

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

SPECIAL NOTE ON USE OF THIS FORM:

This abbreviated Agreement form is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of importance on most projects. In most cases, Owner and Engineer will be better served by the Standard Form of Agreement Between Owner and Engineer for Professional Services (No. E-500, 2002 Edition), or one of the several special purpose EJCDC professional services agreement forms.

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**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of April 21, 2015 (“Effective Date”) between

City of Gillette, Wyoming (“Owner”)

and ECS Engineers (“Engineer”)

Engineer agrees to provide the services described below to Owner for Fox Park – Park Improvements (“Project”).
Project #14EN23

Description of Engineer’s Services: The services Engineer shall provide, or cause to be provided, are further defined in
attached General Provisions as amended and supplemented in Exhibit ‘A’ - Engineer Services, ‘B’ – Duties of Resident
Project Representative, ‘C’ – Payment for Services and are generally described as follows: Provide Construction
Administration Services during construction of the Project. Services shall include part time construction observation,
construction staking, administration of the contract documents, coordinating materials testing, and preparation of
“Record Drawings” upon completion of construction.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in

full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

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

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under 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. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any 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 any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in

accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment and Schedule

A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

1. In accordance with Exhibit 'C' – Payment of Services.

B. The Engineer's compensation is conditioned on the time required for construction completion. The Construction Contract Substantial and Final Completion dates are 45 days, and 55 days, respectively, from the date of the Contractor's Notice to Proceed. Should the time to complete services be extended beyond these periods, total compensation to Engineer shall be appropriately adjusted. Engineer is authorized to begin rendering services as of the Effective Date.

9.01 Payment (Hourly Rates Plus Reimbursable Expenses)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer’s consultants’ charges, if any.

2. Engineer’s Standard Hourly Rates are attached as Appendix 1.

3. The total compensation for services and reimbursable expenses is estimated to be \$ 59,900.00

B The Engineer’s compensation is conditioned on time to complete construction administration services not exceeding 4 (four) months.

Should the time to complete services be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

By: _____

By:  _____

Title: Mayor

Title: Project Manager

Date Signed: _____

Date Signed: 4/9/15

Attest: _____
City Clerk

License or Certificate No. and State #13597 - Wyoming

Address for giving notices:

Address for giving notices:

P.O. Box 3003

511 East 4th Street, Suite 3

Gillette, Wyoming 82717

Gillette, Wyoming 82716

Designated Representative:

Designated Representative:

Attn: Kurt Siebenaler, P.E.
Title: City Engineer
Phone Number: 307-686-5265
Facsimilie Number: 307-685-8889
Email Address: kurt@gillettewy.gov

Name: Anthony P. MacDonald, P.E.
Title: Project Manager
Phone Number: 307-670-8977
Facsimilie Number: 888-424-6090
Email Address: amacdonald@ecsengineers.net

GENERAL PROVISIONS

These are the **General Provisions** referred to in and made a part of **Short Form of Agreement Between Owner and Engineer for Professional Services**, dated April 21, 2015, between City of Gillette, Wyoming (OWNER) and ECS Engineers (ENGINEER) in respect to the Project described therein.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1. General

1.1.1 ENGINEER shall perform for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil and structural engineering services and customary services incidental thereto.

1.2 Study and Report Phase (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)

1.3. Preliminary Design Phase (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)

1.4. Final Design Phase (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)

1.5. Bidding or Negotiation Phase (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)

1.6. Construction Phase

During the Construction Phase:

1.6.1. General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the General Conditions of the City of Gillette Standard Construction Specifications. The extent and limitations of the duties, responsibilities and authority of the ENGINEER as assigned in said General Conditions shall not be modified, except to the extent provided in Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to CONTRACTOR(s) will be issued through ENGINEER who will have

the authority to act on behalf of OWNER to the extent provided in said General Conditions except as otherwise provided in writing.

1.6.2. Visits to Site and Observation of Construction:

- 1.6.2.1. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of CONTRACTOR(s) work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.
- 1.6.2.2. The Resident Project Representative (and any assistants) will be ENGINEER's agent or employee and under ENGINEER's supervision. The duties and responsibilities of the Resident Project Representative (and any assistants) are set forth in Exhibit 'B' "Duties, Responsibilities and Limitation of Authority of Resident Project Representative".
- 1.6.2.3. The purpose of ENGINEER's visits to and representation by the Resident Project Representative (and any assistants) 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 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 of CONTRACTOR(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by CONTRACTOR(s). On the other hand, 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 by CONTRACTOR(s), for safety precautions and programs incident to the work of CONTRACTOR(s) or for any failure of CONTRACTOR(s) to

comply with laws, rules, regulations, ordinances, codes or orders applicable to CONTRACTOR(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by CONTRACTOR(s) nor assume responsibility for CONTRACTOR(s) failure to furnish and perform their work in accordance with the Contract Documents.

1.6.3. Defective Work.

During such visits and on the basis of such observations, ENGINEER may disapprove of or reject CONTRACTOR(s) work while it is in progress if ENGINEER believes such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.6.4. Interpretations and Clarifications.

ENGINEER shall insure necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.6.5. Shop Drawings.

ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid General Conditions), samples and other data which CONTRACTOR(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.6.6. Substitutes.

ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by CONTRACTOR(s), but subject to the provision of the second subparagraph of paragraph 2.1.2.

1.6.7. Inspections and Tests.

ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and

review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.6.8. Disputes Between OWNER and CONTRACTOR(s).

ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge the acceptability of the work thereunder and make decisions on all claims of OWNER and CONTRACTOR(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.6.9. Applications for payment.

Based on ENGINEER's on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of Applications for Payment and the accompanying data and schedules:

1.6.9.1 ENGINEER shall determine the amounts owing to CONTRACTOR(s) and recommend in writing payments to CONTRACTOR(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such 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). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.6.9.2 By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed review or examinations have been made by ENGINEER to check the quality or quantity of CONTRACTOR(s) work as it is furnished and performed beyond the responsibilities specifically

assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of CONTRACTOR(s)' work for the purpose of recommending payments will not impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or CONTRACTOR(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examinations to ascertain how or for what purpose any CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, 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.

1.6.10. CONTRACTOR(s) Completion Documents.

ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by CONTRACTOR(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals, the results certified indicate compliance with the Contract Documents); and shall transmit them to OWNER with written comments.

1.6.11. Inspections.

ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend in writing final payment to CONTRACTOR(s) and may give written notice to OWNER and the CONTRACTOR(s) that the work is acceptable (subject to any conditions therein expressed) but any such recommendation and notice will be subject to limitations expressed in paragraph 1.6.9.1.

1.6.12. Limitations of Responsibilities.

ENGINEER shall not be responsible for the acts or omissions of any CONTRACTOR, or of any subcontractor or supplier, or any of the CONTRACTOR(s); or subcontractor's agents or employees or any

other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the CONTRACTOR(s)' work; however, nothing contained in paragraphs 1.6.1 thru 1.6.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

1.7. Operational Phase

During the Operational Phase, ENGINEER shall, when requested by the OWNER:

- 1.7.1. Provide assistance in the closing of any financial or related transaction for the Project.
- 1.7.2. Provide assistance in connection with the refining and adjusting of any equipment or system.
- 1.7.3. Assist OWNER in training OWNER's staff to operate and maintain the Project.
- 1.7.4. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
- 1.7.5. Prepare a set of reproducible record Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by CONTRACTOR(s) to ENGINEER and which ENGINEER considers significant.
- 1.7.6. In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with CONTRACTOR(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.

The duties and responsibilities of ENGINEER during the Operational Phase are amended and supplemented as indicated in Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters".

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1. Normal and customary engineering services do not include service in respect of the following categories of work which are usually referred to as Additional Services.

2.1.1. If OWNER wishes ENGINEER to perform any of the following Additional Services, OWNER shall so instruct ENGINEER in writing, and ENGINEER shall perform or obtain from others such services and will be paid therefore as provided in the Letter Agreement:

- * Preparation of applications and supporting documents for governmental financial support of the Project in addition to those required under Basic Services; preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.
- * Services resulting from significant changes in the general scope, extent or character of the Project or major changes in documentation previously accepted by OWNER where changes are due to causes beyond ENGINEER's control.
- * Providing renderings or models.
- * Preparing documents for alternate bids requested by OWNER for work which is not executed or for out-of-sequence work.
- * Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.
- * Furnishing the services of independent professional associates or consultants for other than Basic Services.
- * If ENGINEER's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, or from the construction contract containing cost plus or incentive-savings provisions for CONTRACTOR(s)' basic compensation, or for arranging for performance by persons other than the principal prime contractors or from administering OWNER's contracts for such services.
- * Services during out-of-town travel other than visits to the site.

- * Warranty inspections, reviews, correspondence, and contractor follow up.
- * Preparation of operating and maintenance manuals to supplement Basic Services under Paragraph 1.7.3.
- * Preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

2.1.2. When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from OWNER, and ENGINEER will be paid therefore as provided in the Letter Agreement:

- * Services in connection with work directive changes and change orders to reflect the changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- * Services in making revisions to Drawings and Specification occasioned by the acceptance of substitutions proposed by CONTRACTOR(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONTRACTOR(s); and evaluating an unreasonable or extensive number of claims submitted by CONTRACTOR(s) or others in connection with the work.
- * Services resulting from significant delay, changes or price increases occurring as a direct result of material, equipment or energy shortages.
- * Additional or extended services during construction made necessary by (1) work damage by fire or other causes during construction, (2) a significant amount of defective or neglected work of any CONTRACTOR, (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by any CONTRACTOR.

SECTION 3 - OWNER'S RESPONSIBILITIES

- 3.1. Owner shall provide all criteria and full information as to OWNER's requirements for the Project; designate a person to act with authority on OWNER's behalf in all aspects of the Project; examine and respond promptly to ENGINEER's submissions; and give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the work.
- 3.2. OWNER shall also do the following and pay all costs incident thereto:
- * Furnish to ENGINEER borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; existing property, boundary, easement, right-of-way, topographic and utility surveys, property descriptions; zoning and deed restrictions; all of which ENGINEER may rely upon in performing services hereunder.
 - * Guarantee access to and make all provisions for ENGINEER to enter upon public and private property.
 - * Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, and auditing services required in respect of CONTRACTOR(s)' applications for payment, and any inspection services to determine if CONTRACTOR(s) are performing the work legally.
 - * Furnish approvals and permits from all governmental authorities having jurisdiction over the Project.
 - * If more than one prime contract is to be awarded for construction, designate a party to have responsibility and authority for coordinating the activities of the various prime contractors.
- 3.3. OWNER shall pay all costs incident to obtaining bids or proposals from CONTRACTOR(s).

SECTION 4 - MEANING OF TERMS

As used herein the term "this Agreement" refers to the Letter Agreement to which these General Provisions are attached and to these General Provisions, Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters," Exhibit 'B' "A Listing of the Duties, Responsibilities and Limitations of Authority of the Resident

Project Representative” and Exhibit 'C' "Unit Price with a Contract Ceiling Method of Payment", as if they were part of one and the same document.

- 4.1. The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but will not include ENGINEER's compensation and expenses, the cost of land, rights-of way, or compensation for or damages to properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or the interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to paragraph 3.2 (Construction Cost is one of the items comprising Total Project Costs which is defined in paragraph 1.2.6.)
- 4.2. **INTENTIONALLY DELETED**
- 4.3. **INTENTIONALLY DELETED**
- 4.4. **INTENTIONALLY DELETED**

SECTION 5 - MISCELLANEOUS

5.1. Reuse of Documents

All documents including Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not 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, or to ENGINEER's independent professional associates or consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER. ENGINEER shall provide OWNER with one complete set of stabilized, reproducible, record drawings.

5.2. Opinions of Cost

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's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project Costs or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER.

5.3. Other Provisions Concerning Payments

If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement therefore, the amounts due ENGINEER will be increased at the rate of one percent per month from said thirtieth day, and in addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges.

5.4. Termination

The obligation to provide further services under this Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof though no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered to the date of termination, all Reimbursable Expenses and termination expenses.

5.5. Controlling Law

This Agreement is to be governed by the law of the State of Wyoming.

5.6. Successors and Assigns

- 5.6.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.6.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

- 5.6.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assigned from any duty or responsibility under this Agreement.

Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

- 5.6.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party

5.7. Claims and Disputes

All claims, disputes, and other matters in question between the OWNER and ENGINEER arising out of, or relating to the Professional Services Agreement or the breach thereof, which are not resolved to the satisfaction of either of the parties after having been submitted to the City Engineer will be decided by the City Administrator upon his receipt of a demand for review. The demand for review shall be initiated by filing a written demand with the City Administrator. The demand shall include the material previously filed with the City Engineer, the written opinion of the ENGINEER in response thereto, and a concise statement of the alleged errors in the decision of the City Engineer and the specific ground or grounds upon which the party contends he is entitled to relief. The ENGINEER may file a further demand for review of the decision of the City Administrator with the City Council after receipt of the written decision of the City Administrator within the same time limits and according to the same procedure which applies to a demand for review addressed to the City Administrator. Failure to demand review of the decision on review of the determination of the City Administrator within thirty days shall result in the City Administrator's decision being final and binding upon the OWNER and ENGINEER. Failure to complete the review procedure specified herein shall be a complete bar to any legal action on any questions which could have been or was submitted to the OWNER for determination.

No demand for review of any claim, dispute, or other matter that is required to be referred to the City Engineer initially for decision shall be made until the earlier of (a) the date on which the City Engineer has rendered a decision, or (b) the tenth day after the parties have presented their evidence to the City Engineer, if a written decision has not been rendered by the City Engineer before that date. No demand for review of any claim, dispute or other matter shall be made later than thirty days after the date on which the City Engineer has rendered a written decision in respect thereof and the failure to demand review within said thirty days period shall result in the City Engineer's decision being final and binding upon the OWNER and ENGINEER.

EXHIBIT 'A' TO GENERAL PROVISIONS

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES AND OTHER RELATED MATTERS

This is **Exhibit 'A'** referred to in and made a part of the **General Provisions** referred to in and made a part of the **Short Form of Agreement Between Owner and Engineer for Professional Services**, dated April 21, 2015 between the City of Gillette, Wyoming (OWNER) and ECS Engineers (ENGINEER) providing for professional engineering and surveying services. The Basic Services of the ENGINEER as described in Section 1 of said **General Provisions** are amended or supplemented as indicated below.

This scope of work has been prepared based on our understanding of the Fox Park – Park Improvements and Arley Acres Pathway Project and through discussions with the City of Gillette Engineering Staff.

The Project, as we understand it is to provide Construction Administration Services during construction of the Project. Services shall include part time construction observation, coordinating materials testing, providing construction staking, administration of the contract documents, and preparation of “Record Drawing” for the Fox Park – Park Improvements and Arley Acres Pathway Project at the following locations:

- * Fox Park, near Fox Park Subdivision, generally south of East Boxelder Road, and approximately 3300' east of the intersection with Garner Lake Road. The location is more specifically west of the intersection of Gordon Street and Sammye Avenue, and also east of the intersection of Anvil Lane and Tong Lane, in Gillette, Wyoming.
- * Project will also include property in Arley Acres, located immediately west of the Fox Park property.

- I. Pre-Construction Phase Scope of Services
 - A. Conceptual Design (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)
 - B. Preliminary Design (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)
 - C. Final Design (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)
 - D. Bidding (***INTENTIONALLY DELETED, SERVICES NOT INCLUDED IN THIS CONTRACT***)

1.5. Construction Management

- a. Arrange and conduct a Pre-Construction Conference.
- b. Provide construction staking.
- c. Provide a part time Resident Project Representative.
- d. Provide construction reports with photos on a weekly basis.
- e. Provide administration of the contract documents.
- f. Review shop drawings and material submittals from Contractor for compliance with the contract documents.
- g. Coordinate quality assurance/materials testing.
- h. Provide a Final Construction Report/final project close out and final Contractor pay request.
- i. Provide a "Record Drawing" plan set for the project.

EXHIBIT 'B' TO GENERAL PROVISIONS

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE

This is **Exhibit 'B'** referred to in and made a part of the **General Provisions** referred to in and made a part of the **Short Form of Agreement Between Owner and Engineer for Professional Services**, dated April 21, 2015, between the City of Gillette, Wyoming (OWNER) and ECS Engineers (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the work of CONTRACTOR. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents and in particular the specific limitations set forth in paragraph 1.6 of the General Provisions to the Letter Agreement are applicable.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge and under direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR, and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.
 - d. Review of Work, Rejection of Defective Work, Inspections and Tests:
 1. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 2. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

3. Verify that tests, equipment and systems startups and operation and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
4. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
5. Interpretation of Contract Documents:

Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
6. Modifications:

Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
7. Records:
 - a. Maintain at the job site or in a local office orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, Progress Reports, and other Project-related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more

detail as in the case of observing test procedures; and send copies to ENGINEER.

- c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. Reports:

- a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule, and schedule of Shop Drawings and sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes and Field Orders.
- d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.

10. Payment Requests:

Review Applications for Progress Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals:

During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or corrections.
- b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitation of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the General Provisions to the Letter Agreement of the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors of CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

EXHIBIT 'C' TO GENERAL PROVISIONS

PAYMENT FOR SERVICES - UNIT PRICE WITH A CONTRACT CEILING METHOD OF PAYMENT

This is **Exhibit 'C'** referred to in and made a part of the **General Provisions** referred to in and made a part of the **Short Form of Agreement Between Owner and Engineer for Professional Services**, dated April 21, 2015, between the City of Gillette, Wyoming (OWNER) and ECS Engineers (ENGINEER) providing for professional engineering and surveying services.

EXHIBIT C - PAYMENTS TO ENGINEER

C.1. Methods of Payment for Services and Expenses of ENGINEER.

C.1.1. For Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters") as follows:

C.1.1.1. One Prime Contract: If no more than one (1) prime contract is awarded for construction, materials and equipment for the Project, the Unit Prices as identified in the "COST ESTIMATES" attachment to this Agreement shall apply for all Basic Services rendered by principals and employees engaged directly on the Project, and also including materials and equipment. Furthermore, the "Total Project Fee" included in said "COST ESTIMATES" attachment shall govern for the Contract Ceiling amount. The Contract Ceiling amount shall not be exceeded without prior written authorization of the Owner.

C.1.1.2. **Intentionally Deleted.**

C.1.1.3. **Intentionally Deleted.**

C.1.1.4. Professional Associates and Consultants. For services and Reimbursable Expenses of independent professional associates and consultants employed by ENGINEER to render Basic Services, the amount billed to ENGINEER therefore times a factor of 1.15.

C.1.1.5. **Intentionally Deleted.**

Notice of Relationship of Payments to Estimated Total Compensation.

If it becomes apparent to ENGINEER at any time before Basic Services to be rendered under this Agreement have been eighty percent completed that the total amount of compensation to be paid to ENGINEER on account of Basic Services pursuant to paragraphs C.1.1.1., and C.1.1.4. will exceed **\$59,900.00** (which figures are ENGINEER's estimates of the amount that will become payable for such services), ENGINEER shall give OWNER written notice thereof. Promptly thereafter OWNER and ENGINEER shall review the matter of compensation for such Basic Services, and either OWNER shall accede to such compensation exceeding said estimated amounts or OWNER and ENGINEER shall agree to a reduction in the remaining services to be rendered by ENGINEER under this Agreement so that total compensation for such Basic Services will not exceed such estimated amounts when such services are completed.

- C.1.2. Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:
 - C.1.2.1. General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 and 2.2, on the basis of the Unit Prices included in the "COST ESTIMATES" attachment to this Contract.
 - C.1.2.2. Professional Associates and Consultants. For services and Reimbursable Expenses of independent professional associates and consultants employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER times a factor of 1.10.
 - C.1.2.3. Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal administrative proceedings, at the rate of \$600.00 per day or any portion thereof (but compensation for the time spent in preparing to appear in such litigation, arbitration or proceedings will be on the basis provided in paragraph C.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph C.1.2.2.
- C.1.3. Reimbursable Expenses. In addition to payments provided for in paragraph C.1.1., OWNER shall pay ENGINEER the actual costs (except where specifically provided otherwise) of all Reimbursable

Expenses incurred in connection with all Basic and Additional Services.

C.1.4. The "Direct Labor Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph C.4.

C.2. Times of Payments:

C.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The charge on account of the fixed fee will be based upon ENGINEER's estimate of the proportion the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

C.3. Other Provisions Concerning Payments:

C.3.1. If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement thereof, the amounts due ENGINEER will be increased at the rate of 1% per month from said thirtieth day, and in addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges.

C.3.2. In the event of termination by OWNER under paragraph 5.4 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER also will be reimbursed for the charges of independent professional associates and consultants, employed by ENGINEER to render Basic Services, and paid for services rendered during that phase on the basis of ENGINEER's Direct Labor Costs times a factor of 2.46 for services rendered during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

C.3.3. Records of ENGINEER's Direct Labor Cost pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

C.3.4. Whenever a factor is applied to Direct Labor Costs in determining compensation payable to ENGINEER, that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by ENGINEER and consistent with ENGINEER's overall compensation practices and procedures.

C.4. Definitions:

C.4.1. Direct labor Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, and other technical and business personnel; but does not include indirect payroll related costs or fringe benefits.

The hourly Direct Labor Costs of principals of ENGINEER will be adjusted equitably to reflect changes in personnel and in ENGINEER's overall compensation procedures and practices.

Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly or indirectly in connection with the Project, such expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from CONTRACTOR(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques times a factor of 1.0.

C.5. Summary of Project Costs:

ENGINEER's summary of the fees for the Construction Phase of the Project is as shown in the following summary.