



August 31, 2015

The City of Gillette  
P. O. Box 3003  
201 East 5th Street  
Gillette, Wyoming 82717

Mayor and City Council:

DOWL proposes to render professional engineering services for the **Interstate Industrial Park – LID Project** (herewith called the "Project"). Please furnish us with full information as to your requirements including any special or extraordinary considerations for the Project or special services needed, and also make available all pertinent existing data.

Our services will consist of Design Services as identified in Exhibit 'A', as set forth in the General Provisions as amended and supplemented in Exhibits 'A' and 'B', thereto, which are attached to this letter. We will also furnish such additional services as you may request.

You will pay us for our Services on a time and materials basis with a cost not to exceed \$233,000.00. This fee includes labor and expenses to perform the engineering services as identified within this letter and the attached exhibits.

SECTIONS 1 and 2 of the General Provisions are hereby modified. The services provided are detailed within Exhibit 'A'.

We will bill you monthly for services and expenses. The above financial arrangements are on the basis of prompt payment of our bills and the orderly and continuous progress of the project.

We would expect to start our services after receipt of your acceptance of this proposal, and to complete our design services by April 11, 2016.

If there are protracted delays for reasons beyond our control, we expect to negotiate with you an equitable adjustment of our compensation taking into consideration the impact of such delays, including but not limited to changes in price indices and pay scales applicable to the period when services are in fact being rendered.


It is necessary that you advise us in writing at an early date if you have budgetary limitations for Total Project Costs. We must accept any such limitations as being realistic and will then endeavor to work within those limitations.

Services are to be rendered as, identified in Exhibit 'A', which together with the general understandings applicable to our relationship with you, are set forth in the printed General

Provisions and Exhibits 'A' and 'B' ; and, thereto which are attached to and made part of this proposal. Your particular responsibilities are also set forth in the General Provisions.

This proposal, the General Provisions, Exhibit 'A' and Exhibit 'B' represent the entire understanding between you and us in respect of the Project and may only be modified in writing signed by both of us. If it satisfactorily sets forth your understanding of our agreement, we would appreciate your signing the enclosed copy of this letter in the space provided below and returning it to us. This proposal will be open for acceptance until September 16, 2015, unless changed by us in writing.

Respectfully Submitted,  
DOWL

  
\_\_\_\_\_  
Wade A. Irion, P.E.

Accepted this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

CITY OF GILLETTE

By \_\_\_\_\_ ATTEST: \_\_\_\_\_  
Mayor

## GENERAL PROVISIONS

Attached to and made a part of the LETTER AGREEMENT, dated August 31, 2015, between the City of Gillette, Wyoming (OWNER) and DOWL (ENGINEER) in respect to the Project described therein.

*NOTE: Wording that includes a strikethrough does not apply to this Agreement.*

### 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~~

~~After written authorization to proceed, ENGINEER shall:~~

- ~~1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.~~
- ~~1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.2, and assist OWNER in obtaining such data and services.~~
- ~~1.2.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.~~
- ~~1.2.4. Provide analysis of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.~~
- ~~1.2.5. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.~~
- ~~1.2.6. Prepare a written report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental~~

~~authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth ENGINEER's finding and recommendations. This Report will be accompanied by ENGINEER's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Cost, allowances for engineering costs and contingencies, and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-ways, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others for OWNER pursuant to paragraph 3.2. The total of all such costs, allowances, etc. are hereinafter called "Total Project Costs".~~

- ~~1.2.7. Furnish two copies of the Study and Report documents and review them in person with the OWNER.~~

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

### 1.3. Preliminary Design Phase

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

- 1.3.1. In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the Project.
- 1.3.2. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
- 1.3.3. Advise OWNER if additional data or services of the types described in the first subparagraph of paragraph 3.2 are necessary and assist OWNER in obtaining such data and services.
- 1.3.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Total Project Costs.
- 1.3.5. Furnish two copies of the above Preliminary Design documents and present and review them in person with the OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in Exhibit 'A'.

#### 1.4. Final Design Phase

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

- 1.4.1. On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs, prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by CONTRACTOR(s) (hereinafter called the "Drawings") and Specification which will be prepared in conformance with the City of Gillette Standard Construction Specifications.
- 1.4.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with the appropriate authorities.
- 1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character of design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.
- 1.4.4. Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instruction to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the OWNER), and assist in the preparation of other related documents.
- 1.4.5. Furnish two copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during Final Design Phase are amended and supplemented as indicated in Exhibit 'A'.

#### 1.5. Bidding or Negotiation Phase

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

- ~~1.5.1. Assist OWNER in advertising for and obtaining bids or negotiation proposals for each separate prime contract for construction, materials, equipment and~~

~~services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conference and provide the OWNER with eight-sets of Bidding Documents.~~

- 1.5.2. Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.
- 1.5.3. Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "CONTRACTOR(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 1.5.4. Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by CONTRACTOR(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 1.5.5. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services. The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in Outline B of Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters".

#### ~~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:~~

~~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).~~

~~1.6.9.1. 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 1.6.9.2.~~

~~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

- 4.1. 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' and Exhibit 'B' as if they were part of one and the same document.
- 4.2. 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.)
- 4.3. INTENTIONALLY DELETED
- 4.4. INTENTIONALLY DELETED
- 4.5. 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**  
**Interstate Industrial Park - LID**  
**Project No. 15EN47**

**Scope of Services**

---

The following is the scope of services anticipated for this project. Items A through H represent general requirements and Item I is the detailed scope for this project.

**A. Monthly Progress Reports and Billing Statements**

The Consultant shall submit a brief monthly progress report outlining the study status, progress, and results to date, regardless of whether or not a billing statement is submitted, on or before the last working day of the month.

Each billing statement must include a task-by-task report justifying the cost items contained in the billing statement. The monthly progress report may be used as the justification for the billing statement as long as all cost items covered in the billing statement are addressed in the progress report.

Consultant and subconsultant(s) billing statements should indicate the number of hours worked by job classification at the consultant's hourly rate(s) as identified on the hourly rate sheet(s) that will be made part of the Owner-Engineer professional services agreement. Unless previously approved by the City of Gillette (COG), all labor, equipment and materials used in the course of the project that is not included on the consultant's direct costs and rate sheet shall be considered subsidiary to the consultant's hourly rates.

**B. Computer Models, Statement of Assumptions, Project Work File**

1. If the Consultant writes or uses a computer model or spread sheet as a part of this project, the Consultant shall submit to the COG for approval all proposed model names and data formats prior to beginning work on that task. All data shall be submitted to COG in written and digital formats with the final design report. Digital media shall be labeled by the Consultant to provide sufficient detail to access the information on that media. User manuals shall be submitted by the Consultant to the COG providing complete documentation of computer models developed under this project. The user manuals shall also contain the source code language and the type of computer equipment necessary to operate the model(s). All computer models, databases, and spreadsheets developed herein (written and digital formats) are due on the same date as the final design report.
2. To facilitate the COG's accurate evaluation of the Consultant's work product, computations, conclusions and recommendations, the Consultant shall:

- a. Include in the final design report a section describing the assumptions and methodology used by the Consultant in generating the data and conclusions contained in that report.
- b. Maintain a project work file containing the materials used in project analysis. This file will be available for review by the COG and should be organized in such a way as to allow replication of the steps and procedures used by the Consultant to reach the conclusions described in the final design report.

#### **C. Engineer Certification**

The Consultant shall use the Contract Scope of Services as the outline for the draft and final design reports so that Consultant compliance with Contract provisions can be verified. The cover of final design reports, contract documents, as-built drawings, and related material must be stamped and signed by a professional engineer licensed in the State of Wyoming.

#### **D. Digital Submittals**

In addition to paper submittals, the Consultant shall also provide all reports, contract documents, as-built drawings, and related materials in a digital format. This digital format shall, to the extent feasible, be delivered in consolidated files rather than separate files for text, tables, graphics, etc. This digital report shall be contained on a CD(s) or DVD(s), and shall be in both Word and Adobe Acrobat format. Any plates, figures, etc. not suitable for Word shall be in AutoCAD, Adobe Acrobat, or compatible format.

#### **E. Anticipated Project Funding Assistance**

The Consultant anticipates the City of Gillette will handle all grant and loan processes and coordinate funding for the Drinking Water SRF.

#### **F. Project Access**

The Consultant shall be responsible for obtaining access as required for project tasks.

#### **G. Stand-By Time**

The COG will not reimburse the Consultant for stand-by time charges for the Consultant's supervisory personnel.

#### **H. Permitting**

All permit applications prepared under this project shall list the COG as the applicant. The consultant shall be responsible for obtaining the permit and any associated permit fees.

#### **I. Scope of Services**

The following **Scope of Service** details project requirements agreed upon as part of the contract negotiation process:

## **1.0 - Project Management**

### **Task 1.1 – Project Management**

- a. Maintain a project work plan.
- b. Maintain project staff and oversee the work of subconsultants.
- c. Monitor schedule and budget.
- d. Conduct periodic design team meetings and coordinate work elements.
- e. Provide a monthly progress report and invoice.
- f. Provide quality control review of work products.

### **Task 1.1 – Coordination Meetings**

- a. Hold two design review meetings with the City. These will occur at approximately the 50% and 90% completion points.
- b. Meet regularly with the City staff to update progress on the project and present issues needing to be discussed or addressed. It is anticipated about one meeting per month will be required. These meetings can be established on a regular basis if desired.

## **2.0 Preliminary Design**

### **Task 2.1 – Surveying and Mapping**

- a. Create a digital file of the project area from available City GIS data.
- b. Verify and establish 10 to 12 control points throughout the area for use during design and construction. These control points will be set at the interval of approximately one per intersection and off site areas as required.
- c. Surveyor will attempt to locate block and lot corners in the project area.
- d. Request utility companies to locate buried utilities throughout the area. Survey these utility locations using the control points. During this survey, look for features that are not shown in the City GIS that should be added to the mapping. Survey located water system features such as valves, hydrants and curb stops.
- e. Perform a topography survey of the street sections including cross sections from property line to property line. Survey the centerline and cross sections of the roads throughout areas with a one percent slope or less on a 50-foot (approximate) interval.
- f. Revise the base mapping by bringing the elevations and additional features surveyed as outlined above into the City GIS and prepare preliminary plan and profile sheets at a scale of 1"=50'.
- g. Incorporate the street addresses to the base mapping.

#### Task 2.2 – Geotechnical Investigation and Report

- a. This scope anticipates 12 boreholes will be completed to a depth of about 10 to 15 feet to determine the soil profile for design and construction of the underground water lines.
- b. Perform traffic counts at two locations within the study area for the purpose of collecting pavement design parameters.
- c. Prepare logs of all holes for this geotechnical investigation.
- d. Conduct laboratory analysis of some samples gathered for designing the improvements, classifying the soils for the bore logs, and moisture/density relations of the soils sampled in preparation for density tests during construction.
- e. Assemble all work under this task in a project Geotechnical Report including trench backfill and street paving sections.

#### Task 2.3 – Street Design

- a. Prepare typical sections of the street widths and cross sections including trench repairs drainage crossings & curb and gutter replacements.
- b. Prepare profiles of the streets, drainage ditches & curb and gutter.
- c. Prepare preliminary plan and profile sheets of the street improvements.
- d. Prepare street cross sections of the street design as required.
- e. Where necessary for clarity, prepare details showing each intersection with drainage and elevations at key locations.
- f. Develop estimated quantities and tables for construction of street improvements.

#### Task 2.4– Water Line Design

- a. Meet with City staff to verify the desired locations for new lines. It is assumed all new water lines will be 10 & 6-inch diameter with some 4 inch service lines and there will be no additional hydraulic design performed related to sizing water mains.
- b. Add the new water mains to the project mapping. Also, add appurtenances such as valves and fire hydrants.
- c. Add water service lines to replace existing services and consider where service lines should be stubbed into vacant lots for future use without digging in the street. Add service lines to the project mapping.
- d. Develop estimated quantities and tables for construction of water system improvements.

#### Task 2.5 – NEPA Documentation

- a. Per Discussions with Wyoming DEQ staff, NEPA requirements will consists of contacting local agencies and documenting their responses. For the purpose of this scope it is understood the Interstate Industrial Project will be eligible as a categorical exclusion.

#### Task 2.6 – Prepare and Submit 50% Plans and Project Manual

- a. Prepare preliminary plan sheets and drawings in accordance with City of Gillette CAD design standards.
- b. Assemble all of the plan and profile sheets prepared under the above tasks into a Plan Set.
- c. Prepare a cover sheet, key sheets, general sheets and also prepare any additional details that are not contained in the *City of Gillette, 2012 Standard Construction Specifications*.
- d. Prepare a Project Manual with the appropriate Division sections and other sections not included in the *City of Gillette, 2012 Standard Construction Specifications*. Also include a section on project special provisions and work sequencing requirements if required.
- e. Prepare a quantity takeoff and develop the bid schedule for the Project Manual. Prepare preliminary cost estimate.
- f. Perform in-house reviews.
- g. Submit the plans to the City of Gillette for review and comment. Meet with the City of Gillette to review plans and project manual and address comments received.
- h. Revise the plans and project manual to include all comments received and internal reviews.

### **3.0 Final Design**

#### Task 3.1 - Design Report

- a. Prepare a design report describing rehabilitation improvements, engineering design process and assumptions. Design report will include:
  - Water System Improvements. Report will cover the design process for Water System Improvements.
  - Geotechnical Report as an appendix.

#### Task 3.2 - Prepare and Submit 90% Plans and Project Manual

- a. Finalize 90% Plans and Project Manual. Prepare DEQ Application to Construct to the City of Gillette.
  - 90% Plans will include standard details and general requirements for Stormwater Pollution Prevention and Traffic Control.
- b. Submit 90% Plans and Project Manual, DEQ Application, and Design Report to the City of Gillette.
- c. Meet with the City of Gillette to review comments. Address comments as required.
- d. Perform in-house reviews

### Task 3.3 - Prepare Contract Documents for Bidding

- a. Incorporate all comments received from the City of Gillette and from internal reviews.
- b. Update and finalize project plans and manual.
- c. Assemble the final Project Manual and plans for copying for bidding.
- d. Finalize summary sheets of the improvements to be constructed.
- e. Revise the project cost estimate using the quantities in the final bid schedule.

## **4.0 – Project Bidding and Award**

### Task 4.1 – Project Bidding

- a. Prepare an Advertisement for Bid. The City will publish the advertisement.
- b. Prepare 8 sets of plans, specifications/contract documents for bidding the project.
- c. Conduct a pre-bid conference and prepare minutes of this conference.
- d. Address questions raised by contractors and suppliers during the bidding process.
- a. Issue addenda during the bidding process as necessary.
- b. Attend the project bid opening.
- c. Tabulate and verify all bids.
- d. Make a recommendation on the award of the project.

### Task 4.2 – Project Award

- a. Prepare a Notice of Award, Agreement, and bonding forms for the contractor and City for processing.
- b. Prepare a Notice to Proceed when appropriate.

The following assumptions were used in preparing the scope and budget for this project:

- No new easements or rights of way are needed for this project.
- The City will notify all planholders, sell and distribute all plans and maintain the planholder's list during bidding.
- Construction services, not covered in this scope, will be granted under a newly issued contract prior to start of construction.
- City of Gillette will provide a vac truck for location of existing water mains within the project areas to facilitate detailed design. Backfill of these holes will be by City of Gillette as well. If necessary, DOWL can arrange for vac-locates and backfill as additional services.

## TASK BUDGET BREAKDOWN

<b>1.0 - Project Management</b>	<b>Water Design</b>	<b>Street Design</b>	<b>Project Total</b>
Task 1.1 – Project Management	\$8,170.00	\$10,450.00	
Task 1.1 – Coordination Meetings	\$5,800.00	\$6,965.00	
<u>Sub Total</u>	\$13,970.00	\$17,415.00	\$31,385.00
<b>2.0 Preliminary Design</b>			
Task 2.1 – Surveying and Mapping	\$11,830.00	\$15,750.00	
Task 2.2 – Geotechnical Investigation and Report	\$6,220.00	\$19,920.00	
Task 2.3 – Street Design		\$21,465.00	
Task 2.4– Water Line Design	\$11,630.00		
Task 2.5 – NEPA Documentation	\$5,500.00		
Task 2.6 – Prepare and Submit 50% Plans and Project Manual	\$16,295.00	\$17,295.00	
<u>Sub Total</u>	\$51,475.00	\$74,430.00	\$125,905.00
<b>3.0 Final Design</b>			
Task 3.1 - Design Report	\$5,740.00	\$7,740.00	
Task 3.2 - Prepare and Submit 90% Plans and Project Manual	\$10,615.00	\$16,455.00	
Task 3.3 - Prepare Contract Documents for Bidding	\$10,200.00	\$12,960.00	
<u>Sub Total</u>	\$26,555.00	\$37,155.00	\$63,710.00
<b>4.0 – Project Bidding and Award</b>			
Task 4.1 – Project Bidding	\$4,250.00	\$4,250.00	
Task 4.2 – Project Award	\$1,750.00	\$1,750.00	
<u>Sub Total</u>	\$6,000.00	\$6,000.00	\$12,000.00
<b>Project Total</b>			<b>\$233,000.00</b>



# EXHIBIT B

## Interstate Industrial Park - LID

### Project No. 15EN47

#### Project Design Schedule

#### City of Gillette Interstate Industrial Park - UD Project

