



P.O. Box 194
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Gillette, WY 82716
307-682-5000
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January 21, 2015

Mr. Kurt Siebenaler, PE
CITY OF GILLETTE
Department of Engineering
P.O. Box 3003
Gillette, Wyoming 82717

RE: Owner Engineer Agreement for **Construction Administration Services** for the
PMS C 2014 Project, City Project No. 14EN10

Dear Sirs:

Bruce Engineering Inc. proposes to render professional engineering services for the **PMS C 2014 Project, City Project No. 14EN10, Construction Administration Services** (hereinafter called the "Project"). Our services will consist of **Construction Administration Services** all as set forth in the Owner Engineer Agreement and as amended and supplemented in **Exhibits A, B, C, and D**. We will also furnish such Additional Services as you may request.

Payment for our services will be in accordance with the following:

An amount equal to our work hours times our standard hourly rate plus subcontractors shall not exceed \$ 95,829.00 without an approved contract amendment.

We will bill you monthly for services and reimbursable expenses. We would expect to start our services promptly after receipt of your acceptance of this proposal. The time periods for the performance of our services are set forth in Exhibit B of the Owner Engineer Agreement. We appreciate the opportunity to work with the City of Gillette.

Respectively Submitted,

Gerald Williams, P.E.
Manager - Bruce Engineering Inc.

Attached: Owner Engineer Agreement

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

THIS IS AN AGREEMENT effective as of March 3, 2015 ("Effective Date") between

City Of Gillette "Owner")

and

Bruce Engineering Inc. ("Engineer").

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

PMS C 2014, Project No. 14EN10 ("Project").

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

Construction Administration

Attached "Exhibit A – Scope of Services", "Exhibit B – Project Schedule", "Exhibit C – Further Description of Basic Engineering Services", "Exhibit D.1 – Professional Services Fee Schedule" and "Exhibit D.2 - Construction Administration Costs" are made a part of this contract.

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: See attached Exhibit B - Project Schedule
- 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 complete construction not exceeding **100 Work Days**. If the actual time to complete construction exceeds the number of 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 law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and

Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

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

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

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
2. Engineer's Standard Hourly Rates are attached as Exhibit D.1.
3. The total compensation for services and reimbursable expenses is estimated to be **\$95,829.00.**

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 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 Exhibit D.1.

Attachments:

Exhibit A – Scope of Services

Exhibit B – Project Schedule

Exhibit C – Further Description of Basic Engineering Services

Exhibit D.1 – Professional Services Fee Schedule

Exhibit D.2 - Estimated Construction Administration Costs

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

OWNER:

By: _____

Title: Mayor

Date Signed: _____

Address for giving notices:

PO Box 3003

Gillette

WY 82717

ENGINEER:

By: Gerald Williams

Title: Manager

Date Signed: 2-3-15

Engineer License or Firm's Certificate

Number: 8421

State of: WYOMING

Address for giving notices:

PO Box 2284

Gillette

WY 82717

Attest: _____

EXHIBIT A

PMS C 2014 (RC Ranch)

SCOPE OF SERVICES

Construction Administration Services

1. PROJECT: The work will involve the following:

Project is located in the RC Ranch Subdivision. Work will be done on J Cross Ave., Rocking T Dr., Spur Ct., Tate Ave., and Lexington Ave.

Project to include removal and replacement of 1,700 SY AC pavement, 4,600 SF sidewalk and driveway, 1020 LF C&G. Prepare 1,800 CY of excavation below subgrade, install 3,750 LF 4" subdrain, 1,600 LF 18" CPE and 410 LF 15" CPE storm drain pipe, 5 manholes and 19 storm drain inlets.

2. SCOPE OF WORK: Provide professional engineering services to the City of Gillette. The services will include:

Construction Administration – Bruce Engineering will provide full time construction administration for the project. The services will include observation, submitting daily and weekly reports, construction staking, contractor pay requests, change orders, project close out and general administration of the work. Record drawings will be provided at the completion of the project.

EXHIBIT B**PMS C 2014 (RC Ranch)****PROJECT SCHEDULE**

SCHEDULE: The following 2015 schedule is proposed:

Activity	Start	End
Advertise	Jan. 30	Feb. 13
Bid Opening, City Council Award	Feb 18	March 3
Engr. Contract Approved by City	Feb. 17	
Contractor Start	April 1 to June 1	
Contractor End (100 Work Days)		July 10 to Oct. 22

EXHIBIT C PMS C 2014 (RC Ranch)

FURTHER DESCRIPTION OF BASIC ENGINEERING SERVICES

Construction Management Phase

- 1 - Arrange and attend a pre-construction meeting with the contractor and City Engineering staff.
- 2 - Provide needed staking and stationing.
- 3 - Provide full time Resident Project Representatives (RPR's) for the project. The RPR's duties shall include representing the engineer onsite, review of schedules and shop drawings, keep records, prepare required reports, verify quantities for pay requests, attend meetings and be engineer's liaison with the contractor. The RPR shall not exceed the Engineer's authority as set forth in the Owner Engineer Agreement.
- 4 - Review all submittals for compliance to City and project specifications.
- 5 - Monitor quality assurance / materials testing.
- 6 - Submit record drawings of the project no later than 60 days after City acceptance

EXHIBIT D.1

2015

BRUCE ENGINEERING, INC. Professional Services Fee Schedule

Date: January 21, 2015

Client: City of Gillette.

Project: PMS C 2014 (RC Ranch)

LABOR

Principal Engineer (PE)	\$110.00 per hour
Senior Engineer (PE)	\$104.00 per hour
Staff Engineer	\$88.00 per hour
Engineering Design Technician	\$72.00 per hour
Professional Land Surveyor	\$100.00 per hour
Surveyor II	\$72.00 per hour
Surveyor I	\$48.00 per hour
Clerical	\$51.00 per hour

EQUIPMENT

GPS Surveying Unit	\$15.00 per hour
Vehicles	\$15.00 per hour
4x4 All Terrain Vehicle	\$60 per day

DIRECT COSTS

Stakes & Supplies	Cost plus 15%
Photocopies/ Printing (8.5" x 11" or 14")	\$0.25 per copy
Photocopies/ Printing (11" x 17")	\$0.50 per copy
Large Format Black Line Printing	\$6 per sheet (24x36)
Mylars (24 x 36)	\$24 per sheet
Facsimile	\$1.00 per sheet
Per diem (location costs vary)	\$100 –\$150 per person per day
Subconsultants:	Cost Plus Hourly Management Fee or Cost Plus 10%

Labor & Equipment rates are portal to portal.

**Mailing Address - P.O. Box 2284, Gillette, WY 82717, Physical Address - 1300 East Hwy 14-16
Phone: 307-686-2252 or 307-682-5000, Fax: 307-687-7163, Email - bei@vcn.com**

Exhibit D.2**Bruce Engineering Inc.****Estimated Construction Administration Costs****City Of Gillette: PMS C 2014 - City Project No. 14EN10**

Task		Project Engineer (PE)	Staff Engineer	Engr. Tech RPR	Prof. L.S.	Surveyor 2	Clerical	Cost
Construction Management								
Administration		20	30				5	\$ 4,975.00
Observation/Submittals		10	50	800				\$ 64,640.00
Construction Staking			10		25	70		\$ 8,560.00
Miscellaneous		2	4					\$ 560.00
Record Drawings		3	5	8				\$ 1,344.00
Total Hours		35	99	808	25	70	5	1042
Hourly Rate		\$ 104.00	\$ 88.00	\$ 74.00	\$ 100.00	\$ 74.00	\$ 51.00	

Costs = \$ 80,079.00

Reimbursable Expenses	
Misc. Expenses	\$150
Copies	\$100
Materials Testing	\$12,000
Survey Stakes, etc.	\$100
Vehicals	\$3,000
GPS Equipment	\$300
Record Drawings	\$100

(compaction testing, check points, concrete & AC testing)

(200 hrs. @ \$15/hr.)

(20 hrs. @ \$15/hr.)

Total Reimbursable Cost = \$15,750**Total Estimated Cost = \$ 95,829.00**