

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.

STANDARD 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 COUNCIL OF ENGINEERING COMPANIES

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. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, No. E-001, 2002 Edition.

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

THIS IS AN AGREEMENT effective as of July 5, 2017, (“Effective date”) between

City of Gillette, 201 East 5th Street, Gillette, WY 82716 (“Owner”) and

DOWL, 1901 Energy Court, Ste. 170, Gillette, WY 82718 (“Engineer”).

Owner intends to complete Design Phase Services and, upon execution of future amendment(s), to this Agreement, commence Bidding and Construction Phase Services for the Gillette Regional Water Supply Project – Phase II Stone Gate Estates District Extension (“Project”).

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within ~~thirty (30)~~ forty-five (45) days of receipt.
- B. Subcontracted work and other expenses will be paid from invoices with no percentage markup by the Engineer.
- C. Payments shall be made by Owner directly to Engineer only for services rendered and upon submission of monthly progress payment requests, recommended by Owner and approved by the Wyoming Water Development Commission (WWDC), based on hourly rate and reimbursable expenses provided in accordance with the schedules in Exhibit C.
- D. The Engineer shall submit a brief progress report summarizing project activities in the billing period with each Engineer's payment request.
- ~~E. The Owner may elect to retain 10% of each progress payment for Engineer's services; however, retainage for Engineer's services is not required by WWDC. If the owner elects to withhold retainage for Engineer's services, the Owner shall notify the Engineer and WWDC in writing. Engineering retainages shall be held by WWDC in accordance with WWDC policies. With WWDC concurrence, the Owner may release retainage at certain stages of the project e.g., Bid Opening, and will release retainage at the conclusion and acceptance of the project.~~

- F. The Engineer shall submit a construction progress report with each Construction invoice.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within ~~thirty (30)~~ forty-five (45) days after receipt of Engineer's invoice, then:
1. 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 forty-fifth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has 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.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.
- E. Records of the Engineer's costs pertinent to Engineer's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Engineer's charges and upon Owner's timely request, copies of timesheet records will be made available to Owner at cost. Engineer's timesheet and reimbursable cost records shall be made available to Owner during normal office hours at the Engineer's office anytime after Contract execution, and before one year after the date of final payment.
- F. Owner shall initiate approval of payment promptly upon receipt of a statement from Engineer, and payment shall be made within ten (10) days of receipt of moneys from WWDC.
- G. Final payment to the Engineer is not due until Engineer submits to the Owner an affidavit stating that all payrolls, bills for materials, and equipment and other indebtedness connected with the Agreement for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied except for those to be paid with the proceeds from the final payment and retainage.
- H. Acceptance by Engineer of final payment shall constitute a waiver of all claims by the Owner except those arising from:

1. Unsettled liens.
2. Unapproved or unacceptable work.
3. Failure of the work to comply with the requirements of the Agreement.
4. Terms of any special warranties required by the Agreement.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's Opinions of Probable Construction Cost 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 generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator as provided in Exhibit B.

~~5.02 — *Designing to Construction Cost Limit*~~

- ~~A. — If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.~~

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

- 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.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. 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) unless both parties mutually agree to use other General Conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time 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 or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. 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 and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.
- K. All contract documents shall be subject to WWDC concurrence.

6.02 *Design Without Construction Phase Services*

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1)

Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 *Use of Documents*

- A. All Documents ~~are instruments of service~~ in respect to this Project, ~~and Engineering shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineering) whether or not the project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.~~ shall be the property of the Owner and, upon request by the Owner, Engineer shall physically deliver copies of the requested documents, in the format requested, to the Owner. The Engineer shall be compensated by the Owner for associated direct costs including labor, copying, and delivery. Any reuse without written verification or adaptation by the Engineer other than the specific original intended purpose will be at the Owner's sole risk and without liability of legal exposure to the Engineer.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, 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 or on any other project 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 Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." ~~Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.~~ The City of Gillette is a member of the Wyoming Association of Risk Management (WARM). Insurance coverage shall be provided in accordance with Exhibit G.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall deliver the certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

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

1. For cause,

a. By either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Engineer:

1) upon seven (7) 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 (7) days written notice if the Engineer's services for the Project are delayed or suspended for more than ninety (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 under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (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, sixty (60) days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to

allow Engineer to demobilize personnel and equipment from the 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.

D. Payments Upon Termination.

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. ~~This Agreement is to be governed by the law of the state in which the Project is located.~~ Enforcement of the Agreement is to be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be District Court of Owner's locality.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.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.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. 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.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then 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 consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator,"

or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer’s activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner’s officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer’s officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit I, “Allocation of Risks,” if any.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer’s officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner’s officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party’s total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the

negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer 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.
- F. Nothing in this Agreement shall in any way be deemed a waiver of any of the requirements or immunities provided by the Wyoming Governmental Claims Act.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.
3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or 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 Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any

assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
12. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

- A. Exhibit A, "Engineer's Services," consisting of 26 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 4 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 10 pages.
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 5 pages.
- E. Exhibit E, "Notice of Acceptability of Work," consisting of 2 pages.
- F. ~~Exhibit F, "Construction Cost Limit," consisting of _____ pages.~~ Not Used
- G. Exhibit G, "Insurance," consisting of 3 pages.
- H. Exhibit H, "Dispute Resolution," consisting of 2 pages.
- I. Exhibit I, "Allocation of Risks," consisting of 5 pages.
- J. ~~Exhibit J, "Special Provisions," consisting of _____ pages.~~ Not Used
- K. Exhibit K, "Amendment to Owner-Engineer Agreement," consisting of 2 pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 19 inclusive, together with the exhibits identified above) 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 based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

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

Owner:

Engineer:

City of Gillette, Wyoming

DOWL

By: Louise Carter - King

By: Dayton Alsaker, P.E.

Title: Mayor

Title: Region Manager

Date

Date

Signed: _____

Signed: June 28, 2017

Attest: _____

Engineer License or Certificate No. ES-0159

State of: Wyoming

Address for giving notices:

Address for giving notices:

201 E. 5th Street

1901 Energy Court

P.O. Box 3003

Suite 170

Gillette, WY 82717

Gillette, WY 82718

Designated Represetative (see Paragraph 8.03.A):

Designated Representative (see Paragraph 8.03.A):

Levi Jensen, P.E.

Mark Hines, P.E.

Title: Utility Project Manager

Title: Gillette Office Manager/Project Manager

Phone Number: (307) 687-2534

Phone Number: (307) 686-4181

Facsimile Number: (307) 686-6564

Facsimile Number: (307) 686-4858

E-Mail Address: levij@gillettewy.gov

E-Mail Address: mhines@dowl.com

This is **EXHIBIT A**, consisting of 26 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 5, 2017.

Engineer's Service

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

~~A.1.01 Study and Report Phase~~

~~A. Engineer shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.~~
- ~~2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate _____ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its ENGINEERS; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables:~~
- ~~7. Furnish _____ review copies of the Report and any other deliverables to Owner within _____ calendar days of authorization to begin services and review it with Owner. Within _____ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~

8. ~~Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish _____ copies of the revised Report and any other deliverables to the Owner within _____ calendar days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.~~

A.1.02 *Preliminary Design Phase*

- A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and Upon written authorization from Owner, Engineer shall:
 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
 - a. None
 6. Furnish number of review copies of the Preliminary Design Phase documents and any other deliverables to Owner as indicated in Attachment 1 of Exhibit A., and review them with Owner. Within twenty-one (21) calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
 7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within _____ calendar days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A.1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and Upon written authorization from Owner, Engineer shall provide the professional services indicated in Appendix 1 of Exhibit A which were outlined in the Request for Proposals and amended herein during the Consultant selection and contract negotiations stages of the project.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the bid documents are delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A.1.04 *Bidding or Negotiating Phase (TO BE AUTHORIZED BY AMENDMENT AFTER SEPTEMBER 1, 2017)*

- A. After acceptance by Owner of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall perform the following services described in Appendix 1 of this exhibit:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, organize and conduct pre-Bid conferences, ~~if any, and receive and process contractor deposits or charges for the Bidding Documents.~~
 - 2. Issue addenda to clarify, correct, or change the Bidding Documents.
 - 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 5. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: (none)
 6. Attend the Bid opening, Prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors ~~(except as may be required if Exhibit F is a part of this Agreement).~~

A.1.05 Construction Phase (TO BE AUTHORIZED BY AMENDMENT AFTER THE BIDDING PHASE)

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall perform the following services described in Appendix 1 of this exhibit:
1. *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing. Engineer will perform all inspections, test and approvals of samples, materials, and equipment specifically required in this Contract.
 2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
 4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 5. *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

6. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, 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 the 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 will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. 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 or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
8. *Defective Work.* Recommend to Owner that Contractor's Work be rejected while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

9. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives for Owner execution. Prior to executing a Change Order, the Engineer, on behalf of the Owner, will submit a copy to WWDC for review and approval. The Engineer shall not approve work outside a construction contract without an executed Change Order. The Engineer shall promptly provide copies of all executed Change Orders, Field Orders, and Work Directives to the Owner and WWDC.
11. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment.* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the 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), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, 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.
16. *Contractor's Completion Documents.* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11. Engineer will review completion documents and incorporate them into Operation and Maintenance manuals for the Owner. Engineer will provide any operational recommendations into the

Operation and Maintenance manuals. This scope does not include comprehensive technical manuals detailing the operation of the Owner's systems beyond the items specifically listed above.

17. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables: None
19. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
20. *Final Payment Notices and Advertisements.* Engineer will include the requirement for notices and advertisements for final payment in construction contract documents.

- B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction-Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
- C. *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A.1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner to complete work in accordance with A2.01, Engineer, during the Post-Construction Phase, shall:
 1. Provide assistance in connection with the adjusting of Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.

3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
- B. During the Post-Construction Phase, and included in the total fee in Appendix C, the Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 2. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
None
 3. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- C. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Normal changes due to Owner and WWDC comments are included in the Basic Services scope and fee. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, significant or major scope changes due to Owner or WWDC comments, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in

Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions ~~beyond those identified in Paragraph A1.01.A.4.~~
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Engineer's Consultant's for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Exhibit A, Appendix 1 ~~Paragraph A1.03.D.~~
10. Services during out-of-town travel required of Engineer other than for visits to the Site, Owner's office, and WWDC's office(s).
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. ~~Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.~~
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
15. ~~Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.~~ Any restaking of previously staked construction survey work.

16. ~~Providing Construction Phase services beyond the original date for final completion of the Work.~~ Engineer will cause liquidated damages clauses to be placed in the construction contract to cover additional Engineer's services due to Contractor's activities beyond the Substantial and Final Completion date(s). Any of Engineer's additional services due to Contractor's activities beyond the Substantial and Final Completion date(s) that would not be covered by liquidated damages would require written acceptance by the Owner and concurrence by WWDC.
17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
18. ~~Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.~~
19. ~~Preparation of operation and maintenance manuals.~~
20. Preparing to serve or serving as an Engineer or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant

amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the date stated in A1.05.B, or in excess of the times specified in A1.05.A.18.

E-500 Exhibit A.Sept 2004

This is **Appendix 1 to EXHIBIT A**, consisting of 14 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 6, 2017.

Scope of Services

PROJECT DESCRIPTION

The following is the **Project Description** contained within the RFP as adjusted during contract negotiations for this Agreement.

A. PROJECT DESCRIPTION

1. Location: State of Wyoming, Campbell County, City of Gillette
2. Purpose: To provide design, survey and permitting services for Phase II of the District Extensions for the Gillette Regional Water Supply Project (Project).
3. General Scope: The City of Gillette (COG) is experiencing aggressive population growth due to burgeoning energy development in Campbell County. With this population growth comes increased water demands which, during peak periods of usage, are taxing existing, local groundwater supplies. A separate project is underway that will develop a new supply and transmission system to meet existing and long-term demands of the COG and the surrounding area.

The purpose of this particular project is to extend water service to the highest priority "Water Districts" located within the Designated Service Area (DSA) as established by the December 21, 2010 City/County Joint Powers Agreement (JPA).

Extension of water service to the rural areas within the DSA surrounding Gillette will also decrease the continued level of consumption from dwindling supplies within the Ft Union Aquifer. WWDC and the State of Wyoming have made large investments toward the expansion of the Gillette Regional Water Supply Project. WWDC desires to continue to consolidate funding for the Gillette Regional area to a single wholesale system, rather than to multiple Water Districts who currently receive service from local groundwater supplies like the Ft. Union Aquifer.

Several existing water districts within Gillette's DSA have recently noticed significant changes to their drinking water quality from their local wells. Some of these Water Districts have exceeded or will exceed USEPA's Maximum Contaminant Level (MCL) for fluoride and/or radio-nuclide concentration.

Detailed construction cost information is included within the "May 2010 Regional System Potential Participant Connections (Level II) Study" prepared by HDR Engineering Inc. The consultant will review the 2010 HDR (Level II) Study and familiarize themselves with the construction cost estimates, conceptual plans, recommendations and water system inventory data sheets upon commencement of the Preliminary Design Phase.

The 2010 HDR (Level II) Study was a continuation of the "October 2009 Regional Water Master Plan Level I Study" that was also prepared by HDR Engineering Inc. The consultant will review the 2009 HDR (Level I) Study upon commencement of the Preliminary Design Phase.

The primary goal of this Project is to prepare design and construction documents for future bidding purposes to extend water service to master meter locations for each of the following water districts for the Priority II areas.

| Priority I Project Segment from 2010 HDR Study Appendix F; Map Book | Length (ft) Appendix F Map Book | Water District(s) Served |
|--|---------------------------------------|--------------------------|
| Eight-Mile Line 3 <i>Eight Mile Line 3 Sheet 1 to 2. Eight-inch diameter section to Stone Gate Estates Connection as depicted in HDR Study, or from eight-inch line at South Fork Estates control building.</i> | 1,300 (+/-) – 4,200 (+/-) | South Fork Estates |

Contract documents will be prepared for one (1) construction contract.

The consultant will likely be retained through an amendment to the design contract to perform the bidding and construction phase services as funding becomes available.

4. **Information Available to the Consultant:** The Consultant will be expected to review the conclusions and recommendations from prior studies, and revise them as appropriate. Copies of relevant construction drawings and as-constructed drawings of the City's water system assets will be provided to the consultant in PDF format on a CD upon commencement of the Preliminary Design Phase. The COG will make available existing GIS data and existing aerial photography on file with the City's GIS Division. The consultant will be required to confirm and supplement the data through field surveys and/or supplemental mapping. The Consultant will review the 2010 HDR (Level II) Study and familiarize themselves with the construction cost estimates, conceptual plans, recommendations and water system inventory data sheets upon commencement of the Preliminary Design Phase.
5. **Budget.** The total project budget for all aspects of the Phase II Design is \$235,000.00. Of this total Project amount, \$160,000.00 has been identified for the requested Phase II Design Services. The remaining \$75,000.00 has been budgeted for easement/ROW acquisition and permit fees. Sixty-seven percent (67%) of the total Phase II budget is being funded through a WWDC Level III Grant. The remaining thirty-three percent (33%) is being funded by the COG through the City's portion of the County's Special Excise Tax (Cap Tax) revenue. The total project budget includes all foreseeable tasks for Phase II including, but not limited to: design, permitting, access, and easement acquisition.

PROJECT REQUIREMENTS

The following are certain **Project Requirements** contained within the Request for Proposal:

1. **Monthly Progress Reports, Billing Statements and Reimbursable Expenses**

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.

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. The consultant shall sign each monthly payment request on forms provided by the COG. The consultant shall submit the monthly progress report, billing statement and payment request within 5 days following the last day of the month for which month services have been provided.

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.

The Consultant and subconsultant(s) shall not include a percentage mark-up on direct expenses. Additionally, the Consultant shall not include a percentage mark-up on work performed by subconsultant(s).

Unless previously approved by the COG and WWDC, 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.

All charges and fees for communications, computer and technology services, equipment and software shall be included in the Consultant's hourly rate(s).

Reimbursement for lodging and meals will be reimbursed at Federal Per-Diem rates as published by the GSA for the City of Gillette, Campbell County, Wyoming.

Reimbursement for vehicles (including sedans, pick-ups, and panel vans) and for all highway miles will be reimbursed at IRS established reimbursement rates for business miles driven.

2. Computer Models, Statement of Assumptions, Project Work File

- a. If the Consultant writes or uses a computer model or spreadsheet 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.
- b. To facilitate the COG's accurate evaluation of the Consultant's work product, computations, conclusions and recommendations, the Consultant shall:
 1. 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.
 2. 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.

3. 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, bid documents, construction contract documents, as-built drawings, and related material must be stamped and signed by a professional civil engineer licensed in the State of Wyoming. Multiple certifications from various engineering disciplines (electrical, mechanical, structural, etc.) will be necessary for pump stations, treatment facilities, water tanks and structures. Easement exhibits and legal descriptions prepared to accompany easement agreements will be stamped and signed by a professional surveyor licensed in the State of Wyoming.

4. Digital Submittals

In addition to paper submittals, the Consultant shall also provide all reports, design submittals, bid documents, construction contract documents, as-built drawings, o&m manuals 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. Digital files shall be contained on CD(s), DVD(s), or Flash Drive(s) and shall be in both MS Word and Adobe Acrobat PDF format. Any plates, figures, etc. not suitable for MS Word shall be submitted in AutoCAD and Adobe Acrobat PDF formats. All CAD for the Project shall be prepared and submitted in accordance with COG CAD Standards.

5. Design Standards, Standard Construction Specs & Owner-Contractor Agreement

- a. Design Standards. The 2012 COG Design Standards shall be used as the design guidelines and design basis for the Project.
- b. Standard Construction Specifications. The 2012 COG Standard Construction Specifications shall be used for the Project.
- c. Owner-Contractor Agreement. The 2002 EJCDC C-700 Standard General Conditions of the Construction Contract as amended by the City's Supplementary Conditions shall be used for the Project in conjunction with the Agreement, Forms, Templates and other Specifications and Requirements included within the 2012 COG Standard Construction Specifications.

6. Project Access

The Consultant shall be responsible for contacting property owners and ROW managers and shall be responsible for obtaining access as required for all project tasks. The Consultant shall include and name the COG and WWDC personnel and their authorized agents within every access agreement. The Consultant shall provide original copies of all executed access agreements to the COG.

7. Stand-By Time

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

8. Schedule

A Notice to Proceed effective date of July 6, 2017 is anticipated to commence the Preliminary Design Phase. The project design schedule contains the following milestone completion dates:

Scope Alternate Work Complete August 18, 2017
Preliminary Design Phase Complete..... September 25, 2017
90% Design Phase Complete November 16, 2017
Final Design Phase Complete February 15, 2018

The Consultant will assume 100 days (minimum) for the COG to secure the necessary easements for the Project.

9. Anticipated Project Funding Assistance

The Consultant shall clearly identify project design and construction components eligible for Wyoming Water Development (WWDC) funding, both in cost estimates and in project mapping. The Consultant shall verify project components funding eligibility with the WWDC prior to submitting the various construction cost estimates at the various design submittal milestones. Unless otherwise directed by WWDC, the Consultant shall assume that the project will be funded with a 67% grant from the WWDC, and 33% COG local match.

10. Permitting

All permit applications prepared under this project shall list the COG as the applicant. The consultant shall be responsible for obtaining all permits. The consultant shall be reimbursed for associated permit fees less than \$150 per individual permit. The COG will directly pay for permit fees greater than \$150.

11. Private Easements

The COG will obtain representative appraisals and will negotiate all private easements in general accordance with W.S. 1-26-501 through W.S. 1-26-817.

SCOPE OF SERVICES

The following **Scope of Service** details project requirements contained within the Request for Proposal and as modified as part of the consultant selection process and contract negotiation process:

a. Preliminary Design Phase

Task 1 – Project Management and Coordination Meetings

Task 1.1 Project Supervision

Provide general project management and project coordination during the Preliminary Design Phase. Manage sub-consultants. Coordinate work, schedule and delivery of tasks and submittals for the entire consultant team. Monitor quality control and perform quality assurance of deliverables. Request, schedule and coordinate work to be performed by COG. Request, schedule and disseminate information to be provided by the COG.

Task 1.2 Set-up, Attend & Facilitate Meetings

Plan, schedule, organize, and facilitate joint meeting(s) with COG utility system operators, COG managers, WWDC and others as necessary during the Preliminary Design Phase. In addition to the Campbell County meeting, a minimum of four (4) additional on-site meetings in Gillette are anticipated. One to gather input from local districts, and one each at the design kick-off, 10% design review and 50% design review.

Task 1.4 Monthly Pay Requests, Schedule Updates & Progress Reports

Prepare, review and submit monthly progress reports, schedule updates and consultant billing statements in accordance with Section C.

Task 2 – Review Background Information

~~*Task 2.1 Obtain and Review Background Information*~~

~~Obtain and review prior studies, reports, as-built drawings, shop drawings, operation and maintenance manuals, easements, aerial photo coverage, GIS data, agreements and permits.~~

~~*Task 2.2 Review Property Ownership Records (County Assessor Data)*~~

~~Obtain and review property ownership data on file with Campbell County via on-line records information. This information to be updated with information provided by the City of Gillette.~~

~~*Task 2.3 Gather and Review Existing Aerial Photography and Mapping*~~

~~Obtain and review existing aerial photo coverage and existing GIS data on file with the COG GIS Division, Campbell County and others.~~

Task 3 – 10% Design

~~Task 3.1 – Analyze and Recommend Horizontal Alignment~~

~~Develop a base map at the 10% design level utilizing existing as-built drawings, existing ortho photography, and existing GIS data. The base map will be compatible to standards, and vertical/horizontal datum employed by the COG.~~

~~Task 3.2 – Review and Recommend Regional Connections and Sizes~~

~~Review and recommend connections to existing COG water system facilities. Analyze and recommend pipeline sizes. Review, analyze and recommend connections to the existing water system of the respective water district to be served. Identify and recommend meter and cross-connection control devices, sizes and locations. A connection may either be made near the newly constructed South Fork Estates control building, or on the Red Hills line.~~

~~Task 3.7 – Submit 10% Level Design Drawings~~

~~Prepare and submit 10% Level Design Drawings showing proposed horizontal alignment alternatives and property ownership. Include other data and features obtained in preparation of the base map within the 10% drawings. Up to 10 paper copies and 1 digital copy.~~

~~Task 3.9 – Submit 10% Level Engineer's OPGC Estimates~~

~~Prepare and submit 10% Level Engineer's Opinion of Probable Construction Cost for each alternative alignment. Up to 10 paper copies and 1 digital copy.~~

~~Task 3.10 – Submit 10% Technical Memo w/ 10% Level Design Assumptions~~

~~Prepare and submit a Technical Memo with the 10% Level Design Assumptions. Memo shall be 2-3 pages with paper copies and 1 digital copy.~~

A brief 10% design meeting will be held via conference call with the City and WWDC.

Task 4 – 50% Design

Task 4.1 Develop Preliminary Profile and Finalize Horizontal Alignment

Finalize the Horizontal Alignment. Develop the preliminary profile.

Task 4.2 Research and Identify Existing Utilities

Research and identify utilities registered with Wyoming One Call. Contact other utility owners (private service lines and water districts) who might not be registered with Wyoming One Call.

Task 4.3 Prepare Preliminary Connection Details

Prepare preliminary details depicting connections to existing COG water system facilities and existing water district facilities. Prepare preliminary details showing meter and cross-connection control devices, sizes, locations and appurtenances.

Task 4.4 Preliminary Hydraulic Design

Perform the preliminary hydraulic design (including HGL's) evaluating various pipe sizes, and demand conditions including minimum low-growth, and peak day full build-out. Consultant will provide a brief memorandum summarizing preliminary hydraulics. .

Task 4.5 Commence Services for Supplemental Ortho-Photo & Mapping

DOWL will supplement existing COG base mapping and contours with field survey data to verify surface features and updated ground conditions (fences, culverts, etc.)
Task 4.6 Perform Field Surveys -, Topography & Utilities

Perform field surveys to gather, topography and utilities necessary for Final Design purposes.

- Task 4.7** *Perform Geotech Investigation*
Perform subsurface geotechnical investigations as necessary for Final Design Purposes. 3 boreholes are now anticipated – one for the building site and two for the pipeline.
- Task 4.8** *Campbell County Prelim. Meeting - ROW/Utility License Agmt.*
Set-up, schedule, attend and facilitate a meeting with Campbell County Public Works and Road & Bridge Staff to discuss potential Utility License Agreement(s) within Campbell County ROW. Using the 50% submittal information, prepare applications, submit applications and secure Campbell County utility license agreement(s) for access and construction purposes.
- Task 4.9** *Identify Environmental Regulatory Permit Requirements*
Identify all Local, State, and Federal Environmental Regulatory Permits, Licenses and Approvals required for construction of the Project. Assume no NEPA requirements will be triggered.
- Task 4.11** *Submit 50% Level Design Drawings (Final Horiz/Prelim Vertical)*
Prepare and submit 50% Level Design Drawings showing final horizontal alignment, preliminary vertical profile, and field survey supplements. Include preliminary details. Up to 10 paper copies and 1 digital copy.
- Task 4.12** *Submit 50% Level Project Manual (Contract & Tech Specs)*
Prepare and submit 50% Level Project Manual. Include a draft special provisions section, draft bid form and draft method of measurement and basis of payment for proposed unit price items. Include provisions for construction contract duration and liquidated damages. Up to 10 paper copies and 1 digital copy.
- Task 4.13** *Submit 50% Level Engineer's OPCC Estimate*
Prepare and submit 50% Level Engineer's Opinion of Probable Construction Cost with a construction contingency amount not to exceed 20%. Up to 10 paper copies and 1 digital copy.

b. Final Design Phase

Task 1 – Project Management and Coordination Meetings

- Task 1.1** *Project Supervision*
Provide general project management and project coordination during the Final Design Phase. Manage sub-consultants. Coordinate work, schedule and delivery of tasks and submittals for the entire consultant team. Monitor quality control and perform quality assurance of deliverables. Request, schedule and coordinate work to be performed by COG. Request, schedule and disseminate information to be provided by the COG.
- Task 1.2** *Set-up, Attend & Facilitate Meetings*
Plan, schedule, organize, and facilitate joint meeting(s) with COG utility system operators, COG managers, WWDC and others as necessary during the Final Design Phase. A minimum of three (3) on-site meetings are anticipated in Gillette – one for the 90% design review, and two additional meetings to coordinate final easement considerations.
- Task 1.4** *Monthly Pay Requests, Schedule Updates & Progress Reports*
Prepare, review and submit monthly progress reports, schedule updates and consultant billing statements in accordance with Section C.

Task 2 – Perform Field Surveys and Prepare 90% Documents

- Task 2.1 Finalize Vertical Alignment*
Finalize the design for the vertical (profile) alignment. Identify air/vac and blow-off locations.
- Task 2.2 Identify Property Owners and Show Easements on Plans*
Show surveyed property lines and section lines as provided by the COG on plans.
- Task 2.3 Develop Final Connection Details*
Prepare final details depicting connections to existing COG water system facilities and existing water district facilities. Prepare final details showing meter and cross-connection control devices, sizes, locations and appurtenances. Prepare/modify City Standard Details for other water system appurtenances like air/vacs, blow-offs, hydrants, cathodic protection, etc.
- Task 2.4 Prepare and Submit Draft Environmental Memo*
Prepare and Submit to the COG for review and approval a “Draft” Environmental Memo that will accompany all Local, and State, Permits, Licenses and Approvals required for construction of the Project. Up to 10 paper copies and one digital copy.
- Task 2.5 Submit Final Hydraulic Design Report*
Finalize the hydraulic design, pipe sizes, pump sizes and demand conditions including minimum low-growth, and peak day full build-out.. Final hydraulics design will be included with the overall design report for the project. Up to 10 paper copies and one digital copy.
- Task 2.6 Submit Final Geotech Recommendations and Report*
Prepare and submit the Final Geotechnical Report for Final Design Purposes. Include subsurface bore logs and recommendations for trench construction, pipe bedding and cathodic protection. Up to 10 paper copies and one digital copy.
- Task 2.7 Submit 90% Level Design Drawings*
Prepare and submit 90% Level Design Drawings showing final alignments, details, property ownership, utilities, ortho-photography and mapping. Up to 10 paper copies and 1 digital copy.
- Task 2.8 Submit 90% Level Project Manual*
Prepare and submit 90% Level Project Manual. Include final versions of the special provisions, construction sequence, bid form, method of measurement, basis of payment, front-end contract documents, and tech specs. Include final estimated construction duration and final recommendation for liquidated damages amount. Up to 10 paper copies and 1 digital copy.
- Task 2.9 Submit 90% Level Engineer's OPCC Estimate*
Prepare and submit 90% Level Engineer's Opinion of Probable Construction Cost with a construction contingency amount not to exceed 10%. Up to 10 paper copies and 1 digital copy.

Task 3 – Permits

- Task 3.1 Obtain Environmental Permits (, WDEQ, etc.)*
Using the 90% submittal information, prepare applications, submit applications, and secure various environmental permits for construction purposes including: WDEQ water/wastewater construction permits (COG has delegated authority to

review and issue these types of permits on behalf of WDEQ. Provide one paper copy and one digital copy of the permit application(s) to the COG for the file. Provide one original and one digital copy of the final, approved permit(s) to the COG.

Task 3.3 *Campbell County Utility License Agreements*

Legal descriptions, if needed to be provided by COG. Provide one paper copy and one digital copy of the license application(s) to the COG for the file. Provide one original and one digital copy of the final, approved license agreement(s) to the COG.

Task 4 – Contract Documents

Task 4.1 *Incorporate Easement Considerations & Permit Conditions*

Incorporate final easement areas, landowner considerations and approved permit and license conditions within the Final Contract Documents.

Task 4.2 *Submit Contract Documents (Plans and Project Manual)*

Finalize, certify and submit the Final Contract Documents - final plans and project manual. Up to 10 paper copies and one digital copy.

Task 4.3 *Submit Final Engineer's OPCC Estimate*

Finalize, certify and submit the Final Engineer's Opinion of Probable Construction Cost with a construction contingency amount not to exceed 5%. Up to 10 paper copies and 1 digital copy.

Task 4.4 *Submit Final Design Report*

Modify, supplement and/or resubmit the Final Design Report with final easement, landowner, permit and license conditions.

c. Bidding Phase

The Consultant shall prepare scope and fee proposals for the "Bidding Phase." These tasks will be considered by the COG and will be incorporated per amendment after the Final Design Phase is complete, when funding becomes available. For proposal comparison purposes, the consultant is requested to estimate a 60 calendar day duration for the entire Bidding Phase when preparing their scope and fee proposal. The Bidding Phase will conclude upon the issuance of the Notice to Proceed to the Contractor.

Task 1 – Bidding

Task 1.1 *Advertise Construction Contract*

Coordinate with the COG to advertise the construction contract regionally for traditional, competitive bidding purposes.

Task 1.2 *Produce and Submit Contract Documents (5 copies)*

Produce and distribute final contract documents for bidding purposes. Five (5) paper copies and one digital copy of the bidding documents shall be prepared for the COG, WWDC, interested contractors, vendors, suppliers, sub-contractors, and plan review/distribution services. Coordinate with the City of Gillette Purchasing Division to develop a plan-holders list and provide additional copies of the bid documents, as necessary.

Task 1.3 *Pre-Bid Meeting; Answer Questions; Prepare Addenda*

Conduct a pre-bid meeting for interested contractors and vendors. Record conversations, answer questions, coordinate responses with COG and WWDC and distribute meeting minutes summarizing pre-bid meeting. Answer contractor/vendor questions during the advertisement periods. Prepare,

distribute and certify addenda to contract documents during the advertisement periods. Coordinate with the City of Gillette Purchasing Division.

- Task 1.4 Bid Opening, Review Bids, Provide Recommendation*
Attend the bid opening. Review bids received. Tabulate bid results; distribute tabulation to contractors, vendors, COG and WWDC. Provide a recommendation to COG and WWDC to award (or not award) contracts to contractor(s) submitting bids.
- Task 1.5 Construction Contract and Pre-Construction Meeting*
After the Notice of Award has been issued, coordinate with the Contractor to execute all Construction Contract agreements, bonds, insurance and related forms. Review contractor's schedule. Plan, schedule, coordinate, facilitate, attend and participate in a Pre-Construction Meeting with the Contractor after the Agreement and other Contract Documents have been executed by all parties. Prepare meeting minutes and distribute.

d. Construction Phase

The Consultant shall prepare scope and fee proposals for the "Construction Phase." These tasks will be considered by the COG and will be incorporated per amendment after the Bidding Phase is complete, when funding becomes available. The Construction Phase will commence upon the issuance of the Notice to Proceed to the Contractor and will conclude upon issuance of the Contractor's Final Completion Certificate.

Task 1 – Project Management and Coordination Meetings

- Task 1.1 Project Management*
Provide general project management and project coordination during the construction phase. Provide on-site resident project manager. Manage sub-consultants. Coordinate consultant team and sub-consultant work, schedule and delivery of submittals. Monitor quality control and perform quality assurance of consultant team work and deliverables. Request, schedule and coordinate work to be performed by COG. Request, schedule and disseminate information to be provided by the COG.
- Task 1.2 Weekly Construction Coordination Meetings*
Plan, schedule, organize, and facilitate weekly construction coordination meeting(s) with COG utility system operators, COG managers, general contractor, sub-contractors, consultant, sub-consultants, local media & WWDC as necessary during the construction phase.
- Task 1.3 Meeting Minutes*
Prepare, solicit/incorporate comments, and distribute meeting minutes summarizing weekly construction coordination meeting(s).
- Task 1.4 Address Contractor RFI's; Field Orders & Change Orders*
Coordinate w/ COG to address Contractor's questions and Requests for Information (RFI's). Develop, review, seek approval and process contractor field orders and change orders.
- Task 1.5 Engineer's Monthly Pay Requests, Schedule & Progress Reports*
Prepare, review and submit the consultant's monthly progress reports and consultant billing statements in accordance with Section C.
- Task 1.6 Review Contractor's Pay Application & Recommend Payment*
Coordinate w/ COG to review, seek approval and process contractor monthly payment applications and WWDC grant funding disbursements.

Task 2 – Field Services during Construction

- Task 2.1 Review and Approve Contractor Submittals and Shop Drawings*
Review and approve contractor shop drawings, product data and other contractor-furnished submittals for conformance with the construction contract documents.
- Task 2.2 Construction Inspection*
Perform inspection services for all aspects of the proposed construction. Submit weekly inspection reports to COG & WWDC, summarizing contractor and consultant field activities during the construction phase. Monitor contractor quality control.
- Task 2.3 Construction Surveying*
Establish project survey control for contractor to stake improvements.
- Task 2.4 Coordinate and Interpret Material Testing Results*
Schedule quality assurance testing and interpret test results. Through a separate agreement, the COG will hire an independent materials testing firm to provide quality assurance testing in conformance with the construction contract documents.
- Task 2.5 Document Pressure, Disinfection, Flushing, and Bacteria Tests*
Coordinate with the Contractor and COG utility operators to observe, witness, document and report pressure, disinfection, flushing, discharge and bacteria tests in conformance with the construction contract documents and regulatory permits.
- Task 2.6 Perform Substantial Completion Inspection & Submit Punch List*
Coordinate with the Contractor, COG and WWDC to perform a Substantial Completion (walk-through) Inspection. Compile and submit a punch list of items that remain to be completed by the Contractor following this inspection. Prepare, recommend and seek approval for the Substantial Completion certificate.

Task 3 – As-Built Drawings and Contract Close-out

- Task 3.1 Prepare, Certify and Submit Record Drawings*
Prepare, certify and submit detailed record drawings depicting as-constructed locations and features installed as part of this contract. Five (5) copies of the record drawings shall be prepared for the COG and WWDC. One digital copy will be provided to the COG in AutoCAD and Adobe Acrobat PDF format.
- Task 3.3 Prepare & Submit Construction Contract Close-Out Documents*
Coordinate with the COG to advertise contract for final payment purposes. Prepare, submit, seek approval and facilitate construction contract close-out documents and procedures with regulatory permitting agencies, landowners, contractor, sub-contractors and sub-consultants.
- Task 3.4 Prepare and Submit Operations & Maintenance Summary*
Prepare an operation and maintenance (O&M) manual. The proposed O&M manual will be based on O&M submittals provided by the Contractor and their equipment manufacturers. Engineer will prepare a summary of O&M requirements for completed facilities including basic operating information and maintenance recommendations. Five (5) copies of the O&M summary shall be prepared for the COG and WWDC. One digital copy will be provided to the COG in Word or Adobe Acrobat PDF format.

Task 3.5 Final Inspection, Final Contractor Payment & Warranty Period

Coordinate with the Contractor, COG and WWDC to perform a Final Completion (walk-through) Inspection. Track punch list completion progress for items identified the Substantial Completion inspection. Prepare, recommend and seek approval for Final Completion and contractor's Final Payment purposes. Submit the Final Completion Certificate. Perform inspections during the one-year warranty period. Tabulate warranty concerns during one-year warranty period. Submit monthly progress reports to the Contractor, COG & WWDC, summarizing warranty concerns during the one-year warranty period. Coordinate with contractor, sub-contractor(s), and sub-consultant(s) during one-year warranty period to ensure deficiencies are corrected.

e. Scope Alterations

Alteration #1. The proposed connection point for the Stone Gate Project is on the 10" HDPE water line that currently feeds the Red Hills Subdivision. This would leave the Red Hills Pump Station in service for 3-5 more years and that pump station would need to serve both Red Hills and Stone Gate. It is very likely that the Fox Ridge I&SD will be served from this same 10" main in the future and when Fox Ridge is connected the status of the Red Hills Pump Station would need to be reviewed again. It is DOWL's recommendation that the City of Gillette and WWDC consider making connections to the Regional Transmission Main (fed off the Gillette West Pump Station) under this Phase II Stone Gate Project with the goal of making this connection as soon as possible.

Scope Alteration #1 would involve the following changes to the planned approach for this project:

- **10" HDPE Transmission Main Status.** City staff have verified that the existing transmission main is 10" DR18 PVC and the scope alteration work will proceed on this basis.
- **Red Hills Pump Station Status.** Consider whether the Red Hills Pump Station has capacity for both Red Hills and Stone Gate Districts. Determine if it makes sense to take the Red Hills Pump Station out of service as part of the Stone Gate Project or if it will need to remain in service until the Fox Ridge Project is completed in the next 3-5 years.
- **Connection Options.** Besides the connection point anticipated in the base scope for this project, there are two main options for connecting the existing Stone Gate water system into the Regional System. Both of these options appear to be viable at this time and have the key advantage of removing the Red Hills pump station from the system within the next two years, however further discussion with City Staff is needed to verify there are no other obstacles. Figure 1 shows the water systems in the area and the locations of the options described.

Option A. Option A involves making a connection between the new 12" Regional Water Main and the existing 12" City Water Main near the intersection of Roany Road and Force Road. Option A has the main advantage of being the shortest distance between systems – probably less than 200 feet. Disadvantages associated with this connection point include additional permitting with the County, traffic control, and surface restoration costs. It would also require keeping about 4,400 feet of existing 12" and 10" transmission lines in service as well as installing a possible bypass point (either inside or underground) near the Red Hills Pump Station.

Option B. Option B involves making a 1,500 feet long connection between the new 8" Regional Transmission main located just west of the Southfork Control Building and the existing 10" HDPE main located in the Stone Gate Avenue ROW. The main disadvantages for Option B are the longer length of pipe, about 1,500 feet compared to 200 feet for Option A, and the possible creation of a section of dead end 12" City Water main from the Red Hills Pump Station about 1,700 feet to the east (though this could possibly be abandoned too). Advantages associated with Option B include the ability to abandon at least 4,400 feet of 12" and 10" transmission main between the point of connection and the Red Hills Pump Station which should improve water quality.

DOWL will provide a 3-5 page memorandum detailing considerations related to point of connection, transmission line status and pump station status, input received from City Staff as well as a recommendation for the preferred option. Memorandum will include a map developed from City bas mapping, hydraulic design information and any other technical considerations related to the preferred option.

This is **Appendix 2 to EXHIBIT A**, consisting of 01 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated June 20, 2017.

Proposed Schedule

| Gillette Regional Water Supply Project | | | | | | |
|--|--|-----------------|-------------------|--------------------|---|--|
| ID | Task Name | Duration | Start | Finish | 2017 J J J A S O N D J F M A M J J A S | |
| 0 | District Extensions Phase II Design Services Stone Gate Estates | 297 days | Thu 7/6/17 | Fri 8/24/18 | | |
| 1 | a. Preliminary Design Phase | | | | | |
| | Task 1 - Project Management & Coordination Meetings | 58 days | Thu 7/6/17 | Mon 9/25/17 | | |
| 2 | Scope Alternate Work | 30 days | Mon 7/10/17 | Fri 8/18/17 | | |
| 3 | Task 4 - 50% Design | 40 days | Tue 8/1/17 | Mon 9/25/17 | | |
| 4 | b. Final Design Phase | | | | | |
| | Task 1 - Project Management & Coordination Meetings | 109 days | Mon 9/18/17 | Thu 2/15/18 | | |
| 5 | Task 2 - Prepare 90% Documents | 104 days | Mon 9/25/17 | Thu 2/15/18 | | |
| 6 | Task 3 - Permits | 21 days | Thu 10/19/17 | Thu 11/16/17 | | |
| 7 | Easements (City of Gillette) | 30 days | Mon 11/20/17 | Fri 12/29/17 | | |
| 8 | Task 4 - Contract Documents | 100 days | Mon 9/18/17 | Fri 2/2/18 | | |
| 9 | c. Bidding Phase | | | | | |
| | Task 1 - Bidding | 24 days | Mon 1/15/18 | Thu 2/15/18 | | |
| 10 | d. Construction Phase | | | | | |
| | Task 1 - Project Management & Coordination Meetings | 32 days | Mon 2/19/18 | Tue 4/3/18 | | |
| 11 | Task 2 - Field Services during Construction | 32 days | Mon 2/19/18 | Tue 4/3/18 | | |
| 12 | Task 3 - As-Built Drawings & Contract Close-out | 95 days | Mon 4/16/18 | Fri 8/24/18 | | |
| 13 | | 90 days | Mon 4/16/18 | Fri 8/17/18 | | |
| 14 | | 18 days | Wed 7/25/18 | Fri 8/17/18 | | |
| 15 | | 5 days | Mon 8/20/18 | Fri 8/24/18 | | |
| 16 | | | | | | |

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 *In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:*

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Previously completed property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that

affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof

to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- Q. *No Hire.* ENGINEER and OWNER agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other party's associates or employees until one year after the work of this Agreement is completed or this Agreement is terminated.
- R. *Jobsite Safety.* Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or the ENGINEER's Employees and subconsultants at the construction site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. ENGINEER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The OWNER agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the OWNER's agreement with the Contractor. The OWNER also agrees that the OWNER's agreement with the Contractor shall require the Contractor to indemnify the OWNER, the ENGINEER and the ENGINEER's subconsultants from and against all claims arising out of or resulting from the performance of the Work and shall also require the Contractor to provide a separate policy containing Owner's Protective Liability Coverage, which, in addition to the Contractor's general liability insurance policy, shall name the OWNER, the ENGINEER, and the ENGINEER's subconsultants as insureds and which shall indemnify the OWNER, ENGINEER and the ENGINEER's subconsultants against claims, demands or liability by any person or entity which may arise from the performance of the Contractor and his or her subcontractors on this project.
- S. *Contingency.* The Owner and Engineer acknowledge that changes in design and/or construction of the Project may be required for a variety of reasons during the design and construction phases of the Project. As a result, unforeseen changes may cause the final construction and engineering costs of the Project to exceed the initial Project cost estimates for construction and engineering. The Owner agrees to set aside sufficient funds as a contingency reserve to be used, as required, to cover any such increased Project costs.
- T. Perform or provide the following additional services:

1. Based on the final pipeline alignment established by the Engineer, the Owner shall contract separately for all easement related services including a licensed surveyor, field work, title work, legal descriptions, easement negotiations and recording services. Provide final easement linework in electronic (AutoCAD format) to the Engineer for incorporation into the final drawings as well as pdf copies of signed easements to Engineer.

E-500 Exhibit B.Sept 2004

This is **EXHIBIT C**, consisting of 10 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated July 5, 2017.

Payments to Engineer for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 – INVOICES AND PAYMENTS

C4.01 *Compensation For Basic Services – Standard Hourly Rates Plus Reimbursable Expenses* *Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, ~~except for services of Engineer's Resident Project Representative and Post Construction Phase services, if any,~~ 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 Consultant's charges, if any.
2. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C4.01 is ~~estimated to be \$0~~ based on the following assumed distribution of compensation:

| | |
|--|---------------------|
| a. Study and Report Phase | <u>\$ 0.00</u> |
| b. Preliminary Design Phase | <u>\$ 30,925.00</u> |
| c. Final Design Phase | <u>\$ 22,065.00</u> |
| d. Bidding or Negotiating Phase (by Amendment) | <u>\$ 6,305.00</u> |
| e. Construction and Post-Construction Phase (By Amendment) | <u>\$ 52,615.00</u> |
| f. Scope Alterations | <u>\$ 24,900.00</u> |

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C4.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultant's charges.
6. The amounts billed for Engineer's services under Paragraph C4.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges.
7. The Standard Hourly Rates will remain effective for the Time of Completion for the Preliminary and Final Design Phases.

~~C4.02 Compensation For Resident Project Representative and Post-Construction Basic Services~~

~~A. Owner shall pay Engineer for Resident Project Representative and Post-Construction Basic Services as follows:~~

1. ~~Resident Project Representative Services.~~ For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, an amount based on the following method of payment:
 - a. ~~Lump Sum.~~ A Lump Sum fee amount of \$ _____. The Lump Sum includes compensation for the Resident Project Representative's services, and for the services of any direct assistants to the Resident Project Representative. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to the Resident Project Representative's Services.
 - b. ~~Hourly Rate Plus Reimbursable Expenses.~~ Hourly rates for the Resident Project Representative and direct assistants as specified in Appendix 2 plus Reimbursable Expenses.
 - c. ~~Direct Labor Costs Plus Reimbursable Expenses.~~ An amount equal to the Engineer's Direct Labor Cost times a factor of _____ plus Reimbursable Expenses.
 - d. ~~Direct Labor Costs Plus a Fixed Fee Plus Reimbursable Expenses.~~ An amount equal to the Engineer's Direct Labor Cost times a factor of _____ plus a fixed fee of \$ _____ plus Reimbursable Expenses.

~~The total compensation under this paragraph is estimated to be \$ _____.~~

2. ~~Post Construction Phase Services.~~ For Post Construction Phase Services under Paragraph A1.06 of Exhibit A, an amount based on the following method of payment:

- a. ~~Lump Sum.~~ A Lump Sum fee amount of \$ _____. The Lump Sum includes compensation for Engineer's post construction services and such services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to Post-Construction Phase Services.
- b. ~~Hourly Rate Plus Reimbursable Expenses.~~ Hourly rates as specified in Appendix 2 plus Reimbursable Expenses.
- c. ~~Direct Labor Costs Plus Reimbursable Expenses.~~ An amount equal to the Engineer's Direct Labor Cost times a factor of _____ plus Reimbursable Expenses.
- d. ~~Direct Labor Costs Plus a Fixed Fee Plus Reimbursable Expenses.~~ An amount equal to the Engineer's Direct Labor Cost times a factor of _____ plus a fixed fee of \$ _____ plus Reimbursable Expenses.

~~The total compensation under this paragraph is estimated to be \$ _____.~~

C4.03 *Compensation For Additional Services*

A. Owner shall pay Engineer for Additional Services as follows:

1. *General.* For services of Engineer's employees engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A of the Agreement, except for services as a consultant or witness under Paragraph A2.01.A.20, an amount equal to a fee determined by the method of payment for basic services in paragraph C4.01, or a lump sum amount negotiated between the Owner and Engineer for specific additional work tasks performed by the Engineer.
2. *Serving as a Witness.* For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of 1.5 times the rates shown in Appendix 1 of Exhibit C per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1). Compensation for Engineer's Consultants for such services will be on the basis provided in paragraph C4.05.

C4.04 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s);

providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A ~~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 the use of other highly specialized equipment.~~

- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

C4.05 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
 - 1. ~~Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~ Compensation by the Owner for Engineer's basic Services, identified in Exhibit A – "Engineer's Services", are defined under Exhibit C – "Payments to Engineer for Services and Reimbursable Expenses". For Additional Services outside of the Basic Services, the Engineer shall notify the Owner and WWDC in accordance with the Additional Services provisions in Exhibit A. The Engineer shall not exceed the indicated Agreement amount without prior written approval from the Owner and concurrence by WWDC. The total compensation amount indicated in the Agreement represents the maximum contract amount that shall not be exceeded. The sum of the Engineering monthly invoices may not exceed the compensation amount in the Agreement, but may be less than the Agreement compensation amount. With each monthly Engineering Application for Payment, the Engineer shall provide an up to date summary indicating the total Engineering costs to date and the estimated completion percentage of the design or construction services complete. Engineer shall also provide updated summary schedule in the graphical form of Appendix 2, Exhibit A.
 - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be

exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 02 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 5, 2017.

Reimbursable Expenses Schedule

A. DOWL Reimbursable Expenses:

Equipment, Materials, & Supplies

| | | | | |
|----------------------------------|---|--------------|-------------|--------------|
| ATVs | = | \$150.00/day | | |
| Boat/Trailer | = | \$150.00/day | | |
| | | <u>DAY</u> | <u>WEEK</u> | <u>MONTH</u> |
| 2 GPS Receivers (Survey Quality) | | \$425.00 | \$1,600.00 | \$4,320.00 |
| Single/Each Additional Receiver | | \$250.00 | \$900.00 | \$2,700.00 |

Travel, Mileage, & Miscellaneous

Per diem will be billed when travel is more than 50 miles from the office during a meal allowance period of three or more consecutive hours or involves an overnight stay. The three meal allowance periods are breakfast (midnight to 10 am), lunch (10 am – 3 pm) and dinner (3 pm to midnight).

| | | |
|--|---|----------------|
| Per Diem (per person, per day Wyoming) | = | \$51.00/day |
| Lodging | = | cost per night |
| Airfare | = | cost |
| Vehicle Usage – Automobiles | = | 0.54/mile |
| Vehicle Usage – Pickups, Suburban | = | 0.54/mile |
| Printing/Supplies/Phone/Fax/Postage | = | Note 2 |
| Specialized Software/Hardware | = | Note 3 |
| Subcontractors | = | Cost |
| Laboratory Analysis | = | Cost |
| Other/Miscellaneous | = | Cost |

Notes

1. DOWL's Professional Fee Services Fee Schedule is subject to adjustment each year or at the end of a contract period, whichever is appropriate. Should adjustments be anticipated or required, such adjustments will not affect existing contracts without prior agreement between Customer and DOWL.
2. Costs included in overhead rates for reasonable requests. Requests beyond those considered reasonable by the project manager billed at Cost + Agreed Upon Mark-up.
3. Specialized computer software or hardware necessary for a unique application will be billed at a negotiated rate or unit cost.
4. Late charges will be assessed on the unpaid balance of all accounts not paid within 30 days of the billing date, at a rate of 1.0 percent per month (12% per year).

B. WEST PLAINS ENGINEERING, INC Reimbursable Expenses:

Reimbursable Expenses

| | |
|--|--------------------|
| Mileage | \$0.54/mile |
| Meals | At Cost |
| Lodging | At Cost |
| Miscellaneous (i.e. long distance phone calls, outsourced printing, shipping, photos, etc.) | At Cost |

WEST PLAINS ENGINEERING, INC.
www.westplainsengineering.com

This is **Appendix 2 to EXHIBIT C**, consisting of 03 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 5, 2017.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

- Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C 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.
- The Standard Hourly Rates will be effective for the Time of Completion for the Preliminary and Final Design Phases.

B. Schedule

1. DOWL Standard Hourly Rates:

Personnel Billing Rates

Personnel are identified on our invoices by name and/or labor category.

| | | | |
|-----------------------------------|----------|------------------------------------|----------|
| Senior Manager IV | \$250.00 | Planner VIII | \$195.00 |
| Senior Manager III | \$220.00 | Planner VII | \$165.00 |
| Senior Manager II | \$210.00 | Planner V | \$160.00 |
| Senior Manager I | \$195.00 | Planner IV | \$145.00 |
| Project Manager VI | \$190.00 | Planner III | \$125.00 |
| Project Manager V | \$170.00 | Planner II | \$105.00 |
| Project Manager IV | \$165.00 | Planner I | \$75.00 |
| Project Manager III | \$130.00 | Geologist IV | \$140.00 |
| Project Manager II | \$120.00 | Geologist III | \$120.00 |
| Project Manager I | \$115.00 | Geologist II | \$110.00 |
| Project Administrator | \$80.00 | Hydrologist III | \$115.00 |
| Project Quality Assurance Manager | \$160.00 | Hydrologist | \$110.00 |
| Field Project Representative | \$95.00 | Hydrogeologist | \$110.00 |
| Project Assistant II | \$100.00 | Cultural Resources Specialist V | \$155.00 |
| Project Assistant I | \$85.00 | Cultural Resources Specialist IV | \$135.00 |
| Engineer X | \$225.00 | Cultural Resources Specialist III | \$110.00 |
| Engineer IX | \$210.00 | Cultural Resources Specialist I | \$85.00 |
| Engineer VIII | \$185.00 | Intern | \$55.00 |
| Engineer VII | \$175.00 | Engineering Technician V | \$115.00 |
| Engineer VI | \$160.00 | Engineering Technician IV | \$110.00 |
| Engineer V | \$150.00 | Engineering Technician III | \$85.00 |
| Engineer IV | \$125.00 | Engineering Technician II | \$75.00 |
| Engineer III | \$105.00 | Engineering Technician I | \$65.00 |
| Engineer II | \$90.00 | Public Involvement Program Manager | \$125.00 |
| Engineer I | \$80.00 | Public Involvement Coordinator | \$110.00 |

| | | | |
|---|------------|------------------------------------|----------|
| Civil and Transportation Designer | \$90.00 | Public Involvement Planner | \$95.00 |
| Environmental Specialist X | \$225.00 | Public Involvement Assistant | \$80.00 |
| Environmental Specialist IX | \$210.00 | Real Estate Services Manager | \$150.00 |
| Environmental Specialist VIII | \$185.00 | Right of Way Agent VI | \$185.00 |
| Environmental Specialist VII | \$180.00 | Right of Way Agent IV | \$150.00 |
| Environmental Specialist VI | \$165.00 | Right of Way Agent III | \$125.00 |
| Environmental Specialist V | \$150.00 | Right of Way Agent II | \$110.00 |
| Environmental Specialist IV | \$135.00 | Right of Way Agent I | \$95.00 |
| Environmental Specialist III | \$110.00 | Right of Way Assistant | \$85.00 |
| Environmental Specialist II | \$105.00 | Professional Land Surveyor X | \$180.00 |
| Environmental Specialist I | \$90.00 | Professional Land Surveyor IX | \$170.00 |
| Biologist IV | \$155.00 | Professional Land Surveyor VIII | \$155.00 |
| Biologist III | \$115.00 | Professional Land Surveyor VII | \$145.00 |
| Archaeologist | \$85.00 | Professional Land Surveyor VI | \$135.00 |
| Landscape Architect VII | \$180.00 | Professional Land Surveyor V | \$130.00 |
| Landscape Architect V | \$160.00 | Professional Land Surveyor IV | \$120.00 |
| Landscape Architect IV | \$145.00 | Professional Land Surveyor III | \$110.00 |
| Landscape Architect III | \$120.00 | Professional Land Surveyor II | \$100.00 |
| Landscape Architect II | \$105.00 | Professional Land Surveyor I | \$90.00 |
| Landscape Architect I | \$100.00 | Crew Chief V | \$120.00 |
| Landscape Planner | \$105.00 | Crew Chief IV | \$110.00 |
| Planner X | \$250.00 | Crew Chief III | \$100.00 |
| | | | |
| Crew Chief I | \$85.00 | Technical Coordinator | \$135.00 |
| Survey Crew Surveyor V | \$100.00 | Systems Administrator | \$125.00 |
| Survey Crew Surveyor IV | \$90.00 | Accounting Manager | \$145.00 |
| Survey Crew Surveyor III | \$80.00 | Accounting Technician | \$75.00 |
| Survey Crew Surveyor II | \$70.00 | Corporate Development Manager | \$150.00 |
| Survey Crew Surveyor I | \$60.00 | Marketing & Administrative Manager | \$125.00 |
| Survey Technician VI | \$100.00 | Marketing Coordinator | \$85.00 |
| Survey Technician V | \$90.00 | Marketing Assistant | \$75.00 |
| Survey Technician IV | \$85.00 | Proposal Manager | \$110.00 |
| Survey Technician III | \$70.00 | Risk Manager | \$170.00 |
| Survey Technician II | \$60.00 | Materials Supervisor | \$105.00 |
| Survey Technician I | \$50.00 | Materials Manager | \$80.00 |
| Platting/Survey Technician | \$120.00 | Laboratory Supervisor | \$105.00 |
| Survey Technician - Supervisor | \$120.00 | Laboratory Manager | \$95.00 |
| GIS Coordinator | \$120.00 | Senior Materials Technician | \$75.00 |
| GIS Specialist | \$85.00 | Lead Materials Technician | \$65.00 |
| GIS Technician | \$75.00 | Materials Technician | \$60.00 |
| Graphics Designer | \$100.00 | Inspector - Supervisor | \$130.00 |
| Administrative Manager | \$90.00 | Inspector II | \$100.00 |
| Administrative Assistant | \$55.00 | Inspector I | \$90.00 |
| Document Production Supervisor | \$110.00 | Dispatcher | \$85.00 |
| | | | |
| One-Person Survey Crew | \$120/hour | | |
| One-Person Survey Crew GPS Robotics | \$130/hour | | |
| Two-Person Survey Crew w/o GPS Robotics | \$160/hour | | |
| Two-Person Survey Crew | \$180/hour | | |
| Two-Person Survey Crew GPS Robotics | \$190/hour | | |
| Two-Person Survey Crew (PLS + LSIT) | \$225/hour | | |
| Three-Person Survey Crew | \$260/hour | | |

2. WEST PLAINS ENGINEERING, INC Standard Hourly Rates:

**Schedule of Hourly Rates for
West Plains Engineering, Inc.**

| | |
|---|---------------------|
| Principal | \$200.00/hr. |
| Office Manager/Project Manager | \$155.00/hr. |
| Senior Engineer/Project Engineer | \$105.00/hr. |
| Design Engineer | \$85.00/hr. |
| Draftsperson | \$57.00/hr. |
| Clerical | \$50.00/hr. |

This is **EXHIBIT D**, consisting of 05 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 5, 2017.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Paragraph 1.01.A of the Agreement is amended and supplemented to include the following agreement of the parties:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor’s 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. However, 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 the 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 Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *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 Contractor’s work in progress shall in general 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 of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
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. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - 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 portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. *Review of Work and Rejection of Defective Work:*

- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in 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 that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

- a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, 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, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for 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.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:

- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 02 pages,
referred to in and part of the **Agreement
between Owner and Engineer for
Professional Services** dated July 5, 2017.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT Gillette Regional Water Supply Project – Phase II Stone Gate Estates District
Extension

PROJECT NO. City of Gillette Project Number (TBD)

OWNER City of Gillette, Wyoming

OWNER's CONSTRUCTION CONTRACT IDENTIFICATION NO. _____

CONSTRUCTION CONTRACT DATE _____

ENGINEER DOWL

To: _____
OWNER

And To: _____
CONTRACTOR

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services and the terms and conditions set forth on the reverse side of this Notice.

DOWL

By: _____

Title: _____

Dated:

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

E-500 Exhibit E.Sept 2004

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

| | | |
|----|---|-------------|
| a. | Workers' Compensation: | Statutory |
| b. | General Liability: | |
| | General Aggregate: | \$2,000,000 |
| | Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| c. | Excess Umbrella Liability: | |
| | Each Occurrence: | \$1,000,000 |
| d. | Automobile Liability Combined Single Limit | \$1,000,000 |
| e. | Professional Liability (Aggregate) | \$1,000,000 |

Additional Insureds. The following persons or entities are to be listed as additional insureds on Engineer's policies of insurance under b, c & d above:

City of Gillette, Wyoming

Under Professional Liability Insurance, the Engineer is insured for claims arising out of the performance of professional services caused by the negligent acts, errors or omissions of the Engineer. Under the terms of the Engineer's Professional Liability Insurance, no parties other than the Engineer are eligible to be insured. Because of this, no party is allowed to be listed as an "additional insured" on the Engineer's Professional Liability Insurance.

2. By Owner:

a. Workers' Compensation, General Liability, Auto Liability, Property Damage Liability: Coverage is in accordance with the Wyoming Association of Risk Management (WARM) as governed by Wyoming Government Claims Act as evidenced by attached Certificate of Liability Coverage.

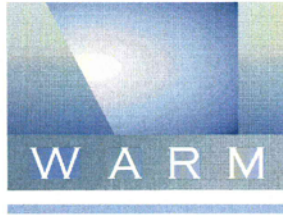
b. Other \$5,000,000

~~Additional Insureds. Engineer and Engineer's Consultants identified in the Project shall be listed on Owner's policies of insurance as additional insureds as provided in paragraph 6.04.B. The following persons or entities are to be listed on Owner's policies of insurance as additional insureds:~~

B. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverage indicated.

C. Owner agrees to include in construction contracts resulting from design services under this Agreement, provisions for satisfactory protection to the Owner and Engineer during the construction phase of the project. This shall be accomplished by requiring the following in the Construction Contract Documents:

1. Contractor's insurance company shall provide a letter to each insured and additional insured that the Contractor has provided the insurance coverage required by the contract documents.
2. Contractor's Liability Insurance shall include as additional insureds the Owner, Engineer and Engineer's Consultants, including coverage for the respective directors, officers, employees and agents of all such additional insureds.
3. Contractor shall purchase a separate OWNER's and CONTRACTOR's PROTECTIVE POLICY insuring the Owner and naming the Engineer and the Engineer's consultants as additional insureds. The minimum amount of this coverage shall be \$1,000,000 each occurrence and \$2,000,000 Aggregate.
4. Property Insurance shall be purchased by the Contractor, with the Owner, Subcontractors, Engineer and Engineer's Consultants named as insureds or additional insureds.
5. The Contractor furnished policies shall be primary and not contributing to any other insurance of the Owner or Engineer.



CERTIFICATE OF LIABILITY COVERAGE

The Wyoming Association of Risk Management (WARM), a joint-powers liability pool, provides comprehensive general liability and automobile liability coverage to the City of Gillette, Wyoming, subject to the following limitations:

- \$250,000 per claimant as listed in W.S. 1-39-118.
- \$500,000 per occurrence as listed in W.S. 1-39-118.
- \$10,000,000 per claim for claims brought solely under Federal Law as provided in W.S. 1-39-118(b)(ii).
- \$10,000,000 per claim for all other claims not brought under the Wyoming Governmental Claims Act.
- The City of Gillette and WARM preserve all immunities under Wyoming law.
- The terms and conditions of the WARM coverage document also restrict coverage.
- The coverage period is July 1, 2012 through June 30, 2013.

Certified:

Joe Constantino
Executive Director



Need Updated Copy

This is **EXHIBIT H**, consisting of 02 pages,
referred to in and part of the **Agreement
between Owner and Engineer for
Professional Services** dated July 5, 2017.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by ~~*insert name of mediator, or mediation service*~~. ~~If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~ a mutually agreed upon mediator. After a written demand for non-binding mediation, which shall specify the nature of the dispute, and within thirty (30) days from the date of selection of the mediator, the matter shall be submitted to the mediator for consideration. The mediator will provide an informal opinion and advice, none of which shall be binding upon the parties. The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter may then be considered by other methods of dispute resolution.
- B. The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

~~{or}~~

- ~~A. Arbitration. All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the *[here insert the name of a specified arbitration service or organization]* rules effective at the Effective Date of the Agreement, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with~~

~~this Paragraph H6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$_____ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$_____ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~
- ~~3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), either Owner or Engineer may join each Joinable Party as a party to the arbitration between Owner and Engineer hereunder, and Engineer or Owner, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between Owner and Engineer involving the work of such Joinable Party. Nothing in this Paragraph H6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

This is **EXHIBIT I**, consisting of 05 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 5, 2017.

Allocation of Risks

Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

I6.10.E *Mutual Waiver*

1. Consistent with the terms of Paragraph 6.10.E the Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, or any of them, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants.

I6.10.F *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.

I6.11.G *Conditions Beyond the Control of the Engineer*

1. The Owner recognizes that in the course of completing the services under this agreement, the Engineer may encounter conditions which are beyond the control of the Engineer and which create potential for claims against and additional costs to the Engineer which are not covered in fees earned for services provided. This category includes, but is not limited to the following:

- Unknown underground utilities or other man-made objects not properly located underground.
- Unavoidable contamination of subsurface areas, aquifers, etc. or the disturbance of natural underground resources during the design and construction of the project.
- Changed codes or standards during the course of the work.
- Information provided by others which is not accurate or complete.
- Conditions that may arise and differ significantly from those existing at the beginning of the project.

Should any such condition occur during the performance of this Agreement, judged to be beyond the control of the Engineer, the Engineer will promptly notify the Owner, and the parties will renegotiate the Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement. The Owner agrees to compensate the Engineer for any time spent and expenses incurred by the Engineer in defense of any such claim with such compensation to be based upon the Engineer's prevailing fee schedule and expense reimbursement policy.

I6.11.H *Statutes of Limitations*

1. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run in any and all events not later than either the date of Substantial Completion of the project for acts or failures to act occurring prior to Substantial Completion or the date of Final Payment for acts or failures to act occurring after Substantial Completion.

I6.11.I *Betterment*

1. If Engineer mistakenly leaves out of the Construction Documents any component or item required for the Project, Engineer shall not be responsible for the cost or expense of constructing or adding the component or item to the extent such item or component would have been required and included in the original construction documents. In no event will the Engineer be responsible for any cost or expense that provides betterment, upgrades or enhances the value of the Project.

~~{or}~~

1. ~~Engineer's Liability Limited to Amount of Insurance Proceeds. Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed \$_____.~~

~~{or}~~

2. ~~Engineer's Liability Limited to the Amount of \$_____. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total amount of \$_____.~~

~~{NOTE: If appropriate and desired, include
16.10.B.2 below}~~

3. ~~Exclusion of Special, Incidental, Indirect, and Consequential Damages. To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10.E the Engineer and Engineer's officers, directors, partners, employees, agents,~~

and Engineer's Consultants, or any of them, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, and including but not limited to:

~~{NOTE: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them."}~~

~~{NOTE: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph 16.10.B.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$____."}~~

~~{NOTE: If appropriate and desired, include 16.10.B.3 below}~~

~~{NOTE: The foregoing provisions may be included as a supplement to Paragraph 6.10.E, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer.}~~

4. ~~Agreement Not to Claim for Cost of Certain Change Orders.~~ Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed ____% of Construction Cost, and then only for an amount in excess of such

~~percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants.~~

~~*[NOTE: The parties may wish to consider the additional limitation contained in the following sentence.]*~~

~~Owner further agrees not to sue and otherwise to make no claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

E-500 Exhibit I.Sept 2004

This is **EXHIBIT K**, consisting of 02 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 5, 2017.

AMENDMENT NO. _____ TO OWNER-ENGINEER AGREEMENT

PROJECT NO. (TBD) _____

1. Background Data:

- a. Effective date of OWNER-ENGINEER Agreement: September 20, 2016
- b. OWNER: City of Gillette, Wyoming
- c. ENGINEER: DOWL
- d. Project: Gillette Regional Water Supply Project – Phase II Stone Gate Estates District Extension

2. Nature of Amendment: [*Check those that are applicable.*]

- ☐ Additional Services to be performed by ENGINEER
- ☐ Modifications to Services of ENGINEER
- ☐ Modifications to Responsibilities of OWNER
- ☐ Modifications to Payment to ENGINEER
- ☐ Modifications to Time(s) for rendering Services
- ☐ Modifications to other terms and conditions of the Agreement

3. Description of Modifications

- ☐ Attachment 1, “Modifications”
- ☐ Other attachments as listed below:

OWNER and ENGINEER hereby agree to modify the above-referenced Agreement as set forth in this agreement. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

City of Gillette, Wyoming

DOWL

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

ATTACHMENT 1

This is **Attachment 1**, consisting of _____ Page(s), to Amendment No._____, Dated _____.

Modifications

[Check the following paragraphs that are appropriate. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and future correspondence or amendments.]

- ☐ A1. ENGINEER shall perform the following Additional Services:

- ☐ A2. The Scope of Services currently authorized to be performed by ENGINEER in accordance with the Agreement and previous amendments, if any, is modified as follows:

- ☐ A3. The responsibilities of OWNER are modified as follows:

- ☐ A4. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional or modified compensation:

- ☐ A5. The schedule for rendering services is modified as follows:

- ☐ A6. Other portions of the Agreement (including previous amendments, if any) are modified as follows: