

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

THIS IS AN AGREEMENT effective as of  
JULY 12, 2017 ("Effective Date")  
between  
CITY OF GILLETTE, WYOMING ("Owner")  
and  
STRUCTURAL DYNAMICS, LLC ("Engineer").

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

**GURLEY AVENUE OVERPASS  
BARRIER REHABILITATION  
CONSTRUCTION ADMINISTRATIVE & DECK DELAMINATION INVESTIGATION PHASES  
("Project").**

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

**A. CONSTRUCTION ADMINISTRATIVE PHASE**

1. Provide general administration of the Construction Contract.
2. Prepare Construction Contract Documents ("For Construction" plans) that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor. Print and provide up to five (5) sets of the plans (11" by 17" paper copies) to the Contractor. Update, print and provide up to five (5) paper copies of the Project Manual to the Contractor.
3. Attend a Contractor arranged pre-construction meeting with the Owner and Contractor to determine schedules, to establish chains of communications, and receive information.
4. Receive and review shop drawings, samples, schedules, submittals and proposed alternatives.
5. Provide Project Representative (PR) services for the Work:
  - a. During the approximately first five (5) days of active construction work, the PR will travel to the project site and be present effectively full-time. This will total about ten

- (10.0) hours per day field time plus one (1) hour per day in the office for report preparation.
- b. During approximately days six (6) through fifteen (15) of the active construction work, the PR will travel to the project site approximately three times per day for a duration of approximately 2.5 hours per site visit, unless work progress dictates lesser or longer duration site visits. This will total about (7.5) hours per day field time plus one (1) hour per day in the office for report preparation.
  - c. After approximately 15 days of the active construction work and prior to Substantial Completion, the PR will travel to the project site approximately three times per day for a duration of approximately 1.5 hour per site visit, unless work progress dictates lesser or longer duration site visits. This will total about (4.5) hours per day field time plus one (1) hour per day in the office for report preparation.
  - d. Between Substantial Completion and Final Completion, the field time for the PR will be approximately three (3.0) hours per day in the field plus one (1) hour per day in the office.
  - e. The PR duties are detailed in SC-9.03 of the Project Manual.
  - f. Provide clarification to questions from the general contractor via telephone or while on the project site.
6. Contract with Consolidated Engineers, Inc. for the following services:
- a. One design engineer to provide project representative services for the duration of the project. This design engineer will handle the everyday project representative services and report to Engineer. Engineer will also provide additional construction observation on a non-regular basis, in addition to the project representative services provided by Consolidated Engineers, Inc.
7. Prepare and provide daily Construction Observation Reports that are to be submitted electronically following the previous week's work. Reports shall contain photographs, as appropriate.
8. Prepare and provide weekly Project Summary Reports that are to be submitted electronically following the previous week's work. Reports shall contain the Engineer's project progress, construction administration budget progress, and compilation of the daily reports.
9. Review subsequent Contractor's Change Orders and RFI, if necessary.
10. Work with Contractor to prepare monthly and final contractor pay requests on the repairs to coincide with the Owner's pay request schedule. Review pay requests and submit to the Owner.

11. Arrange for substantial and final completion walk-through with the Owner's staff. Prepare certificates of substantial completion and final completion.
12. Prepare the Warranty document and submit to the Contractor.
13. Compile the construction records, field changes, and Contractor's drawing red-lines to be included on the Drawings of Construction Record. Draft, plot and submit the Drawings of Construction Record (two blackline sets) within sixty (60) days following the issuance of Certificate of Final Completion.
14. Travel to the project site for an eleventh month warranty walk-through (Pre-billed at the conclusion of Construction Administrative Phase).
15. Prepare and submit to Contractor a letter listing any remedial warranty issues (Pre-billed at the conclusion of Construction Administrative Phase).

#### B. DECK DELAMINATION INVESTIGATION PHASE

1. Prepare a plan and scope of the proposed investigation of the bridge deck. Present the plan to the Owner for review and comment. All field work to be completed within this phase is assumed to be completed during the bridge closure for the Barrier Rehabilitation project, anticipated to be awarded to Van Ewing Construction.
2. Conduct a field investigation of the bridge deck:
  - a. Conduct a visual review of the top surface of the entire bridge deck for delaminations.
  - b. Perform manual "sounding" of the bridge deck using chaining tools or other mechanical devices.
  - c. Document the position and size of all the delaminations on the top surface of the bridge deck. Delaminations will generally be marked in rectangular-shaped boxes with spray paint on the top surface of the bridge deck.
  - d. Take measurements and photographs as necessary to document the condition of the bridge deck and documented delaminations.
  - e. Coordinate with Van Ewing Construction to provide minor investigative bridge demolition and repair to assist us our deck delamination investigation. We will select up to six locations for further demolition and destructive investigation of the delaminated areas to determine the typical depth of the delaminations and the condition of the bridge deck base concrete. All demolition and repair to be completed by Van Ewing Construction will be billed directly from Van Ewing Construction to the Owner.
3. Prepare a repair plan and estimate the quantity of delaminations and repair work.
4. Prepare an estimate of the delamination repair costs for the Owner's use in budgeting.

5. Provide the repair plan and quantities of the delamination investigation results along with the estimate of construction costs to repair the delaminations to the Owner for review. Meet with Owner to review and discuss the results.
6. Prepare a set of Design Drawings to include:
  - a. Design Data & Summary of Quantities
  - b. General Notes
  - c. Construction Sequence
  - d. Breakout and Repair Plan
  - e. Traffic Control Plan & Details
7. Submit 90% progress Design Drawings electronically to the City Engineering staff for review.
8. Submit the final Design Drawings electronically to the City Engineering staff for distribution.
9. For the preparation of Design Drawings and cost estimate with this agreement, it is assumed that the delamination repairs will be incorporated into the existing Barrier Rehabilitation Project (17EN10) by change order. If it is determined that these repairs will need to be completed with a separate construction project, preparation of Design Drawings and Project Manual to facilitate a separate project is not included under the scope of this Agreement.

#### C. DECK DELAMINATION BIDDING PHASE

1. The scope of services and compensation for a separate bidding phase, if determined to be needed later, are not included in this agreement and will be determined at a later date.

#### D. DECK DELAMINATION CONSTRUCTION PHASE

1. The scope of services and compensation for a separate construction administrative phase, if determined to be needed later, are not included in this agreement and will be determined at a later date.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction. The contract number of working days for the Base Bid work is 35 days to substantial completion plus 5 additional days to final completion. If the Alternate #1 work is awarded, the number of days will be increased by 5. If the Alternate #2 work is awarded (or added by change order later), the number of days will be increased by 8. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days' written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
  - 1. For cause,
    - a. By either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days' written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

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

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

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

## 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or

legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### 7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
  - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
  - 2. Engineer's Standard Hourly Rates are attached as Appendix 1.

3. The compensation for services and reimbursable expenses is estimated to be as follows:

a. CONSTRUCTION ADMINISTRATIVE PHASE

- 1) The compensation for services and reimbursable expenses is estimated to be Seventy-Five Thousand Nine Hundred Ninety Dollars and Twenty-Four Cents (\$75,990.24) for the Base Bid and the Alternate #1 work. If the Alternate #2 work is awarded (or added by Change Order later), the compensation for services and reimbursable expenses is estimated to be an additional Fifteen Thousand One Hundred Seventy-Four Dollars (\$15,174.00). Therefore, if all work (Base Bid, Alternate 1, & Alternate 2) is awarded (or added by Change Order later), the total compensation for services and reimbursable expenses is estimated to be Ninety-One Thousand One Hundred Sixty-Four Dollars and Twenty-Four Cents (\$91,164.24).

b. DECK DELAMINATION INVESTIGATION PHASE

- 1) The compensation for services and reimbursable expenses is estimated to be Twenty Thousand Five Hundred Fifty-Six Dollars and Eighteen Cents (\$20,556.18) for the work.

c. SERVICES EXCLUDED

- 1) Costs for Van Ewing Construction to perform selective demolition and repair work for the deck delamination destructive investigation.
- 2) Bidding and additional construction administrative phase services related to the repair of the deck. These services would generally be needed if the deck repair is needed to be completed as a separate project from the Barrier Rehabilitation project (17EN10). We are assuming that the deck delamination repairs will be completed by Van Ewing Construction through a change order to the Barrier Rehabilitation contract (17EN10), without a new bidding phase for the work being needed.
- 3) Preparation of Design Drawings and Project Manual if the deck delamination repairs are to be completed as a separate project.
- 4) Design of the bridge deck repairs other than isolated spot repairs. Extensive deck repairs or full-deck replacement, if needed, is beyond the scope of services in this agreement and would need to be negotiated at a later time.

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus, reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

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

OWNER: CITY OF GILLETTE

ENGINEER: STRUCTURAL DYNAMICS, LLC

By: \_\_\_\_\_

By: Philip P. John

Title: \_\_\_\_\_

Title: Member-Manager

Date Signed: \_\_\_\_\_

Date Signed: July 12, 2017

Address for giving notices:

201 E. Fifth Street

PO Box 3003

Gillette, Wyoming 82717

\_\_\_\_\_

Address for giving notices:

316 So. Gillette Ave.

PO Box 2767

Gillette, Wyoming 82717

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This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated July 12, 2017.

### **Engineer's Standard Hourly Rates**

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A. *Standard Hourly Rates:*

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

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

Hourly rates for services performed during the 2017 calendar year are as shown on the attached Schedule of Fees dated June 21, 2017.



## **SCHEDULE OF FEES**

June 21, 2017

### **PROFESSIONAL FEES (per hour):**

Principal Engineer .....	\$135.00
Senior Engineer .....	\$135.00
Senior Project Engineer .....	\$125.00
Project Engineer/Manager .....	\$115.00
Sr. Design Engineer .....	\$105.00
Design Engineer .....	\$ 98.00
Sr. Construction Engineer .....	\$115.00
Construction Engineer .....	\$ 95.00
Resident Project Representative (RPR) .....	\$ 90.00
Sr. Engineering Technician .....	\$ 91.00
Engineering Technician .....	\$ 80.00
Clerical .....	\$ 50.00

### **CHARGEABLE EXPENSES:**

Travel Expenses: Mileage (per mile) .....	\$ 0.65
Overnight Travel (meals & incidentals/per diem) .....	\$50.00
Lodging .....	actual cost
Blackline Prints, B&W, 24"x36" .....	\$ 3.00
Drafting Plots: Mylar (each) .....	\$11.00
Bond (each) .....	\$ 4.00
Photocopies, B&W, 8½ x 11 (each) .....	\$ 0.15
Photocopies, Color, 8½ x 11 (each) .....	\$ 0.30
Photocopies, B&W, 11 x 17 (each) .....	\$ 0.30
Photocopies, Color, 11 x 17 (each) .....	\$ 1.00
Special tests, services of sub-consultants, and equipment rental .....	Cost + 15%