

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

THIS IS AN AGREEMENT effective as of  
May 8, 2020 ("Effective Date")

between

CITY OF GILLETTE, WYOMING ("Owner")

and

STRUCTURAL DYNAMICS, LLC ("Engineer").

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

**DONKEY CREEK PUMP STATION #1  
VFD ROOM ADDITION  
("Project")**

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

A. Design Phase

1. Scope of services previously completed in accordance with Agreement dated April 23, 2019.

B. Bidding Phase

1. Scope of services previously completed in accordance with Agreement dated April 23, 2019.

C. Construction Phase

1. Provide general administration of the Construction Contract.
2. Prepare conformed Construction Contract Documents ("For Construction" plans) that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor. Print and provide up to three (3) sets of the plans (24" by 36" paper copies) to the Contractor. Update, print and provide up to three (3) paper copies of the Project Manual to the Contractor.
3. Surveying: Construction surveying will be provided by the Contractor. No preparation or processing of AutoCAD data for civil/site construction is anticipated.
4. Attend a Contractor arranged pre-construction meeting with the Owner and Contractor to determine schedules, to establish chains of communications, and receive information.
5. Attend construction progress meetings during periods of active construction. This agreement assumes a total of no more than three (3) such meetings.

6. Receive and review shop drawings, samples, schedules, submittals and proposed alternatives.
7. Contract with Electrical Engineering Solutions to review the electrical submittals and provide on-site review of the electrical construction work as needed.
8. Contract with Mechanical Design Works to review the mechanical submittals and provide on-site review of the mechanical construction work as needed.
9. Observe and assist Contractor in coordinating Owner provided materials testing services as required by the Construction Specifications, and review of the testing results for acceptance of the Work. These services include observation of soil density testing, testing of fresh concrete, and testing of concrete compressive strength.
10. Provide part-time Project Representative (PR) services for the Work:
  - a. During periods of active construction work (prior to Substantial Completion), the PR will travel to the project site up to twelve (12) times. This will total about one and one-half (1.5) hours per day field time, plus one (1.0) hour travel time, plus one and one-half (1.5) hours per day in the office for report preparation.
  - b. Between Substantial and Final Completion, the PR will travel to the project site up to two (2) times. This will total about one and one-half (1.5) hours per day field time, plus one (1.0) hour travel time, plus one and one-half (1.5) hours per day in the office for report preparation.
  - c. The PR duties are detailed in SC-9.03 of the Project Manual.
  - d. Provide clarification to questions from the general contractor via telephone or while on the site.
11. Prepare and provide periodic Construction Observation Reports that are to be submitted electronically following the previous week's work, depending upon the level of performed work. Reports shall contain photographs, as appropriate.
12. Review Contractor's Change Orders and RFI, if necessary.
13. Work with Contractor to prepare monthly and final contractor pay requests on the work to coincide with the Owner's pay request schedule. Review pay requests & submit to the Owner.
14. Arrange for substantial and final completion walk-throughs with the Contractor and Owner's staff. Prepare punch lists. When punch list items are satisfactorily completed, prepare certificates of substantial completion & final completion.
15. Prepare the Warranty document and submit to the Contractor.
16. Prepare "41-Day Notice" for Owner's advertisement of project completion and final payment.
17. Compile the construction records, field changes, and Contractor's drawing red-lines to be included on the Drawings of Construction Record. Draft, plot and submit the Drawings of Construction Record (two blackline sets) within sixty (60) days following the issuance of the Certificate of Final Completion. Compile all construction records onto a "Project Records" DVD and provide to Owner for their project documentation.
18. Travel to the project site for an eleventh month warranty walk through.
19. Prepare and submit to Contractor a letter listing any remedial warranty issues.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- ~~B. Engineer shall complete its services within a reasonable time, or within the following specific time period:~~
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to substantially complete construction not exceeding 60 working days after the date of the notice to proceed, plus an additional 5 working days to complete final construction. If the actual time to complete construction exceeds the number of working days indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

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

3.01 *Termination*

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

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

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

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
  - C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

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

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

## 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the laws of the State of Wyoming, with any action at law or judicial proceeding for the enforcement of this Agreement being administered only in the court system of the State of Wyoming.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2002 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without

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

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

#### 6.01 *Total Agreement*

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

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

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

3. The total compensation for services and reimbursable expenses is estimated to be Forty-Four Thousand Five Hundred Eighty Dollars (\$44,580.00) for the services. This has been estimated as follows:

|                          |                     |                    |                  |
|--------------------------|---------------------|--------------------|------------------|
| Structural Dynamics, LLC | Principal Engineer  | 252 hrs x \$145/hr | \$ 36,975.00     |
|                          | Mileage             |                    | \$ 477.00        |
| EES                      | Electrical Engineer | \$5,700 x 1.10     | \$ 6,270.00      |
| MDW                      | Mechanical Engineer | \$780 x 1.10       | <u>\$ 858.00</u> |
|                          | TOTAL               |                    | \$44,580.00      |

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

Attachments: Appendix 1, Engineer's Standard Hourly Rates and Reimbursable Expenses

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

OWNER: CITY OF GILLETTE

ENGINEER: STRUCTURAL DYNAMICS, LLC

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

Signed: Philip P. Hohn

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

By: Philip P. Hohn

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

Title: Principal Engineer

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

Date Signed: May 8, 2020

Address for giving notices:

Address for giving notices:

201 E. 5<sup>th</sup> Street

PO Box 2767

Gillette, Wyoming 82716

Gillette, Wyoming 82717

This is **Appendix 1, Engineer's Standard Hourly Rates and Reimbursable Expenses**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated May 8, 2020.

### **Engineer's Standard Hourly Rates and Reimbursable Expenses**

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A. *Standard Hourly Rates:*

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

B. *Schedule of Hourly Rates for calendar year 2020:*

Hourly rates for services performed during the 2020 calendar year are as shown on the attached Schedule of Fees dated December 1, 2019.





## **SCHEDULE OF FEES AND REIMBURSABLE EXPENSES**

December 1, 2019

### **PROFESSIONAL FEES (\$/hour):**

|  |                  |
|--|------------------|
| Principal Engineer .....                       | \$145.00         |
| Senior Engineer .....                          | \$140.00         |
| Senior Project Engineer.....                   | \$134.50         |
| Project Engineer/Manager .....                 | \$124.50         |
| Senior Design Engineer .....                   | \$119.00         |
| Professional Engineer.....                     | \$114.00         |
| Resident Project Representative (RPR) .....    | \$103.50         |
| Design Engineer .....                          | \$ 98.50         |
| Construction Engineer .....                    | \$ 98.50         |
| Senior Engineering Technician .....            | \$ 94.50         |
| Engineering Technician .....                   | \$ 83.00         |
| Clerical .....                                 | \$ 52.00         |
| Expert Witness Services – Depositions .....    | 2x rates above   |
| Expert Witness Services – Court Testimony..... | 2.5x rates above |

### **REIMBURSABLE EXPENSES:**

|   |                |               |
|---|----------------|---------------|
| Travel Expenses:  | Mileage .....  | \$ 0.65/mi    |
|   | Per diem ..... | \$52.00/night |
|   | Lodging .....  | Actual cost   |
|   | Airfare.....   | Actual cost   |
| Special tests, subconsultant services, equipment rental ..... | Cost + 15%     |               |
| Printing/Plotting/Reproduction .....                          | Cost + 5%      |               |
| Postal/mailing/delivery services .....                        | Actual cost    |               |
| Specialized software/hardware/equipment .....                 | Actual cost    |               |