

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of
December 21, 2016 ("Effective Date")
between
CITY OF GILLETTE, WYOMING ("Owner")
and
CONSOLIDATED ENGINEERS, INC. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

GURLEY OVERPASS STRUCTURAL REPAIRS
BARRIER REHABILITATION INVESTIGATION, PRELIMINARY & FINAL DESIGN PHASES
SPlice PLATE INVESTIGATION & PRELIMINARY DESIGN PHASES
("Project").

Engineer's Services under this Agreement are generally identified as follows:

A. Roadside Barriers

1. Investigation & Preliminary Design Phases

- a. Review previous investigations and repairs that have been completed at the Gurley Avenue Overpass structure:
 1. Bridge Inspection Reports by WYDOT, Biennial
 2. Original Design Drawings by Ihlenfeldt-Peterson & Associates, Inc., 1982
 3. Investigation Report by Consolidated Engineers, Inc., 1999
 4. North Abutment Drainage Repair, 2000
 5. Investigation Report by Consolidated Engineers, 2000
 6. North Abutment & Expansion Joint Repair, 2010
 7. Investigation Report by Consolidated Engineers, Inc., North Abutment and Pier 5, 2014
 8. Pier 5 & Abutment 2 Structural Repairs, 2015
 9. Other documents and information as provided by the Owner.
- b. Prepare a plan and scope of the proposed field investigation of the roadside barriers. Present the plan to the Owner for review and comment. Meet with the Owner to review the Owner's comments on the scope and plan. Coordinate on the traffic control to be provided by the Owner during the field investigation.
- c. Conduct a field review of the roadside barriers:

1. Conduct observations of the roadside barriers along the entire length of each side of the structure. It is anticipated at this time that the observation of the roadside barriers will be conducted from the bridge deck only, without the use of man lifts, and all traffic control to conduct this observation will be provided by the Owner.
 2. Document and map the position, length, and orientation of cracks, spalling, delaminations, and other damage in the roadside barriers.
 3. Take measurements and photographs of the surface condition of the roadside barriers.
 4. Observe and document other damage and cracking in other structural elements in the near vicinity of the roadside barriers. However, the roadside barriers will remain the primary focus of the investigation.
 5. Prepare a map and listing of the damage and other concerns with the overall structure. Categorize the issues by importance, structural vs. non-structural, and cosmetic. Prioritize the issues for possible phasing of the repairs.
 6. Establish available repair methods for each form of damage observed. Determine if the lower curb is salvageable in full or in part. Investigate options for repairing or reconstructing the lower portion of the barriers to be durable under tire impacts, scraping from snow plows, and exposure to deicing chemicals. Consider which options would allow the repairs to be made with the least down-time for public use of the overpass. Formulate overall recommendations and details for barrier repairs. Provide an opinion concerning the option with the least or shortest impact on the public use of the overpass.
 7. Review available products and techniques for sealing and waterproofing the repaired barriers. Select the waterproofing products that will be most suitable for the overpass conditions.
 8. Provide the listing of damage, the priorities, and the conceptual repair products, methods, and details to the Owner for review. Meet with Owner to review and discuss the submittal. Confirm the prioritization and possible phasing of the repairs with the Owner.
 9. Prepare an estimate of construction costs for the Owner's use in budgeting. Include possible phasing of the work, if recommended and agreed upon by Owner. Compare the costs to repair versus replacing the existing roadside barriers.
 10. Submit the estimates of construction costs to the Owner for budgeting purposes.
2. Final Design Phase
- a. Prepare a set of Design Drawings to include:
 1. Title Page
 2. Design Data & Summary of Quantities
 3. General Notes
 4. General Plan & Elevation
 5. Construction Sequence
 6. Barrier Concrete Removal Elevations
 7. Barrier Repair Elevations
 8. Breakout and Repair Details
 9. Traffic Control Plan & Details

- b. Project Manual: Prepare a Project Manual to include advertisement for bids, information for bidders, bid form, standard forms, general conditions, supplementary conditions, technical specifications, and special provisions.
 - c. Prepare a final estimate of probable construction cost based on the final estimate quantities.
 - d. Submit 90% progress Design Drawings, cost estimate, and Project Manual electronically to the City Engineering staff for review.
 - e. Submit the final Design Drawings, cost estimate, and Project Manual electronically to the City Engineering staff for distribution.
3. Bidding Phase
- a. The scope of services and compensation for the bidding phase are not included in this agreement and will be determined at a later date.
4. Construction Phase
- a. The scope of services and compensation for the construction administrative phase are not included in this agreement and will be determined at a later date.

B. Splice Plates

1. Investigation & Preliminary Design Phases
- a. Review previous investigations and repairs that have been completed at the Gurley Avenue Overpass structure as noted in Section A.1.a above.
 - b. Prepare a plan and scope of the proposed field investigation of the splice plates. Present the plan to the Owner for review and comment. Meet with the Owner to review the Owner's comments on the scope and plan.
 - c. Conduct a field review of the splice plates:
 - 1. Owner to coordinate and obtain permissions and permits, as necessary for the field investigation work in the BNSF railroad ROW. Owner will also provide and pay for a BNSF flagger, if needed.
 - 2. Conduct observations of the splice plates utilizing a manlift, as supplied by the Owner. All traffic control to conduct this observation will be provided by the Owner.
 - 3. Document the extent of the pack rust and other damage in the splice plates.
 - 4. Take measurements and photographs of the surface condition of the splice plates.
 - 5. Observe and document other obviously noted damage and cracking in other structural elements in the near vicinity of the splice plates. However, the splice plates will remain the primary focus of the investigation.
 - 6. Prepare a table or listing of the damage and other concerns with the splice plates. Categorize the issues by importance, structural vs. non-structural, and cosmetic. Prioritize the issues for order of work to be completed.
 - 7. Develop a description of the repair work or conceptual details. Provide the listing of damage, the priorities, and the conceptual repair details to the Owner for review. Meet with Owner to review and discuss the submittal.
 - 8. Prepare an estimate of construction costs for the Owner's use in budgeting.
 - 9. Submit the estimates of construction costs to the Owner for budgeting purposes.

2. Final Design Phase

- a. The scope of services and compensation for the final design phase are not included in this agreement and will be determined at a later date.

3. Bidding Phase

- a. The scope of services and compensation for the bidding phase are not included in this agreement and will be determined at a later date.

4. Construction Phase

- a. The scope of services and compensation for the construction administration phase are not included in this agreement and will be determined at a later date.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete the described services by May 1, 2017.
- ~~C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding ____ months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.~~

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. 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, then 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, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
 - 1) upon seven days' written notice if Owner demands that Engineer 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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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 Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.

- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.

- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

7.01 *Basis of 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 Thirty-Seven Thousand Eight Hundred Eighty-Three Dollars (\$37,883.00). A breakdown of this estimate is as follows:
 - a. Roadside Barriers – Investigation & Preliminary Design Phases: \$15,873.00
 - b. Roadside Barriers – Final Design Phase: \$15,366.00
 - c. Splice Plates – Investigation & Preliminary Design Phases: \$ 6,644.00

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Appendix 1.

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

OWNER: CITY OF GILLETTE

By: _____

Title: Mayor

Date Signed: _____

Attest: _____

City Clerk

ENGINEER: CONSOLIDATED ENGINEERS, INC.

By: Brian D. Shipton

Title: Sr. Structural Engineer

Date Signed: December 21, 2016

Address for giving notices:

201 E. Fifth Street

PO Box 3003

Gillette, Wyoming 82717

Address for giving notices:

316 So. Gillette Ave.

PO Box 1035

Gillette, Wyoming 82717

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated December 21, 2016.

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates for calendar year 2017:*

Hourly rates for services performed during the 2017 calendar year are as shown on the attached Schedule of Fees dated November 17, 2015.



CONSOLIDATED ENGINEERS, INC.

316 S. GILLETTE AVENUE
P.O. BOX 1035
GILLETTE, WY 82717
(307) 682-0768

2040 W. MAIN, SUITE 207
P.O. BOX 9686
RAPID CITY, SD 57709
(605) 791-3738

SCHEDULE OF FEES

November 17, 2015

PROFESSIONAL FEES (per hour):

Principal Engineer	\$150.00
Senior Engineer	\$148.00
Senior Project Engineer.....	\$130.00
Project Engineer/Manager	\$125.00
Sr. Design Engineer	\$114.00
Design Engineer	\$ 98.00
Sr. Construction Engineer.....	\$115.00
Construction Engineer	\$ 95.00
Resident Project Representative (RPR)	\$ 90.00
Sr. Engineering Technician	\$ 91.00
Engineering Technician	\$ 80.00
Clerical	\$ 50.00

CHARGEABLE EXPENSES:

Travel Expenses: Mileage (per mile)	\$ 0.75
Overnight Travel (meals & incidentals/per diem)	\$50.00
Lodging	actual cost
Blackline Prints, B&W, 24"x36"	\$ 3.00
Drafting Plots: Mylar (each)	\$11.00
Bond (each)	\$ 4.00
Photocopies, B&W, 8½ x 11 (each)	\$ 0.15
Photocopies, Color, 8½ x 11 (each)	\$ 0.30
Photocopies, B&W, 11 x 17 (each)	\$ 0.30
Photocopies, Color, 11 x 17 (each)	\$ 1.00
Special tests, services of sub-consultants, and equipment rental	Cost + 15%

OWNER: CITY OF GILLETTE

By: _____

Title: Mayor

Date Signed: _____

Attest: _____

City Clerk

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