. Consultant has no legal or financial responsibility for claims against a contractor or vendor arising from a contractor's or vendor's failure to comply with its contract or warranty obligations.

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13. **No Consequential Damages:** In no event and under no circumstances shall Consultant be liable to Client for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages.
14. **Information Provided by Others:** Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.
15. **Opinions of Cost:** Consultant does not control the cost of labor, materials, equipment or services furnished by others, nor does it control pricing factors used by others to accommodate inflation, competitive bidding or market conditions. Consultant estimates of operation expenses or construction costs represent its best judgment as an experienced and qualified professional and are not a guarantee of cost. This section does not apply to the cost of Consultant performing the Scope of Services.
16. **Safety and Security:** Consultant has established and maintains programs and procedures for the safety of its employees. Consultant specifically disclaims any authority or responsibility for job site safety and safety of persons other than Consultant's employees. Consultant shall not provide any such services and disclaims any responsibility under this Agreement related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.
17. **Level of Authority:** Consultant provides its services, comments, opinions and recommendations solely as a consultant to Client. The Parties acknowledge that primary responsibility for design, construction, and operation of any facility remains with the project owner, contractor, and/or operator. Employees of Consultant will not:
- a. Perform any of the responsibilities of Client, project owner, contractor, or operator.
 - b. Expedite work for Client, project owner, contractor, or operator unless Client requests Consultant to do so and reimburses Consultant costs for expediting functions.
 - c. Advise Client, project owner, contractor, or operator on work methods, safety precautions, procedures or programs.
18. **Termination:** Any Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party(s). Client shall pay Consultant for all services rendered to the date of termination plus reasonable expenses for winding down the services. If any Party defaults in its obligations hereunder, the non-defaulting Party(s), after giving seven (7) days written notice of its intention to terminate or suspend performance under this

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Agreement, may, if cure of the default is not commenced and diligently continued, terminate this Agreement or suspend performance under this Agreement.

19. **Dispute Resolution:** The Parties shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator (except for payment disputes which may be submitted directly to arbitration). If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, the dispute or conflict shall be subject to arbitration in English under the Construction Industry Arbitration Rules as promulgated by the American Arbitration Association and arbitrability shall be subject to the Federal Arbitration Act.
20. Section Intentionally Left Blank.
21. **Litigation Expenses:** Client will be responsible for payment of all expenses and costs associated with Consultant's compliance with a subpoena or Client request to produce documents, data or testimony relating to any proceeding relating to any information pertaining to Client's project or to the work Consultant performed for Client, excluding any litigation or proceeding between Client and Consultant. These costs will include hourly charges for persons involved in responding to a subpoena or Client request, travel and reproduction expenses, advice and participation of counsel in responding to a subpoena and other request and other reasonable expenses. Consultant will endeavor to confer with Client prior to responding to any subpoena or request covered by this paragraph.
22. **Non Exclusivity of Services:** Consultant may perform for other clients similar or identical services to those services contemplated under this Agreement, subject to applicable confidentiality and ethical obligations of Consultant. In the event Client desires any level of exclusivity or other limitations on Consultant's services to its other clients, Client and Consultant shall confer regarding the scope of requested exclusivity or other limitations and the additional compensation to be paid to Consultant for the requested exclusivity or other limitations on providing services to other clients. Any agreed exclusivity or other limitations on providing similar or identical services shall be confirmed in writing signed by the Parties and shall expressly state such provision shall supersede this Section 22. No fiduciary or agency obligations shall be created as a result of any exclusivity obligations or other limitations on Consultant's services to other clients.
23. **Miscellaneous:**
- a. This Agreement is binding upon and will inure to the benefit of the Parties and their respective successors and assigns. No Party may assign its rights or obligations hereunder without the prior written consent of the other Party(s).

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- b. Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client: The City of Gillette
Attention: Mr. Wayne Lindgren
Address: 611 N Exchange Ave. Gillette, WY 82717

Consultant: Leidos Engineering, LLC
Attention: Mr. Fred Wellington
Address: 1000 Broadway, Suite 600, Oakland, CA 94607

With a copy to:
Legal Department (which will not be considered notice)
Leidos Engineering, LLC
9400 N. Broadway, Suite 300
Oklahoma City, OK 73114

- c. The Parties expressly agree that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, Consultant's compensation for services would otherwise be greater and/or Consultant would not have entered into the Agreement.
- d. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
- e. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Oklahoma.
- f. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorneys' fees and costs from the other party.
- g. This Agreement shall not be construed against Consultant only on the basis that Consultant drafted the Agreement.
- h. Notwithstanding any statute to the contrary, the Parties agree that any action to enforce or interpret this Agreement shall be initiated within two (2) years from the time the Party knew or should have known of the fact giving rise to its action, and shall not in any case be initiated later than six (6) years after Consultant completes its Scope of Services under this Agreement.

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- i. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have signed this Agreement the date first written above.

CITY OF GILLETTE, WYOMING

Signature _____
Name _____
Title _____

LEIDOS ENGINEERING, LLC


Signature  _____
Name Fred Wellington
Title Managing Director

Exhibit A – Sample Task Authorization
Exhibit B – Billing Rates

Task Authorization Description:**Effective Date:****Client Name and Number:****Contract No. (if any):**

Consultant and Client agree that this Task Authorization will be governed by the terms and conditions of the Agreement dated [DATE], as amended, unless specifically modified herein.

Scope of Services

(Detailed tasks to be performed. Include any project locations, deliverables, quantities, assumptions, client deliverables, team member names, roles, etc.)

Schedule

(Provide summary or detail level schedule of milestones.)

Fee for Services

(Provide summary or task level detail of cost. Note if the cost is a maximum not-to-exceed.)

Advance Payment: None **Or** [Client shall pay \$_____ upon signing and before commencement of any work by Consultant as Advance Payment, which shall be held as progress payment security and shall be applied to the last invoice submitted by Consultant for services provided under such Task Authorization.]

Amendment(s) to Terms of the Agreement

(Insert terms different than base agreement if applicable.)

(e.g. Note if compensation arrangements deviate from that outlined in PSA (i.e., lump sum).

Additional Services

(Indicate if there are any optional tasks that may be related to the work performed in this TA that the client would authorize at a later date that may be a result of current task findings, etc. Otherwise delete)



SAMPLE

EXHIBIT A
TASK AUTHORIZATION
[Task Authorization Description]

IN WITNESS WHEREOF, the Parties have signed this Task Authorization as of the date first written above.

[CLIENT NAME]

LEIDOS ENGINEERING, LLC

Signature
Name
Title

SAMPLE - NO SIGNATURE REQUIRED

Signature
Name
Title

EXHIBIT B
To Master Professional Services Agreement
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Billing Rates

| Billing Class | Hourly Rate (US\$) | Typical Project Roles |
|---------------|--------------------|---|
| 1 | 14.00 | Clerical, Administration, Junior Engineers and Technicians |
| 2 | 28.00 | |
| 3 | 42.00 | |
| 4 | 56.00 | |
| 5 | 70.00 | |
| 6 | 84.00 | |
| 7 | 98.00 | Staff Engineers, Consultants and Technicians |
| 8 | 112.00 | |
| 9 | 126.00 | |
| 10 | 140.00 | |
| 11 | 154.00 | Senior Engineers, Consultants and Technicians, and Project Managers |
| 12 | 168.00 | |
| 13 | 182.00 | |
| 14 | 196.00 | |
| 15 | 210.00 | Executive Engineers and Consultants, Senior Project Managers, and Principals |
| 16 | 224.00 | |
| 17 | 238.00 | |
| 18 | 252.00 | |
| 19 | 266.00 | |
| 20 | 280.00 | |
| 21 | 294.00 | Executive Engineers and Consultants, Senior Project Managers, and Senior Principals |
| 22 | 308.00 | |
| 23 | 322.00 | |
| 24 | 336.00 | |
| 25 | 350.00 | |
| 26 | 364.00 | |
| 27 | 378.00 | |
| 28 | 392.00 | |
| 29 | 406.00 | |
| 30 | 420.00 | |
| 31 | 434.00 | |

*Salaries of personnel are subject to change in accordance with Consultant's annual salary adjustment program.

