



August 15, 2014

The City of Gillette
P. O. Box 3003
201 East 5th Street
Gillette, Wyoming 82717

Gentlemen:

DOWL HKM proposes to render professional engineering services for the **Boxelder Phase III Project** (herewith called the "Project"). Please furnish us with full information as to your requirements including any special or extraordinary considerations for the Project or special services needed, and also make available all pertinent existing data.

Our services will consist of Design Services as identified in Exhibit 'A', as set forth in the General Provisions as amended and supplemented in Exhibits 'A' and 'B', thereto, which are attached to this letter. We will also furnish such additional services as you may request.

You will pay us for our Services on a time and materials basis with a cost not to exceed \$59,950.00. This fee includes labor and expenses to perform the engineering services as identified within this letter and the attached exhibits.

SECTIONS 1 and 2 of the General Provisions are hereby modified. The services provided are detailed within Exhibit 'A'.

We will bill you monthly for services and expenses. The above financial arrangements are on the basis of prompt payment of our bills and the orderly and continuous progress of the project.

We would expect to start our services after receipt of your acceptance of this proposal, and to complete our design services by July 10, 2015.

If there are protracted delays for reasons beyond our control, we expect to negotiate with you an equitable adjustment of our compensation taking into consideration the impact of such delays, including but not limited to changes in price indices and pay scales applicable to the period when services are in fact being rendered.

It is necessary that you advise us in writing at an early date if you have budgetary limitations for Total Project Costs. We must accept any such limitations as being realistic and will then endeavor to work within those limitations.

Services are to be rendered as, identified in Exhibit 'A', which together with the general understandings applicable to our relationship with you, are set forth in the printed General Provisions and Exhibits 'A' and 'B' ; and, thereto which are attached to and made part of this proposal. Your particular responsibilities are also set forth in the General Provisions.

This proposal, the General Provisions, Exhibit 'A' and Exhibit 'B' represent the entire understanding between you and us in respect of the Project and may only be modified in writing signed by both of us. If it satisfactorily sets forth your understanding of our agreement, we would appreciate your signing the enclosed copy of this letter in the space provided below and returning it to us. This proposal will be open for acceptance until September 16th, 2014, unless changed by us in writing.

Respectfully Submitted,
DOWL HKM



Jeffrey Rosenlund, P.E., PTP
Project Manager

Accepted this _____ day of _____, 20____

CITY OF GILLETTE

By _____ ATTEST: _____
Mayor

GENERAL PROVISIONS

Attached to and made a part of the LETTER AGREEMENT, dated August 15, 2014, between the City of Gillette, Wyoming (OWNER) and DOWL HKM (ENGINEER) in respect to the Project described therein.

NOTE: Wording that includes a strikethrough does not apply to this Agreement.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1. General

- 1.1.1 ENGINEER shall perform for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil and structural engineering services and customary services incidental thereto.

~~1.2 Study and Report Phase~~

~~After written authorization to proceed, ENGINEER shall:~~

- ~~1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.~~
- ~~1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.2, and assist OWNER in obtaining such data and services.~~
- ~~1.2.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.~~
- ~~1.2.4. Provide analysis of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.~~
- ~~1.2.5. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.~~
- ~~1.2.6. Prepare a written report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions~~

~~available to OWNER and setting forth ENGINEER's finding and recommendations. This Report will be accompanied by ENGINEER's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Cost, allowances for engineering costs and contingencies, and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-ways, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others for OWNER pursuant to paragraph 3.2. The total of all such costs, allowances, etc. are hereinafter called "Total Project Costs".~~

- ~~1.2.7. Furnish two copies of the Study and Report documents and review them in person with the OWNER.~~

~~The duties and responsibilities of ENGINEER during the Study and Report Phase are amended and supplemented as indicated in Exhibit 'A' "Further Descriptions of Basic Engineering Services and Related Matters".~~

~~1.3. Preliminary Design Phase~~

~~After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:~~

- ~~1.3.1. In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the Project.~~
- ~~1.3.2. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.~~
- ~~1.3.3. Advise OWNER if additional data or services of the types described in the first subparagraph of paragraph 3.2 are necessary and assist OWNER in obtaining such data and services.~~
- ~~1.3.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Total Project Costs.~~
- ~~1.3.5. Furnish two copies of the above Preliminary Design documents and present and review them in person with the OWNER.~~

~~The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in Exhibit 'A'.~~

~~1.4. Final Design Phase~~

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

- 1.4.1. On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs, prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by CONTRACTOR(s) (hereinafter called the "Drawings") and Specification which will be prepared in conformance with the City of Gillette Standard Construction Specifications.
- 1.4.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with the appropriate authorities.
- 1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character of design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.
- 1.4.4. Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instruction to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the OWNER), and assist in the preparation of other related documents.
- 1.4.5. Furnish two copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during Final Design Phase are amended and supplemented as indicated in Exhibit 'A'.

1.5. Bidding or Negotiation Phase

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

- ~~1.5.1. Assist OWNER in advertising for and obtaining bids or negotiation proposals for each separate prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and provide the OWNER with twenty-five sets of Bidding Documents.~~

- 1.5.2. Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.
- 1.5.3. Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "CONTRACTOR(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 1.5.4. Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by CONTRACTOR(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 1.5.5. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services. The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in Outline B of Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters".

~~1.6.—Construction Phase~~

~~During the Construction Phase:~~

- ~~1.6.1.—General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the General Conditions of the City of Gillette Standard Construction Specifications. The extent and limitations of the duties, responsibilities and authority of the ENGINEER as assigned in said General Conditions shall not be modified, except to the extent provided in Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to CONTRACTOR(s) will be issued through ENGINEER who will have the authority to act on behalf of OWNER to the extent provided in said General Conditions except as otherwise provided in writing.~~

~~1.6.2.—Visits to Site and Observation of Construction:~~

- ~~1.6.2.1.—ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of CONTRACTOR(s) work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and~~

~~on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.~~

~~1.6.2.2. The Resident Project Representative (and any assistants) will be ENGINEER's agent or employee and under ENGINEER's supervision. The duties and responsibilities of the Resident Project Representative (and any assistants) are set forth in Exhibit 'B' "Duties, Responsibilities and Limitation of Authority of Resident Project Representative".~~

~~1.6.2.3. The purpose of ENGINEER's visits to and representation by the Resident Project Representative (and any assistants) 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 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 of CONTRACTOR(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by CONTRACTOR(s). On the other hand, 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 by CONTRACTOR(s), for safety precautions and programs incident to the work of CONTRACTOR(s) or for any failure of CONTRACTOR(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to CONTRACTOR(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by CONTRACTOR(s) nor assume responsibility for CONTRACTOR(s) failure to furnish and perform their work in accordance with the Contract Documents.~~

~~1.6.3. Defective Work.~~

~~During such visits and on the basis of such observations, ENGINEER may disapprove of or reject CONTRACTOR(s) work while it is in progress if ENGINEER believes such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.~~

~~1.6.4. Interpretations and Clarifications.~~

~~ENGINEER shall insure necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.~~

~~1.6.5. Shop Drawings.~~

~~ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid General Conditions), samples and other data which CONTRACTOR(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.~~

~~1.6.6. Substitutes.~~

~~ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by CONTRACTOR(s), but subject to the provision of the second subparagraph of paragraph 2.1.2.~~

~~1.6.7. Inspections and Tests.~~

~~ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).~~

~~1.6.8. Disputes Between OWNER and CONTRACTOR(s).~~

~~ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge the acceptability of the work thereunder and make decisions on all claims of OWNER and CONTRACTOR(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.~~

~~1.6.9. Applications for payment.~~

~~Based on ENGINEER's on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of Applications for Payment and the accompanying data and schedules:~~

~~ENGINEER shall determine the amounts owing to CONTRACTOR(s) and recommend in writing payments to CONTRACTOR(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such 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). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).~~

~~1.6.9.1. By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed review or examinations have been made by ENGINEER to check the quality or quantity of CONTRACTOR(s) work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of CONTRACTOR(s)' work for the purpose of recommending payments will not impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or CONTRACTOR(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examinations to ascertain how or for what purpose any CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, 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.~~

~~1.6.10. CONTRACTOR(s) Completion Documents.~~

~~ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by CONTRACTOR(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals, the results certified indicate compliance with~~

~~the Contract Documents); and shall transmit them to OWNER with written comments.~~

~~1.6.11. Inspections.~~

~~ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend in writing final payment to CONTRACTOR(s) and may give written notice to OWNER and the CONTRACTOR(s) that the work is acceptable (subject to any conditions therein expressed) but any such recommendation and notice will be subject to limitations expressed in paragraph 1.6.9.2.~~

~~1.6.12. Limitations of Responsibilities.~~

~~ENGINEER shall not be responsible for the acts or omissions of any CONTRACTOR, or of any subcontractor or supplier, or any of the CONTRACTOR(s); or subcontractor's agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the CONTRACTOR(s)' work; however, nothing contained in paragraphs 1.6.1 thru 1.6.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.~~

~~1.7. Operational Phase~~

~~During the Operational Phase, ENGINEER shall, when requested by the OWNER:~~

- ~~1.7.1. Provide assistance in the closing of any financial or related transaction for the Project.~~
- ~~1.7.2. Provide assistance in connection with the refining and adjusting of any equipment or system.~~
- ~~1.7.3. Assist OWNER in training OWNER's staff to operate and maintain the Project.~~
- ~~1.7.4. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.~~
- ~~1.7.5. Prepare a set of reproducible record Drawings showing those changes made during the construction process, based on the marked up prints, drawings and other data furnished by CONTRACTOR(s) to ENGINEER and which ENGINEER considers significant.~~

- ~~1.7.6. In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with CONTRACTOR(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.~~

~~The duties and responsibilities of ENGINEER during the Operational Phase are amended and supplemented as indicated in Exhibit 'A' "Further Description of Basic Engineering Services and Related Matters".~~

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

- 2.1. Normal and customary engineering services do not include service in respect of the following categories of work which are usually referred to as Additional Services.

- 2.1.1. If OWNER wishes ENGINEER to perform any of the following Additional Services, OWNER shall so instruct ENGINEER in writing, and ENGINEER shall perform or obtain from others such services and will be paid therefore as provided in the Letter Agreement:

- * Preparation of applications and supporting documents for governmental financial support of the Project in addition to those required under Basic Services; preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.
- * Services resulting from significant changes in the general scope, extent or character of the Project or major changes in documentation previously accepted by OWNER where changes are due to causes beyond ENGINEER's control.
- * Providing renderings or models.
- * Preparing documents for alternate bids requested by OWNER for work which is not executed or for out-of-sequence work.
- * Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.
- * Furnishing the services of independent professional associates or consultants for other than Basic Services.

- * If ENGINEER's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, or from the construction contract containing cost plus or incentive-savings provisions for CONTRACTOR(s)' basic compensation, or for arranging for performance by persons other than the principal prime contractors or from administering OWNER's contracts for such services.
- * Services during out-of-town travel other than visits to the site.
- * Warranty inspections, reviews, correspondence, and contractor follow up.
- * Preparation of operating and maintenance manuals to supplement Basic Services under Paragraph 1.7.3.
- * Preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

~~2.1.2. When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from OWNER, and ENGINEER will be paid therefore as provided in the Letter Agreement:~~

- ~~* Services in connection with work directive changes and change orders to reflect the changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.~~
- ~~Services in making revisions to Drawings and Specification occasioned by the acceptance of substitutions proposed by CONTRACTOR(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by CONTRACTOR(s); and evaluating an unreasonable or extensive number of claims submitted by CONTRACTOR(s) or others in connection with the work.~~
- ~~* Services resulting from significant delay, changes or price increases occurring as a direct result of material, equipment or energy shortages.~~

- ~~* Additional or extended services during construction made necessary by (1) work damage by fire or other causes during construction, (2) a significant amount of defective or neglected work of any CONTRACTOR, (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by any CONTRACTOR.~~

SECTION 3 - OWNER'S RESPONSIBILITIES

- 3.1. Owner shall provide all criteria and full information as to OWNER's requirements for the Project; designate a person to act with authority on OWNER's behalf in all aspects of the Project; examine and respond promptly to ENGINEER's submissions; and give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the work.
- 3.2. OWNER shall also do the following and pay all costs incident thereto:
 - * Furnish to ENGINEER borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; existing property, boundary, easement, right-of-way, topographic and utility surveys, property descriptions; zoning and deed restrictions; all of which ENGINEER may rely upon in performing services hereunder.
 - * Guarantee access to and make all provisions for ENGINEER to enter upon public and private property.
 - ~~* Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, and auditing services required in respect of CONTRACTOR(s)' applications for payment, and any inspection services to determine if CONTRACTOR(s) are performing the work legally.~~
 - * Furnish approvals and permits from all governmental authorities having jurisdiction over the Project.
 - ~~* If more than one prime contract is to be awarded for construction, designate a party to have responsibility and authority for coordinating the activities of the various prime contractors.~~
- ~~3.3. OWNER shall pay all costs incident to obtaining bids or proposals from CONTRACTOR(s).~~

SECTION 4 - MEANING OF TERMS

- 4.1. As used herein the term "this Agreement" refers to the Letter Agreement to which these General Provisions are attached and to these General Provisions, Exhibit 'A' and Exhibit 'B' as if they were part of one and the same document.
- 4.2. The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but will not include ENGINEER's compensation and expenses, the cost of land, rights-of way, or compensation for or damages to properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or the 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 paragraph 3.2 (Construction Cost is one of the items comprising Total Project Costs which is defined in paragraph 1.2.6.)
- 4.3. INTENTIONALLY DELETED
- 4.4. INTENTIONALLY DELETED
- 4.5. INTENTIONALLY DELETED

SECTION 5 - MISCELLANEOUS

5.1. Reuse of Documents

All documents including Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER. ENGINEER shall provide OWNER with one complete set of stabilized, reproducible, record drawings.

5.2. Opinions of Cost

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the CONTRACTOR(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Cost provided for herein

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 engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project Costs or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER.

5.3. Other Provisions Concerning Payments

If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement therefore, the amounts due ENGINEER will be increased at the rate of one percent per month from said thirtieth day, and 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 charges.

5.4. Termination

The obligation to provide further services under this Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof though no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered to the date of termination, all Reimbursable Expenses and termination expenses.

5.5. Controlling Law

This Agreement is to be governed by the law of the State of Wyoming.

5.6. Successors and Assigns

5.6.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.6.2 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.

5.6.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release

or discharge the assigned from any duty or responsibility under this Agreement.

Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

- 5.6.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party

5.7. Claims and Disputes

All claims, disputes, and other matters in question between the OWNER and ENGINEER arising out of, or relating to the Professional Services Agreement or the breach thereof, which are not resolved to the satisfaction of either of the parties after having been submitted to the City Engineer will be decided by the City Administrator upon his receipt of a demand for review. The demand for review shall be initiated by filing a written demand with the City Administrator. The demand shall include the material previously filed with the City Engineer, the written opinion of the ENGINEER in response thereto, and a concise statement of the alleged errors in the decision of the City Engineer and the specific ground or grounds upon which the party contends he is entitled to relief. The ENGINEER may file a further demand for review of the decision of the City Administrator with the City Council after receipt of the written decision of the City Administrator within the same time limits and according to the same procedure which applies to a demand for review addressed to the City Administrator. Failure to demand review of the decision on review of the determination of the City Administrator within thirty days shall result in the City Administrator's decision being final and binding upon the OWNER and ENGINEER. Failure to complete the review procedure specified herein shall be a complete bar to any legal action on any questions which could have been or was submitted to the OWNER for determination.

No demand for review of any claim, dispute, or other matter that is required to be referred to the City Engineer initially for decision shall be made until the earlier of (a) the date on which the City Engineer has rendered a decision, or (b) the tenth day after the parties have presented their evidence to the City Engineer, if a written decision has not been rendered by the City Engineer before that date. No demand for review of any claim, dispute or other matter shall be made later than thirty days after the date on which the City Engineer has rendered a written decision in respect thereof and the failure to demand review within said thirty days period shall result in the City Engineer's decision being final and binding upon the OWNER and ENGINEER.

EXHIBIT A
Boxelder Road Extension Phase III
15EN06

DOWL HKM Scope and Fee Proposal

The Boxelder road project was designed in a previous project by DOWL HKM. The City of Gillette desires to build this project in phases. The third phase of the Boxelder project will include connecting the Boxelder Road Extension from Burma to Highway 50; water, sanitary, and stormwater utilities; and roadway, sidewalk, and bike path surfacing between Burma and Highway 50. This document discusses the scope of work and estimated fee for each of these tasks. They are:

1.0 Project Management

- a. Maintain a project work plan.
- b. Provide project staff, and incorporate previous design work.
- c. Monitor schedule and budget.
- d. Conduct periodic design team meetings and coordinate work elements.
- e. Provide a monthly progress report and invoice broken out by tasks.
- f. Meet regularly with the City staff to provide updates on the project and present issues that need to be discussed or addressed.

2.0 Design – The following design tasks are included in this scope of work:

- 2.1 Revise drawing to show work completed during Phase I, IIA and IIB.
- 2.2 Revise drawings to show Highway 50 construction.
- 2.3 Prepare mass haul diagram for Phase III.
- 2.4 Repackage/revise plans to clearly delineate Phase III work. Changes will be made to the cover and general notes, as necessary. We anticipate including the following sections into Phase III Bid Package:
 - a. Roadway Plan/Profiles
 - b. Waterline/Sanitary Sewer
 - c. Storm Sewer
 - d. Signs
 - e. Striping
 - f. Street Lighting
- 2.5 Prepare the DEQ application. This task includes:

- a. Review the hydraulic model of the water and sewer systems for this area, including the demand and loading for growth areas. Review the design reports for Metz Drive and Burma Road.
 - b. Tabulate the results of the hydraulic analysis for the Design Report.
- 2.6 Finalize the Project Manual. – We will revise the project manual to cover Phase III.
- 2.7 Revise cost estimate
- a. Revise the bid schedule to match limits of Phase III. Compare this estimated cost to the projected funding, and communicate cost estimates to City staff.
 - b. At final design, revise the quantities, bid schedule and cost estimate. Prepare an opinion of probable construction cost prior to the bid opening.

3.0 Review and incorporate comments

- 3.1 We will submit plans for the review through eplans.
- 3.2 We anticipate receiving review comments 3 weeks from submitting the documents through eplans.
- 3.3 We will address comments from the review and incorporate, as appropriate, into the final plan set.

4.0 Project Bidding

4.1. Bidding Documents

- a. Prepare an Advertisement for Bid to be published
- b. Prepare 5 sets of plans and project manuals for bidding the project.
- c. Prepare PDF information for use in electronic bidding site.
- d. We will provide this information to the City of Gillette for bidding purposes.

4.2. Bidding Period

The City of Gillette will distribute plans and specifications to contractors, sub-contractors, and suppliers as requested and maintain a plan holders list. DOWL HKM will:

- a. Attend a pre-bid conference and prepare minutes.
- b. Address questions raised by contractors and suppliers during the bidding process.
- c. Issue addenda during the bidding process as necessary.

4.3. Bid Letting and Award




















We will:

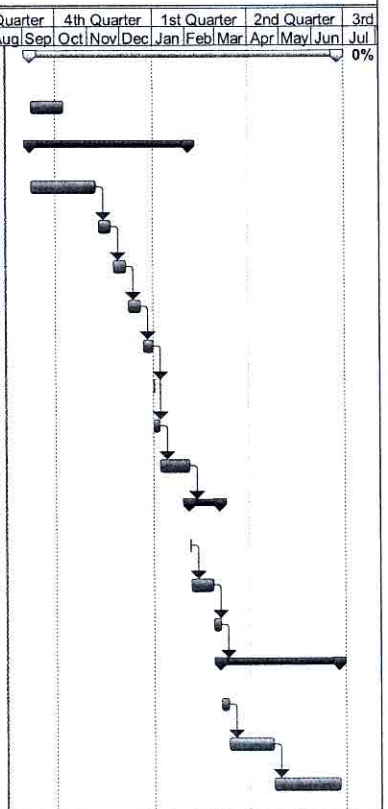
- a. Attend the project bid opening.
- b. Tabulate and verify bids. Provide a summary of the bids to the City.
- c. Make a recommendation on the award of the project.

The City will:

- a. Prepare Notice of Award, Agreement, and bond forms for Contractor and City processing.
- b. Prepare a Notice to Proceed when appropriate.

Exhibit B
City of Gillette Boxelder Road Extension Phase III - 15EN06

Task	Task Name	Duration	Start	Finish	Cost	Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd							
						Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
	Boxelder Phase III	208 days	Mon 9/8/14	Wed 6/24/15	\$59,950.00												0%
1	Project Management	22.08 days	Mon 9/8/14	Wed 10/8/14	\$7,000.00												
2	Design	107 days	Mon 9/8/14	Tue 2/3/15	\$41,950.00												
2.1	Revise Drawings to show previous phases	45 days	Mon 9/8/14	Fri 11/7/14	\$5,550.00												
	Revise for Highway 50	10 days	Mon 11/10/14	Fri 11/21/14	\$5,000.00												
2.3	Stormwater Improvements	10 days	Mon 11/24/14	Fri 12/5/14	\$8,690.00												
2.4	Mass Haul Diagram	10 days	Mon 12/8/14	Fri 12/19/14	\$1,920.00												
2.5	Revise Plan Set for Phase III Work	7.5 days	Mon 12/22/14	Wed 12/31/14	\$9,600.00												
2.6	DEQ Permit to Construct	1.5 days	Wed 12/31/14	Thu 1/1/15	\$1,740.00												
2.7	Project Manual	4.5 days	Wed 12/31/14	Tue 1/6/15	\$7,810.00												
2.8	Cost Estimate	20 days	Wed 1/7/15	Tue 2/3/15	\$1,640.00												
3.0	Review Period	21 days	Wed 2/4/15	Wed 3/4/15	\$3,640.00												
3.1	Submit eplans	1 day	Wed 2/4/15	Wed 2/4/15	\$680.00												
3.2	Review Period	15 days	Thu 2/5/15	Wed 2/25/15	\$0.00												
3.3	Incorporate Comments	5 days	Thu 2/26/15	Wed 3/4/15	\$2,960.00												
4.0	Bidding	80 days	Thu 3/5/15	Wed 6/24/15	\$7,360.00												
4.1	Bidding Documents	5 days	Thu 3/5/15	Wed 3/11/15	\$820.00												
4.2	Bidding Period	30 days	Thu 3/12/15	Wed 4/22/15	\$4,180.00												
4.3	Bid Letting and Award	45 days	Thu 4/23/15	Wed 6/24/15	\$2,360.00												



City of Gillette
Boxelder Phase III Project - 15EN06

ID	Task Name	Work	Duration	Start	Cost	Finish
0	Boxelder Phase III	546 hrs	208 days	Mon 9/8/14	\$59,950.00	Wed 6/24/15
1	Project Management	50 hrs	22.08 days	Mon 9/8/14	\$7,000.00	Wed 10/8/14
	Jeffrey Rosenlund	40 hrs		Mon 9/8/14	\$5,800.00	Fri 9/12/14
	Matthew Ruder	10 hrs		Mon 9/8/14	\$1,200.00	Wed 10/8/14
2	Design	404 hrs	107 days	Mon 9/8/14	\$41,950.00	Tue 2/3/15
3	Revise Drawings to show previous phases	50 hrs	45 days	Mon 9/8/14	\$5,550.00	Fri 11/7/14
	Matthew Ruder	20 hrs		Mon 9/8/14	\$2,400.00	Wed 9/10/14
	John Duncan	30 hrs		Mon 9/8/14	\$3,150.00	Fri 11/7/14
4	Revise for Highway 50	40 hrs	10 days	Mon 11/10/14	\$5,000.00	Fri 11/21/14
	Jeffrey Rosenlund	20 hrs		Mon 11/10/14	\$2,900.00	Fri 11/21/14
	John Duncan	20 hrs		Mon 11/10/14	\$2,100.00	Fri 11/21/14
5	Stormwater Improvements	98 hrs	10 days	Mon 11/24/14	\$8,690.00	Fri 12/5/14
	Jeffrey Rosenlund	2 hrs		Mon 11/24/14	\$290.00	Mon 11/24/14
	Matthew Ruder	16 hrs		Mon 11/24/14	\$1,920.00	Tue 11/25/14
	Tad Rosenlund	48 hrs		Mon 11/24/14	\$4,080.00	Fri 12/5/14
	Robert Condrat	32 hrs		Mon 11/24/14	\$2,400.00	Thu 11/27/14
6	Mass Haul Diagram	18 hrs	10 days	Mon 12/8/14	\$1,920.00	Fri 12/19/14
	Matthew Ruder	2 hrs		Mon 12/8/14	\$240.00	Mon 12/8/14
	John Duncan	16 hrs		Mon 12/8/14	\$1,680.00	Fri 12/19/14
7	Revise Plan Set for Phase III Work	100 hrs	7.5 days	Mon 12/22/14	\$9,600.00	Wed 12/31/14
	Matthew Ruder	20 hrs		Mon 12/22/14	\$2,400.00	Wed 12/31/14
	John Duncan	40 hrs		Mon 12/22/14	\$4,200.00	Fri 12/26/14
	Robert Condrat	40 hrs		Mon 12/22/14	\$3,000.00	Fri 12/26/14
8	DEQ Permit to Construct	12 hrs	1.5 days	Wed 12/31/14	\$1,740.00	Thu 1/1/15
	Jeffrey Rosenlund	12 hrs		Wed 12/31/14	\$1,740.00	Thu 1/1/15
9	Project Manual	70 hrs	4.5 days	Wed 12/31/14	\$7,810.00	Tue 1/6/15
	Jeffrey Rosenlund	10 hrs		Wed 12/31/14	\$1,450.00	Thu 1/1/15
	Matthew Ruder	36 hrs		Wed 12/31/14	\$4,320.00	Tue 1/6/15
	Tad Rosenlund	24 hrs		Wed 12/31/14	\$2,040.00	Mon 1/5/15
10	Cost Estimate	16 hrs	20 days	Wed 1/7/15	\$1,640.00	Tue 2/3/15
	Matthew Ruder	8 hrs		Wed 1/7/15	\$960.00	Tue 2/3/15
	Tad Rosenlund	8 hrs		Wed 1/7/15	\$680.00	Wed 1/7/15
11	Review Period	32 hrs	21 days	Wed 2/4/15	\$3,640.00	Wed 3/4/15
12	Submit eplans	8 hrs	1 day	Wed 2/4/15	\$680.00	Wed 2/4/15
	Tad Rosenlund	8 hrs		Wed 2/4/15	\$680.00	Wed 2/4/15
13	Review Period	0 hrs	15 days	Thu 2/5/15	\$0.00	Wed 2/25/15
14	Incorporate Comments	24 hrs	5 days	Thu 2/26/15	\$2,960.00	Wed 3/4/15
	Jeffrey Rosenlund	8 hrs		Thu 2/26/15	\$1,160.00	Wed 3/4/15
	Matthew Ruder	8 hrs		Thu 2/26/15	\$960.00	Wed 3/4/15
	John Duncan	8 hrs		Thu 2/26/15	\$840.00	Wed 3/4/15
15	Bidding	60 hrs	80 days	Thu 3/5/15	\$7,360.00	Wed 6/24/15
16	Bidding Documents	6 hrs	5 days	Thu 3/5/15	\$820.00	Wed 3/11/15
	Jeffrey Rosenlund	4 hrs		Thu 3/5/15	\$580.00	Wed 3/11/15
	Matthew Ruder	2 hrs		Thu 3/5/15	\$240.00	Thu 3/5/15
17	Bidding Period	34 hrs	30 days	Thu 3/12/15	\$4,180.00	Wed 4/22/15
	Jeffrey Rosenlund	4 hrs		Thu 3/12/15	\$580.00	Thu 3/12/15
	Matthew Ruder	30 hrs		Thu 3/12/15	\$3,600.00	Wed 4/22/15
18	Bid Letting and Award	20 hrs	45 days	Thu 4/23/15	\$2,360.00	Wed 6/24/15
	Jeffrey Rosenlund	4 hrs		Thu 4/23/15	\$580.00	Thu 4/23/15
	Matthew Ruder	12 hrs		Thu 4/23/15	\$1,440.00	Wed 6/24/15
	Tad Rosenlund	4 hrs		Thu 4/23/15	\$340.00	Thu 4/23/15

