

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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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 9-17-2019 ("Effective date") between

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

DOWL, 1901 Energy Court, Suite 170, Gillette WY 82718 ("Engineer").

Owner intends to Crestview Water & Sanitary Sewer Extensions ("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) 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 approved monthly progress payment requests 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. If the owner elects to withhold retainage for Engineer's services, the Owner shall notify the Engineer and in writing. Engineering retainages shall be held by the Owner in accordance with COG policies. 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) 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 1.5 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.

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.

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:

I. 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 20 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 4 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 8 pages.
- D. ~~Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of _____ pages. Not Used~~

- ~~E.~~ Exhibit E, "Notice of Acceptability of Work," consisting of _____ pages. Not Used
- ~~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 _____ pages. Not Used

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 18 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:

City of Gillette, Wyoming

By: Louise Carter - King

Title: Mayor

Date

Signed:

Attest:

(City Clerk)

Address for giving notices:

201 E. 5th Street

Gillette, WY 82716

Designated Representative (see Paragraph 8.03.A):

Nicholas Marty, P.E. / Josh Richardson, P.E.

Title: Project Mangers

Phone Number: (307) 686-5265

Facsimile Number: (307) 686-0952

E-Mail Address: nickm@gillettewy.gov
josh@gillettewy.gov

Engineer:

DOWL

By: Mark Hines, PE

Title: Gillette Office Manager

Date

Signed:

Engineer License or Certificate No. E-0159

State of: Wyoming

Address for giving notices:

1901 Energy Court, Suite 170

Gillette, WY 82718

Designated Representative (see Paragraph 8.03.A):

Adam Spindler, P.E.

Title: Project Manager

Phone Number: 307-686-4181

Facsimile Number: 307-686-4858

E-Mail Address: aspindler@dowl.com

This is **EXHIBIT A**, consisting of 20 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

Engineer's Services

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, (50% - effort) preliminary drawings, outline specifications, 50% Opinion of Probable Cost, Quantity Estimates, Reports 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 7 of review copies of the Preliminary Design Phase documents within 50 calendar days of authorization to proceed with this phase, and review them with Owner. Within 15 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 21 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 herein.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the City authorizes approval of a construction contract, following the completion of the bidding tasks, and once the Notice of Award has been executed by the City of Gillette, or upon cessation of negotiations with prospective contractors.
- 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. At this time, only one (1) prime construction contract is anticipated.
- 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 is 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

- 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 herein:

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, attend pre-Bid conferences.
 2. Issue Addenda as appropriate 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:
 - a) Prepare and conduct a pre-bid conference, record minutes of the meeting, and issue addenda if necessary.
 - b) Attend bid opening and assist Owner with bid opening process.
 - c) Review bid proposals received and provide a recommendation of award letter to the City of Gillette.
 6. 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 on the date when the City authorizes approval of a construction contract, following completion of the bidding tasks, and once the Notice of Award has been executed by the City of Gillette, or upon cessation of negotiations with prospective contractors.

A.1.05 Construction Phase

- A. ~~Upon successful completion of the Final Design and Bidding and Negotiating Phase(s), and upon written authorization from Owner, Engineer shall perform the following services described herein:~~
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, generate and distribute meeting minutes
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. 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.~~
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. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts. 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 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 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 Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site, and Owner's office.
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.
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 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

Scope of Services

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

A. Monthly Progress Reports and Billing Statements

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

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

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

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

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

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

C. Engineer Certification

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

D. Digital Submittals

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

E. Anticipated Project Funding Assistance

The Consultant anticipates no funding assistance will be required for this project.

F. Project Access

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

G. Stand-By Time

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

H. Permitting

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

I. Scope of Services

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

1.0 - Project Management

Task 1.1 – Project Management

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

Task 1.2 – Client Coordination

- a. Hold three design review meetings with the City. These will occur at approximately the concept, 50%, and 90% completion points.
- b. Coordinate regularly with the City staff to update progress on the project and present issues needing to be discussed or addressed. Meetings can be established on a regular basis if required.

2.0 Preliminary Design

Task 2.1 – Surveying and Mapping

- a. Create a digital file of the project area from the City GIS.
- b. Verify and establish 2 to 3 control points throughout the area for use during design and construction. These control points will be set in offsite areas as required.
- c. Perform record research for recorded property and easement information.
- d. Surveyor will attempt to locate block and lot corners in the project area.
- e. Request utility companies to locate buried utilities throughout the area. Survey these utility locations using the control points. During this survey, look for features that are not shown in the City GIS that should be added to the mapping. Survey these also.
- f. Perform a topography survey of the project area including cross sections and profiles as required for design purposes.
- g. Revise the base mapping by bringing the elevations and additional features surveyed as outlined above into the City GIS and prepare preliminary plan and profile sheets.
- h. Incorporate any street addresses to the base mapping.

Task 2.2 – Geotechnical Investigation and Report

- a. Development of Drilling Program. Prior to the geotechnical investigation, DOWL will conduct a survey of available soils maps and geotechnical information. DOWL will also complete site reconnaissance to examine existing site conditions and evaluate accessibility. This information will be utilized to develop our drilling program along with a preliminary sampling

and testing regimen. The intent will be to establish a program that will yield subsurface information representative of the project site, allowing for complete and detailed geotechnical recommendations. Following development of a drilling program, DOWL will stake the boring locations in the field and arrange for a public buried utility locate.

- b. Subsurface Exploration. The purpose of this exploration will be to obtain subsurface soil and groundwater information to develop geotechnical engineering recommendations for the proposed construction. We propose advancing one (1) borehole within the proposed project area to 15 feet below the existing ground surface or hollow stem auger refusal, whichever comes first. Samples will be collected and tested for appropriate index and engineering properties. Following subsurface exploration, the borehole location will be surveyed utilizing hand-held GPS units for inclusion in a detailed borehole location map. If additional drilling appears necessary, DOWL will contact you prior to proceeding. Prior to backfilling the boring, groundwater measurements will be taken. All borings will be backfilled with drill cuttings.

During subsurface exploration a soil bore log will be recorded for the soil boring. The logs will illustrate information such as soil types, consistency/density, sample depths, SPT blow counts, and water table elevation. The final bore log that accompanies the Geotechnical Memo will include laboratory test results.

- c. Geotechnical Engineering Analysis and Report Memo. Geotechnical engineering analysis and memo reporting will be completed for the utility project area and will include both flexible and rigid structural pavement design recommendations. Recommendations regarding site preparation, earthwork, structural fill, subgrade, and cement type will also be provided. DOWL will analyze the subsurface conditions based on the field studies and laboratory tests and summarize the results in a memo report signed by a professional engineer registered in the State of Wyoming. Our memo report will describe the work performed, subsoil conditions encountered and recommendations. Test results and soil boring logs will be included in the report.

Task 2.3 – Prepare and Submit 50% Plans and Project Manual

- a. Review drainage options and runoff calculations.
- b. Prepare preliminary plan sheets and drawings in accordance with City of Gillette CAD design standards.
- c. Prepare preliminary plan sheets for the utility extension and street surfacing area to consist of the following – 800 ft of proposed sanitary sewer with 4 sewer services, 500 ft of proposed water main with 4 water services, 800 ft of proposed City street section with associated drainage requirements.

- d. Prepare a cover sheet, key sheets, general sheets and also prepare any additional details that are not contained in the *City of Gillette, 2017 Standard Construction Specifications*.
- e. Assemble all of the prepared sheets under the above tasks into a Plan Set.
- f. Prepare a Project Manual with the appropriate Division sections and other sections not included in the *City of Gillette, 2017 Standard Construction Specifications*. Also include a section on project special provisions and work sequencing requirements if required.
- g. Prepare a preliminary quantity takeoff and develop the bid schedule for the Project Manual. Prepare preliminary cost estimate.
- h. Perform in-house reviews.
- i. Submit the plans to the City of Gillette for review and comment. Meet with the City of Gillette to review plans, project manual, preliminary geotechnical memo and address comments received.
- j. Revise the plans, project manual and the geotechnical memo to include all comments received and internal reviews.

3.0 Final Design

Task 3.1 - Design Report

- a. Prepare a brief design memo describing improvements, engineering design process and assumptions. Design report will include:
 - Pavement design cross section, grading considerations, utility extension descriptions
 - Attached Geotech Memo
 - Drainage Report for Existing Conditions

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

- a. Finalize 90% Plans and Project Manual. 90% Plans will include revisions to the 50% review comments and standard details and general requirements for Stormwater Pollution Prevention and Traffic Control.
- b. Revise the quantity takeoff and the bid schedule for the Project Manual and update the cost estimate.
- c. Submit 90% Plans and Project Manual, and Design Report to the City of Gillette.
- d. Meet with the City of Gillette to review comments. Address comments as required.
- e. Perform in-house reviews
- f. Submit 95% Plans and Project Manual, and Design Memo to the City of Gillette Engineering Department with a permit to construct application.

Task 3.3 - Prepare Contract Documents for Bidding

- a. Incorporate any final comments received from the City of Gillette permit to construct application.
- b. Update and finalize project plans and manual.

- c. Assemble the final Project Manual and plans for copying for bidding.
- d. Finalize summary sheets of the improvements to be constructed.
- e. Revise the project cost estimate using the quantities in the final bid schedule.

4.0 – Project Bidding and Award

Task 4.1 – Project Bidding

- a. Prepare an Advertisement for Bid. The City will publish the advertisement.
- b. Prepare 5 sets of plans, specifications/contract documents for bidding the project.
- c. Conduct a pre-bid conference and prepare minutes of this conference.
- d. Address questions raised by contractors and suppliers during the bidding process.
- f. Issue addenda during the bidding process as necessary.
- g. Attend the project bid opening.
- h. Tabulate and verify all bids.
- i. Make a recommendation on the award of the project.

Task 4.1 – Project Award

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

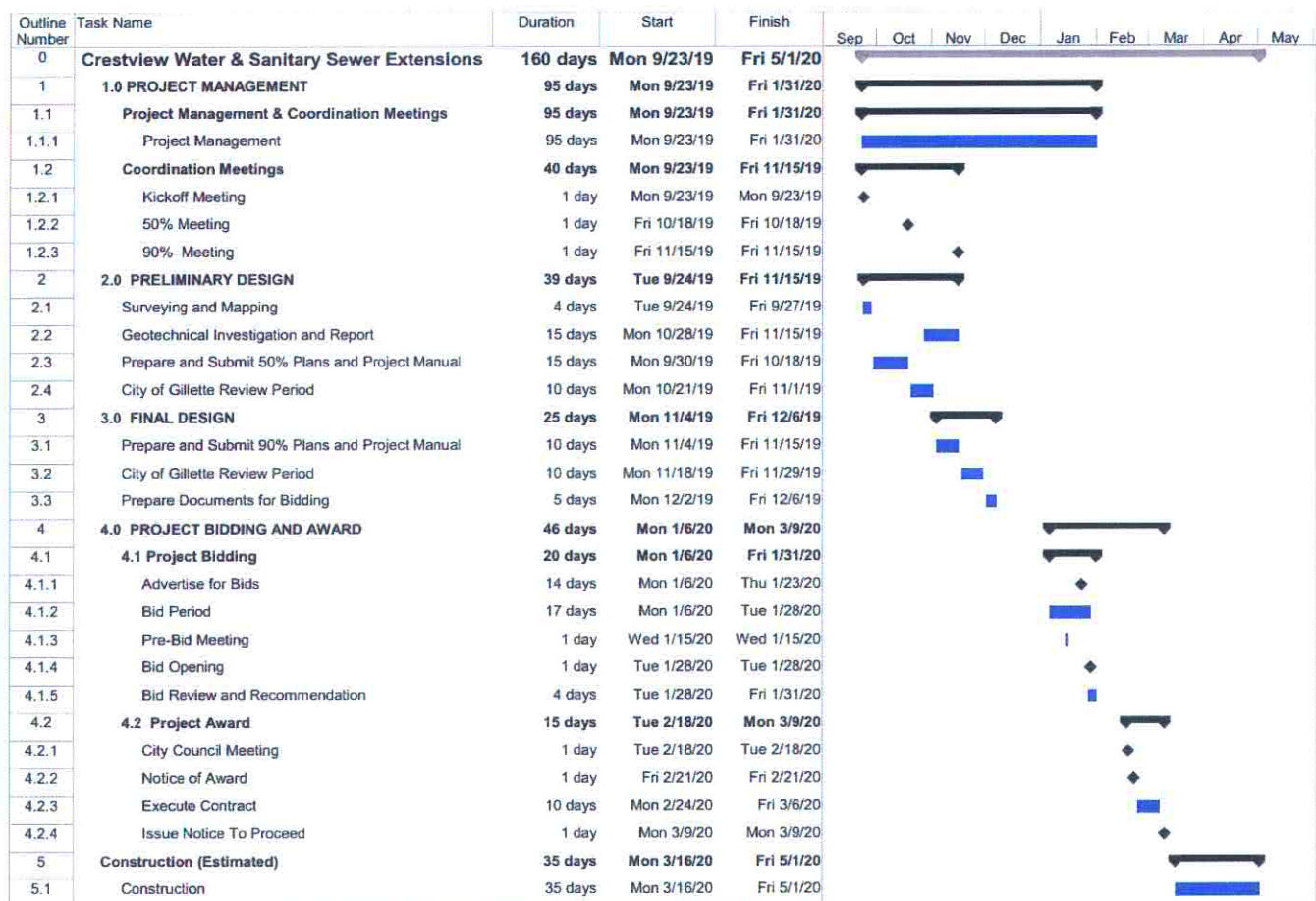
The following assumptions were used in preparing the scope and budget for this project:

- No new easements or rights of way are needed for this project.
- The City will notify all planholders, sell and distribute all plans and maintain the planholder's list during bidding.
- Construction services, not covered in this scope, will be added by separate contract prior to start of construction.
- Utility extensions will not be upsized and will remain their current size
- A hydraulic analysis or sanitary sewer analysis will not be performed

This is **Appendix 2 to EXHIBIT A**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

Proposed Schedule

City of Gillette Crestview Water & Sanitary Sewer Extensions



This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

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. *Easement Negotiations.* Owner shall be responsible for negotiations of easements with individual landowners and recording of executed documents. Owner shall provide a PDF copy of the executed agreement to the Engineer.

This is **EXHIBIT C**, consisting of 8 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 9-17-2019.

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 \$ 61,036.00 based on the following assumed distribution of compensation:

a. Project Management	\$ <u>8,640.00</u>
b. Preliminary Design Phase	\$ <u>27,736.00</u>
c. Final Design Phase	\$ <u>17,280.00</u>
d. Bidding or Negotiating Phase	\$ <u>7,380.00</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.

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 \$ _____. The total compensation under this paragraph is included within the total compensation for the Construction Phase as identified in C4.01,A.3.e.~~

- ~~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 \$ _____.
_____. The total compensation under this paragraph is included within the total compensation for the Construction Phase as identified in C4.01.A.3.e.

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. Expenses related to the Engineer's project support systems associated with telephone, fax equipment, computer equipment and related peripheral equipment shall be a reimbursable expense applied to the project as a Technology and Communications Charge rate per month.

- 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 1.05.
- D. The Reimbursable Expenses Schedule will be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

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 1.05.
- 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 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. 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 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Travel, Mileage, & Miscellaneous

Lodging	=	Cost per night
Airfare	=	Cost
Vehicle Usage – Passenger Cars	=	0.85/mile
Vehicle Usage – Trucks & SUV's	=	1.05/mile
Printing/Supplies/Phone/Fax/Postage	=	Note 3
In-House Usage Charges	=	Note 4

Per Diem

Unless otherwise specified contractually, 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).

	Breakfast	Lunch	Dinner	Incidentals	GSA Per Diem Rate
Gillette	\$13.00	\$14.00	\$23.00	\$5.00	\$55.00
Lander	\$13.00	\$14.00	\$23.00	\$5.00	\$55.00
Laramie	\$13.00	\$14.00	\$23.00	\$5.00	\$55.00
Sheridan	\$13.00	\$14.00	\$23.00	\$5.00	\$55.00

All other cities not listed above, please use the following link: <https://www.gsa.gov/travel/plan-book/per-diem-rates>
 Please use the following link for the meal breakdown: <https://www.gsa.gov/travel/plan-book/per-diem-rates/meals-and-incidental-expenses-me-breakdown>

Notes

1. DOWL's Professional 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 Client and DOWL.
2. Straight-time rates are given. Multiply by 1.5 for overtime rates. Overtime rates will be applied at the rate prescribed by applicable state law.
3. Direct reimbursable expenses such as travel, freight, subcontractors, and request beyond those requests considered reasonable by the Project Manager for phone/fax/postage, office supplies, reproduction and photography, and laboratory analysis will be billed at cost plus the negotiated markup.
4. In-house equipment usage charges or specialized software/equipment that are not separately stated on the fee schedule will be negotiated at rates deemed fair and reasonable.
5. 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).

This is **Appendix 2 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

Standard Hourly Rates Schedule

A. Standard Hourly Rates

1. 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. Hourly rates for services performed on or after the date of the Agreement are:

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WYOMING FEE SCHEDULE

Personnel Billing Rates

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

Description	Rate	Description	Rate
Accounting Manager	\$155	Engineer VI	\$185
Accounting Technician	\$85	Engineer VII	\$180
Administrative Assistant	\$60	Engineer VIII	\$190
Administrative Manager	\$95	Engineer IX	\$215
Biologist I	\$100	Engineer X	\$230
Biologist II	\$110	Engineering Technician I	\$70
Biologist III	\$120	Engineering Technician II	\$80
Biologist IV	\$130	Engineering Technician III	\$90
Biologist V	\$175	Engineering Technician IV	\$115
CAD Drafter I	\$75	Engineering Technician V	\$120
CAD Drafter II	\$90	Engineering Technician VI	\$145
CAD Drafter III	\$100	Environmental Specialist I	\$90
CAD Drafter IV	\$110	Environmental Specialist II	\$105
CAD Drafter V	\$120	Environmental Specialist III	\$110
Civil and Transportation Designer	\$95	Environmental Specialist IV	\$135
Contract Administrator I	\$130	Environmental Specialist V	\$150
Contract Administrator II	\$155	Environmental Specialist VI	\$165
Corporate Development Manager	\$180	Environmental Specialist VII	\$180
Crew Chief I	\$90	Environmental Specialist VIII	\$190
Crew Chief II	\$100	Environmental Specialist IX	\$215
Crew Chief III	\$105	Environmental Specialist X	\$225
Crew Chief IV	\$115	Field Project Representative I	\$95
Crew Chief V	\$125	Field Project Representative II	\$105
Cultural Resources Specialist I	\$90	Field Project Representative III	\$135
Cultural Resources Specialist II	\$105	Geologist I	\$100
Cultural Resources Specialist III	\$115	Geologist II	\$110
Cultural Resources Specialist IV	\$135	Geologist III	\$120
Cultural Resources Specialist V	\$165	Geologist IV	\$140
Document Production Supervisor	\$120	Geologist V	\$165
Engineer I	\$90	GIS Technician	\$75
Engineer II	\$100	GIS Specialist	\$90
Engineer III	\$120	GIS Coordinator	\$140
Engineer IV	\$135	Graphics Designer	\$100
Engineer V	\$155	Inspector I	\$90

Standard Hourly Rates Schedule

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Inspector II	\$100	Professional Land Surveyor IX	\$170
Inspector III	\$105	Professional Land Surveyor X	\$190
Inspector - Supervisor	\$130	Project Assistant I	\$85
Intern I	\$50	Project Assistant II	\$100
Intern II	\$75	Project Administrator	\$100
Laboratory Supervisor	\$80	Project Controller	\$125
Laboratory Manager	\$95	Project Manager I	\$125
Landscape Architect I	\$100	Project Manager II	\$140
Landscape Architect II	\$115	Project Manager III	\$155
Landscape Architect III	\$130	Project Manager IV	\$170
Landscape Architect IV	\$145	Project Manager V	\$185
Landscape Architect V	\$160	Project Manager VI	\$200
Landscape Architect VI	\$170	Project Manager VII	\$215
Landscape Architect VII	\$180	Proposal Manager	\$110
Landscape Planner	\$105	Public Involvement Assistant	\$85
Lead Materials Technician	\$85	Public Involvement Planner	\$105
Marketing & Administrative Manager	\$180	Public Involvement Coordinator	\$115
Marketing Assistant	\$75	Public Involvement Program Manager	\$170
Marketing Coordinator	\$85	Real Estate Services Manager	\$150
Materials Technician	\$60	Right of Way Assistant	\$85
Materials Technician II	\$70	Right of Way Agent I	\$95
Materials Manager	\$85	Right of Way Agent II	\$110
Planner I	\$90	Right of Way Agent III	\$125
Planner II	\$105	Right of Way Agent IV	\$135
Planner III	\$125	Right of Way Agent V	\$150
Planner IV	\$145	Right of Way Agent VI	\$185
Planner V	\$160	Risk Manager	\$170
Planner VI	\$170	Senior CAD Drafter	\$135
Planner VII	\$180	Senior Civil and Transportation Designer	\$140
Planner VIII	\$190	Senior Manager I	\$200
Planner IX	\$210	Senior Manager II	\$220
Planner X	\$250	Senior Manager III	\$230
Professional Land Surveyor I	\$90	Senior Manager IV	\$265
Professional Land Surveyor II	\$100	Senior Manager V	\$275
Professional Land Surveyor III	\$110	Senior Manager VI	\$295
Professional Land Surveyor IV	\$120	Senior Materials Technician	\$75
Professional Land Surveyor V	\$130	Senior Proposal Manager	\$155
Professional Land Surveyor VI	\$135	Survey Crew Surveyor I	\$60
Professional Land Surveyor VII	\$145	Survey Crew Surveyor II	\$70
Professional Land Surveyor VIII	\$155	Survey Crew Surveyor III	\$80

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

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 and letter.

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. Engineer shall deliver to the Owner 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.
- \$21,000,000 per claim for claims brought solely under Federal Law as provided in W.S. 1-39-118(b)(ii).
- \$21,000,000 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, 2019 through July 1, 2020.

Certified:

Joseph Constantino
Executive Director



This is **EXHIBIT H**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

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 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 9-17-2019.

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.]~~

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