



City of Green River  
City Council Meeting  
Agenda Documentation

Preparation Date: April 16, 2020	Department: Public Works
Meeting Date: April 21, 2020	Department Head: Mark Westenskow
	Presenter: Mark Westenskow

**Subject:**

*Award of the 2020 North 3<sup>rd</sup> West Water Improvements Project Materials Testing*

**Background/Alternatives:**

*On February 24, 2020 Requests for Proposals were sent out to the firm in the area with expertise in materials testing services. Four firm responded by the March 12, 2020 deadline. A Professional Services Contract for materials testing services related to the 2020 North 3<sup>rd</sup> West Water Improvements Project was selected from WHS by independent employees.*

**Attachments:**

*Professional Services Contract*

**Fiscal Impact:**

*\$3,720 from the Water Fund has been requested and there is an adequate budget available*

**Staff Impact:**

*In house project management and oversight by the Engineering Division*

**Legal Review:**

*Completed*

**Suggested Motion #1:**

*I move to un-table the award of a Professional Services Contract to William H. Smith and Associates, Inc. for construction materials testing services for the 2020 North 3<sup>rd</sup> West Water Improvement Project, in the amount of \$3,720 and authorize the Mayor sign the contract.*

**Suggested Motion #2:**

*I move to reconsider the award of a Professional Services Contract to William H. Smith and Associates, Inc. for construction materials testing services for the 2020 North 3<sup>rd</sup> West Water Improvement Project, in the amount of \$3,720 and authorize the Mayor sign the contract.*

**Suggested Motion #3:**

*I move to award a Professional Services Contract to William H. Smith and Associates, Inc. for construction materials testing services for the 2020 North 3<sup>rd</sup> West Water Improvement Project, in the amount of \$3,720 and authorize the Mayor sign the contract.*

# CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the **City of Green River, 50 East 2<sup>nd</sup> North, Green River, WY 82935**, hereinafter referred to as the “**Owner**”, and **William H. Smith & Associates, Inc., 550 East 2<sup>nd</sup> North, Green River, WY 82935**, hereinafter referred to as the “**Consultant**”.

WITNESSETH:

WHEREAS, the Owner is undertaking the **2020 North 3<sup>rd</sup> West Water Improvement Project**, hereinafter referred to as the “**Project**”: and,

WHEREAS, the Project necessitates professional services for materials testing; and,

WHEREAS, the Consultant represents that it is ready, willing, and able to provide the professional services to Owner as required by this Contract; and,

WHEREAS, the Owner desires to retain the Consultant for such services.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein to be performed, the parties agree as follows:

1. SCOPE OF SERVICES

The Consultant shall perform the following services in connection with and respecting the Project as outlined in the Price Proposal (attached) for Materials Testing Services dated **March 10<sup>th</sup>, 2020**.

2. TIME OF PERFORMANCE

The services of the Consultant are to commence upon written notice to proceed from the Owner.

3. COMPENSATION

In consideration of the performance for services rendered under this Contract, the Consultant shall be compensated for services performed at the Consultant’s hourly rates, shown in the Cost Proposal for Materials Testing Services, with a not to exceed ceiling amount of Three Thousand Seven Hundred Twenty Dollars and Zero Cents (\$3,720.00), for successful completion of the Project.

4. METHOD OF PAYMENT:

Payment will be paid in the following manner, in every case subject to receipt of an invoice for payment from the Consultant specifying that he has performed the services under this Contract and that he is entitled to receive the amount requested under the terms of the Contract.

5. TERMS AND CONDITIONS:

This Contract is subject to and incorporates the Provisions attached.

6. ENTENT OF AGREEMENT:

This Contract represents the entire and integrated Contract between the Owner and the Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended only by written instruments signed by both the Owner and the Consultant.

IN WITNESS WHEREOF, the Owner and the Consultant have executed this Contract as of the date first above written.

ATTEST: \_\_\_\_\_ ATTEST: Becky Legere

OWNER: **The City of Green River** Consultant: **William H. Smith & Associates, Inc**

By \_\_\_\_\_ By Shawn M. Arnoldi

Title: Pete Rust, Mayor Shawn M. Arnoldi, P.E., Vice President

Date \_\_\_\_\_ Date 3/24/2020

## PROVISIONS

### 1. Authorization to Proceed

Execution of this AGREEMENT by the CLIENT will be authorization for William H. Smith & Associates, Inc. to proceed with the work, unless otherwise provided for in this AGREEMENT.

### 2. Compensation

Compensation for all services provided by WILLIAM H. SMITH & ASSOCIATES, INC. under this AGREEMENT shall be based on the proposal, as attached to this AGREEMENT. All services will be provided on a Lump Sum basis unless otherwise shown and agreed upon.

### 3. Per Diem Rates

William H. Smith & Associates, Inc.'s Per Diem Rates are those hourly or daily rates charged for work performed on Client's Project by WILLIAM H. SMITH & ASSOCIATES, INC. employees of the indicated classifications. These rates are subject to annual calendar year adjustments and include all allowances for salary, overheads, and fee, but do not include allowances for Direct Expenses.

### 4. Direct Expenses

William H. Smith & Associates, Inc.'s Direct Expenses, are those costs incurred on or directly for the Client's Project, including, but not limited to, necessary transportation costs, including current rates for WILLIAM H. SMITH & ASSOCIATES, INC. vehicles; meals and lodging; laboratory tests and analyses; computer services; word processing services; telephone, printing, binding, and reproduction charges; all costs associated with outside consultants, sub consultants, subcontractors, and other outside services and facilities; and other similar costs. Reimbursement for Direct Expenses will be on the basis of actual charges when furnished by commercial sources and on the basis of current rates when furnished by WILLIAM H. SMITH & ASSOCIATES, INC.

### 5. Cost Opinions

Any cost opinions or Project economic evaluations provided by WILLIAM H. SMITH & ASSOCIATES, INC. will be on a basis of experience and judgment, but, since it has no control over market conditions or bidding procedures, WILLIAM H. SMITH & ASSOCIATES, INC. cannot warrant that bids, ultimate construction cost, or Project economics will not vary from these opinions.

### 6. Standard of Care

The standard of care applicable to William H. Smith & Associates, Inc.'s services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time William H. Smith & Associates, Inc.'s services are performed. WILLIAM H. SMITH & ASSOCIATES, INC. will re-perform any services not meeting this standard without additional compensation.

### 7. Termination

This AGREEMENT may be terminated for convenience on 30 days' written notice, or for cause, if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice and diligently complete the correction thereafter. On termination, WILLIAM H. SMITH & ASSOCIATES, INC. will be paid for all authorized work performed up to the termination date. If no notice of termination is given, relationships and obligations created by this AGREEMENT, except Articles 9 through 14, will be terminated upon completion of all applicable requirements of this AGREEMENT.

### 8. Payment to WILLIAM H. SMITH & ASSOCIATES, INC.

Monthly invoices will be issued by WILLIAM H. SMITH & ASSOCIATES, INC. for all work performed under this AGREEMENT. Invoices are due when received and are to be paid in accordance with Wyoming State Statutes. All invoices not paid promptly are subject to penalties and interest in accordance with Wyoming State Statutes. In the event of the failure of CLIENT to make payment of any invoice for William H. Smith & Associates, Inc.'s services within ninety (90) days from the date the invoice is received by the City, then WILLIAM H. SMITH & ASSOCIATES, INC., at its election, may terminate this agreement, or may cease performance of the services to be provided hereunder until the full payment of all amounts owing from CLIENT has been received. Additionally, in the event of the failure of CLIENT to make payment of any invoice for William H. Smith & Associates, Inc.'s services within ninety (90) days from the date the invoice is received by the City, WILLIAM H. SMITH & ASSOCIATES, INC., at its election, may retain and hold all papers, reports, drawings, blue prints, plans, surveys, plats, and other records relating to the engineering and surveying services to be provided under this Agreement until the full payment of all amounts owing from CLIENT has been received. CLIENT agrees to pay all of William H. Smith & Associates, Inc.'s reasonable attorney's fees and all other costs and expenses which are incurred by WILLIAM H. SMITH & ASSOCIATES, INC. in collection of any amount not timely paid by CLIENT pursuant to the terms of this agreement. In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CLIENT will exercise reasonableness in contesting any bill or portion thereof.

**9. Severability and Survival**

If any of the provisions contained in this AGREEMENT are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of this AGREEMENT for any cause.

**10. Monitoring Services**

WILLIAM H. SMITH & ASSOCIATES, INC. is not responsible for the duties and responsibilities that belong to the other agents of the CLIENT such as developer(s), construction contractor(s), designer(s), testing laboratory (ies), full-time inspector(s), or other parties associated with the Project not in the employment of or a subcontractor to WILLIAM H. SMITH & ASSOCIATES, INC.

**11. Interpretation**

The limitations of liability and indemnities will apply whether William H. Smith & Associates, Inc.'s liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, except for willful misconduct or gross negligence for limitations of liability sole negligence for indemnification, and shall apply to William H. Smith & Associates, Inc.'s officers, affiliated corporations, employees, and subcontractors. The law of the state of Wyoming shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

**12. No Third Party Beneficiaries**

This AGREEMENT gives no rights or benefits to anyone other than the CLIENT and WILLIAM H. SMITH & ASSOCIATES, INC. and has no third party beneficiaries. William H. Smith & Associates, Inc.'s services are defined solely by this AGREEMENT, and not by any other contract or AGREEMENT that may be associated with the Project.

**13. Reuse of Document**

All designs, drawings, specifications, documents, and other work products of WILLIAM H. SMITH & ASSOCIATES, INC. are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse by the CLIENT, or by others acting through or on behalf of the CLIENT of any such instruments of service without the written permission of WILLIAM H. SMITH & ASSOCIATES, INC. will be at Client's sole risk.

**14. Free Publicity**

William H. Smith & Associates, Inc. has the right to photograph the above named project and to use the photos in the promotion of the professional practice marketing materials. Should additional photos be needed in the future, the client agrees to provide reasonable access to the facility.

**Tuesday, March 10, 2020**  
**2020 North 3<sup>rd</sup> West Water Improvement Project**  
**City of Green River**

Following is William H. Smith & Associates' (WHS) construction materials testing daily rate proposal for the 2020 North 3<sup>rd</sup> West Water Improvement Project. WHS proposes to provide the following described services:

Description	Qty.	Unit	Unit Cost	Cost
<b>Equipment</b>				
Vehicle per Day	12	Mile	\$40	\$480
Nuclear Density Gauge	5	Day	\$50	\$250
			<b>Subtotal</b>	<b>\$730</b>
<b>Staff</b>				
Materials Technician – Soils	16	Hour	\$55	\$880
Materials Technician - Concrete	6	Hour	\$55	\$330
Materials Technician - Asphalt	20	Hour	\$55	\$1,100
			<b>Subtotal</b>	<b>\$2,310</b>
<b>Laboratory Testing</b>				
Modified Proctor	3	Test	\$160	\$480
Compressive Strength of Cylinders – 4X8	10	Test	\$20	\$200
			<b>Subtotal</b>	<b>\$680</b>
			<b>Total Cost Estimate</b>	<b>\$3,720</b>

**Notes and Assumptions:**

1. All laboratory testing will be performed in WHS's AASHTO Accredited laboratory located at 155 N 1<sup>st</sup> St., Lander, WY. See attached AASHTO Certification.
2. Assumed 52 total soils density tests at approximately one-half hour per test.
3. Assumed 2 total concrete pours/test sets at approximately 3 hours per pour.
4. Assumed 2 days of asphalt density testing at 10 total hours per day.
5. A WHS professional engineer will review and stamp all test reports.
6. WHS cannot control the contractors schedule and therefore this is not a lump sum proposal – Revisions to the scope or assumptions will change the total estimated cost. Additional testing beyond the noted assumptions is available on a T&M basis.

Any questions or concerns regarding this materials testing proposal, please feel free to contact me either by phone (307)840-4014 or by email - breed@whsmithpc.com.

Sincerely,

Brandon Reed  
 Materials Testing Manager