

DOUGLAS CITY COUNCIL MEETING

Douglas City Hall, Council Chambers
101 N. 4th Street, Douglas, WY

Friday, August 2, 2024
Special Meeting 4:00 P.M.

Thank you for your cooperation in facilitating the public meeting process!

1. Call To Order, Roll Call And Pledge Of Allegiance

Kim Pexton, Mayor

Ron McNare, Councilperson/Council President

Perry Hershberger, Councilperson

Matt Schmidt, Councilperson

John Bartling, Councilperson

2. Disclosures By City Council Members

3. Approval Of General Agenda (Corrections Or Additions)

4. Public Comment

This section of the Agenda is reserved for comments from the General Public to the City Council on matters relating to Douglas Municipal Government.

Comments must be five (5) minutes or less. As a general practice, the Council does not discuss, debate, or take action on issues raised or comments made under public comment. Council may refer items to staff for follow-up. In order to be heard, please speak clearly and loudly. Please state your name and address for the record.

5. Council Action Items

5.I. Resolution 2024-28: A Resolution Pertaining To The Parking Of Vehicles On Brownfield Road

Documents:

[RESOLUTON 2024-28 BROWNFIELD ROAD PARKING.PDF](#)
[NARRATIVE - RESOLUTION 2024-28 20240722.PDF](#)

5.II. Owner's Representative/Program Services Proposal From NV5 For The Douglas Community Center

Documents:

[20240724 NV5 - DOUGLAS_OR PROPOSAL -DRAFT.PDF](#)
[NV5 CONTRACT DOCUMENTS DRAFT.PDF](#)
[NARRATIVE OWNERS REP AGREEMENT DCC 20240724.PDF](#)

6. Adjourn

RESOLUTION NO. 2024-28

A RESOLUTION PERTAINING TO THE PARKING OF VEHICLES ON BROWNFIELD ROAD

WHEREAS, the City of Douglas (City) Council finds and determines that vehicular and pedestrian safety is diminished due to proper line of sight on Brownfield Road; and

WHEREAS, the specific area of concern is the entrance/exit of the Fairgrounds on Brownfield Road; and

WHEREAS, it is determined that prohibiting parking on the west side of Brownfield Road from 75' south of the State Fair Entrance to 75' north of the State Fair entrance would increase vehicular and pedestrian safety; and

WHEREAS, Council has authority to erect traffic control devices including the placement of "No Parking" signs under ordinance 10.64.020; and

WHEREAS, Council grants the authority for police department staff to take enforcement action on violations of this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DOUGLAS, parking on the west side of Brownfield from 75' south of the State Fair entrance to 75' north of the State Fair entrance is hereby disallowed.

PASSED, APPROVED, AND ADOPTED this 2nd day of August, 2024.

Kim Pexton, Mayor

Attest:

Mary Nicol, City Clerk



Item

Resolution 2024-28

Responsible Staff Contact

Todd Byerly
John Harbarger

Recommendations

Disallow parking on the west side of Brownfield from a point 75' south of the State Fair entry and 75' north of the State Fair entry. Signs would indicate "No Parking Between Signs".

Executive Summary

On July 26, 2024, Council approved the 3rd and Final Reading of Ordinance 1043, which included the following provision:

By resolution, the City Council may prohibit parking upon any individual street or alley in the city, including those streets or alleys that allow commercial truck parking as listed in subparagraph (a) of this section.

At the same meeting, Council asked that Staff review the safety with truck parking on Brownfield and recommend action. Subsequently, the Police Chief and Public Works Director inspected and determined that the area 75' south of the State Fair entry to 75' north of the State Fair entry should not be allowed so as to preserve visibility and a clear line of sight.

Background

Published December 28, 2022, Ordinance 1018 disallowed the parking of commercial trucks on the east side of Brownfield Road, but allowed commercial trucks to be parked on the west side of Brownfield Road between the entrance to the Wyoming State Fair Grounds and the South property line of the Wyoming State Fair Grounds.

Since the adoption of Ordinance 1018, Brownfield Road has had an increase of issues related to parking commercial trucks creating an unsafe and unsightly thoroughfare. Recently, the Douglas Police Department and the Wyoming State Fairgrounds have witnessed damage to fences, an increase in trash being dumped along the side of the road, deep ruts in the drainage area along the west side of the road. Additionally, the parking of commercial trucks has created a visual obstruction and an unsafe environment on Brownfield Road.

During the July 8, 2024, council meeting, a discussion took place in reference to prohibiting vehicle parking within a defined area of the entrance to the Wyoming State Fair on Brownfield. This discussion took place due to both vehicular and pedestrian traffic safety is at risk due to visual impairment. This impairment is due to a hinderance of a clear line of sight of oncoming traffic and limits one's ability to safely execute a turn onto Brownfield from the fairground's entrance/exit. Upon study of the area impacted, it was determined that prohibiting parking on the west side of Brownfield from a point 75' south of the State Fair entryway to a point 75' north of the State Fair entryway would greatly enhance traffic and pedestrian safety.



Alignment to Strategic Doing (SD) and/or Other Plans

SD25 Outcome

Well-Connected City (WCC)

SD25 Strategy

Strategy 1: Increase Streets & Alleys Productivity and Safety.

SD25 KPI

n/a

2014 Master Plan

n/a

2015 Downtown Master Plan

n/a

Budget/Fiscal Impact

Fund/Department

Project/Line Item(s)

Budgeted Amount

Anticipated Amount

Action Requested/Recommended Motion

Approve Resolution 2024-08 as presented.

Reviewed/Approved

Community Development

Law Enforcement

City Manager

Public Works

Legal

Finance

HR

City Clerk

July 24 2024

J. D. Cox – City Manager
City of Douglas
 P.O. Box 1030, 101 N 4th St.
 Douglas, WY 82633

Subject: City of Douglas, WY – New Community Center
 Owner’s Representative/Program Manager Services Proposal

Dear J.D.,

It was a pleasure meeting both your Ron yesterday and I enjoyed learning about your new community center project and some the challenges you are working to overcome. Through the discussion I learned that evaluating the feasibility of a geo-exchange heating & cooling systems was a top priority, it seems there may be some benefit to engaging my firm to support the City through the full continuum of the project. I’m excited to share this proposal in response to your request for Owner’s Representative services.

During our call, I learned you desire to development a new community center with a construction budget of +/- \$20M. But as of now, the architect has advised the budget is likely to increase beyond your conform level. Among the many priorities, I would suggest a principal task will be gaining alignment with the budget and program goals for the project. Additionally, you shared the major project milestone dates and duration, as developed by the project architect. To ensure our services will align with that plan, at least initially, I’ve organized our schedule and timeline assumptions to mirror those of the architect. If/when adjustments are needed, we will have open dialogue and transparent discussion to review resolve the impacts. The remaining overall timeline is approximately 26-months and my understanding of the schedule follows:

1. **Concept Development** (ongoing and evolving)
2. **Design** – SD due July 30th
3. **Bidding** – 30-45 days to implement a traditional bid process
4. **Construction** – Starting June 2025 & 12-14 months in duration
5. **Project Closeout** – typically 60 days in duration
6. **Warranty** – anticipate a 2-year period commencing @ Substantial Completion of the Work

This proposal between NV5, Inc. (“NV5”), an independent consultant, and City of Douglas (“Client”) contemplates services whereby NV5 would act as the Owner’s Representative/Program Manager for new Community Center project. The following is an explanation of the Scope of Services, associated fees, and my proposed project team.

Our project Team including me, John Sattler (Sr. VP & Principal in Charge), a Geoff Graham (Project Manager) and additional office support to include Project Director Chris Spyke and TBD Project Coordinator. Our Project Management resources are significant and include a wide range of expertise and focus.

Scope of Services:

As Program Manager, we will work to execute the principal aspects of this engagement as listed below. Our efforts would begin during the Concept Design and run through the completion of Construction and Closeout of all prime contracts. We will also lead the 11-month and 23-month inspections in support of a 2-year project Warranty. The following is not intended to be an exhaustive list of tasks, but a more overarching summary of objectives and outcomes required to deliver the project in alignment with the Scope, Schedule, Budget and Quality expectations of the City.

Phase 1. Planning / Concept Development / Design Phase:

- **Estimated to be 8 months in duration: August 2024 – March 2025**
 1. Assist Client to identify the overall project implementation strategy including Critical Success Factors and Goals of the Project. Typically, Budget, Space Needs, Quality Standards, and compatibility with Client's operations and maintenance strategies and staffing.
 2. Development and management of the Master Budget and Master Project Schedule.
 3. Review 3rd Party Opinions of Probable Cost (OPC) and provide feedback to design team.
 4. Working with Client Legal Counsel, develop & negotiate remaining Prime Contracts to be used by the Client for the necessary Professional Services and Construction Services.
 5. Implement Procurement of remaining Prime Consulting & Professional Services including Survey, Geotech and Materials Testing & Observation, and Commissioning as applicable.
 6. Provide Contract Administration and oversight for all Prime Contracts with the Client for the Project including those Professional and Construction Services.
 7. Oversee the development of Concept Designs and assist client in evaluation of options. Special care taken to determine alignment with Critical Success Factors and Goals of the Project.
 8. Review consultant billings and resolve issues with vendor(s) prior to providing recommendation for payment to Client.
 9. Assist in the evaluation of heating and cooling systems including but not limited to the following:
 - a. Traditional gas-fired Boiler (heating) w/ DX or Air-Cooled Chiller (cooling);
 - b. Geothermal & Heat Pump system w/ either distributed heat pumps or a central plant.
 10. Provide oversight and guidance to Project Team through the entitlement process.
 11. Coordinate project utility needs and timing with local providers including power, gas, water & sewer, telecom, internet, and others as may be necessary and identified by Client. Secure quotations and facilitate payment processing.
 12. Provide oversight of the design process including participation in scheduled design review and coordination meetings. Make recommendations and provide insight and suggestions relative to compliance with Scope, Schedule, Budget, Program, and quality expectations.
 13. Provide recommendations for establishing Bid Alternates to allow for better financial management and balance of Scope and Budget.
 14. **Optional Additional Services:**
 - a. *Provide "Peer" review of the mechanical, electrical and plumbing systems design and offer feedback/observation to the Client and if approved, work with the design team to seek resolution of identified issues.*
 - b. *Cost Estimating at key milestones.*
 - c. *Provide IECC Mechanical & Electrical Commissioning Services ("Cx").*

Phase 2. Construction Bidding/Permitting and Management Phase:

- **Estimated to be 16 months in duration: April 2025 – August 2026**

Up to 8 weeks for Bidding/Permitting & up to 60 weeks for Construction. Weekly OAC Meetings participation provided through a combination of on-site meetings and virtual meetings.

 1. Provide oversight throughout submission of the "Building Permit" and ensure timely resolution of clarifications and deficiencies identified by AHJ(s).
 2. Develop General Contractor solicitation documents and manage the contractor "bidding" and contract approval process. Anticipate using a traditional design-bid-build delivery method.
 - a. Develop market interest through direct outreach to qualified general contractors and key subcontractors.
 - b. Design-Bid-Build delivery method warrants use of a 3rd party Cost Consultant during design to ensure the Scope is in alignment with the Budget.
 3. Provide contractor oversight and Contract Administration throughout the construction phase of the project including attendance at Owner, Architect, Contractor (OAC) meetings.

- a. Review of all contract paperwork including but not limited to: Applications for Payment, Change Order Proposals, RFI's, Submittals and Schedule.
 - b. Establish requirements for Contractor Schedule of Values to ensure appropriate transparency and tracking of completed work v. monthly billing.
 - c. Provide support in evaluating the monthly billings (application for payment and supporting documentation) and manager corrections as may be required to protect Client's interests. Make recommendation for payment once all issues are resolved.
 - d. Evaluate the status of Work in place, stored materials, and other progress, through on-site observations, to validate the representations of the monthly billing.
4. Lead the financial management and reporting process including justification of all costs/expenditures and track same against the detailed Project Budget.
 5. Provide monthly review of the Contractor's approved CPM schedule and evaluate proposed adjustments prior to acceptance.
 6. Provide Monthly written reports on the progress of the Project for Staff and attend Board Meetings as requested to report on same. Reports will include status on current, planned and overdue activities. Issues that have a potential to affect the Budget or Schedule will be identified and carried through in report until resolved.
 7. Coordinate installation and provisioning of local utility providers identified and provide liaison between providers, project team and the approved construction schedule.
 8. Participate in Substantial Completion inspection(s) to ensure proper documentation by Architect establishing completion date expectations and proper commencement of the project warranty.
 - a. Provide support to project team through completion of the Punch List.
 9. Plan and implement the transition process moving from the existing facilities into the new facility.
 10. **Optional Additional Services:**
 - a. *Cost Estimating – Evaluation of the GMP proposal and reconciliation of contractors "Bid" with milestone estimates and then current market rates.*

Phase 3. Construction Close Out Phase:

- **Up to 8 weeks in duration: assume 1 month overlap with Construction**
1. Provide oversight to the project "Close-Out Process" including completion of all Architect & Contractor responsibilities including Punch List, Client Training, Completion of O&M Manuals and Record Drawings.
 2. Provide oversight and leadership to the inspection process and AHJ acceptance process. Monitor inspection schedule(s), reinsertions and support negotiations and resolutions.
 3. Cause publication of the Notice of Final Settlement to occur and authorize the release of all final payments in accordance with the Contract Documents, Agreements, and applicable State Statutes.
 4. Provide Contract and financial Closeout of the construction agreement and major consultant agreements.
 - a. Provide Closeout checklists and manage completion of same.
 - b. Provide recommendations for FINAL PAYMENT when ALL contract requirements have been satisfied.
 5. Working with CFO, reconcile Project Financials with internal accounting.

Phase 4. Warranty Phase:

- **Estimated to be 2 year(s) in duration – Commencing at Substantial Completion of the Work**
1. Ensure the Contractor has provided Client with a proper warranty repair process including reporting forms, logs, and compliance with timeline expectations of the contract.
 2. Participate in the 11 and 23-month inspection prior to the expiration of the warranty.

3. Ensure each deficiency on the 11 and 23-month inspection is resolved appropriately and in a timely manner.
4. **Optional Additional Services:**
 - a. Provide support to Client to identify and validate appropriate warranty claims and resolution of same. This is in addition to the 11 & 23-month warranty walks and will be billed on Time & Materials plus Expenses basis.

Schedule of Fees:

The Scope of Services outlined above will be provided by our firm on a Fixed Fee plus Expense Basis. Our fee for the proposed Scope of Services as Client’s Representative is **Two Hundred Sixty-Nine Thousand Eight Hundred Sixteen and 00/100 Dollars (\$269,816.00)**. Fees for these Services will be billed monthly, consistent with the progress of the Services. If it is apparent the durations or the budget will extend beyond that established, through no fault of our firm (NV5), Client and NV5 shall negotiate an equitable adjustment.

Phase/Responsibility	Fee Structure	Fees & Expenses
Phase 1 – Planning/Pre-Design/Design	Fixed Fee	\$69,440.00
Phase 2 – Construction Management	Fixed Fee	\$161,584.00
Phase 3 – Close Out	Fixed Fee	\$24,000.00
Phase 4 - Warranty	Mixed Fee	\$3,000.00
Reimbursable Expenses	Allowance	\$11,792.00
Total Professional Services Fee & Expenses		\$269,816.00

Reimbursable Expenses:

The following expenses will be billed against the Reimbursable Expense Allowance of \$11,792.00 listed in the table above. *(No other expenses are anticipated at this time)*

- Consumable materials & office equipment used to facilitate completion of Services.
- Travel to and from the Project location(s) including but not limited to mileage, airfare, car rental, per diem and lodging.
- Additional expenses when approved by Client in advance.

Conditions & Clarifications:

- A. The below Proposal Acceptance should be completed to serve as our written authorization to proceed.
- B. NV5 will utilize telephone and videoconference capabilities where feasible and appropriate, at our discretion, to create cost efficiency and reduce travel time/costs.
- C. NV5 strongly urges the use of a 3rd party cost consultant to provide independent detailed cost estimates at each design milestone to ensure alignment with the Project Budget and reduce risk at time of bid.
- D. Client to resolve warranty claims that are submitted to General Contractor. NV5 will be available to support the ongoing warranty administration as an Optional Additional Service.
- E. Any and all Services not expressly included in the Scope of Services listed above shall be excluded and only provided by prior written approval of Client.

If you have any questions, or if any aspect of this proposal is unsatisfactory, please contact me at once so that we may make corrections or adjustments. If you agree with the above, please indicate acceptance by returning a signed copy at your earliest convenience.

July 24 2024

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Sincerely,
NV5, Inc.



John Sattler – LEED AP
Sr. Vice President
303.818.7802

Incl: NV5 Standard Terms & Conditions

PROPOSAL ACCEPTED BY: CITY OF DOUGLAS, WY

AUTHORIZED SIGNATURE: _____

NAME & TITLE: _____

DATE ACCEPTED: _____

This Proposal Acceptance, the Scope of Services outlined in the Proposal, and Schedule of Fees, shall become an exhibit to the Agreement between Client and NV5, and supersede all prior written or oral understandings.



GENERAL TERMS AND CONDITIONS

1. Appointment. **City of Douglas, Wyoming.** (hereinafter "Owner") hereby appoints Consultant and Consultant hereby accepts the appointment, as an independent contractor and not as an agent, to perform services herein contemplated, in accordance with and subject to, the express terms, covenants, conditions and provisions of this Agreement.

2. Standard of Care. Consultant shall perform in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the Project.

(a) It is understood and agreed that the Consultant shall not be held responsible for any inaccuracies in any materials, data or records as provided to the NV5 by the Owner or a third-party on the Project, which have been prepared by any other person, firm or agency. Owner agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

(b) Consultant makes no warranty, either express or implied, as to its services.

3. Scope of Authority. Consultant shall act in an advisory capacity to Owner and will not have the authority to bind Owner to any contractual obligations or otherwise incur liabilities on behalf of Owner or the existing parties. As such:

(a) Consultant shall have no liability or responsibility to neither Owner nor any third party (i) by reason of the failure on the part of any design party, inspection party, contractor party, or any other party to furnish required labor, materials, supplies or services in accordance with their respective contracts, obligations or undertakings, or (ii) for any defect or omission in plans and specification for the project, or (iii) for any negligent act or omission, breach of contract, malfeasance or malpractice of any existing party or contractor on the project. No action, statements, or communications of Consultant, or Consultant's site representative, can be construed as modifying any agreement between Owner and others. Consultant's presence on the project in no way guarantees the completion or quality of the performance of the work of any party retained by Owner to provide services. The activities of Consultant, shall not be construed to impose upon Consultant any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the job site. Owner acknowledges that its general contractor is solely responsible for job site safety.

(b) Consultant shall in no event be obligated or liable for the duties or responsibilities of the general contractor or design-build contractor, including but not limited to means, methods, sequencing, and safety.

(c) All contracts for labor, materials or services to be furnished in connection with the project shall be made in the name of the Owner (and, subject to compliance with the provisions hereof, shall be executed by Owner), and Owner shall be responsible for all payments required to be made hereunder.

4. Representatives. Consultant shall be entitled to rely upon any consents or approvals given by Owner or Owner's representative.

A handwritten signature in blue ink, appearing to be 'J.A.S.', located in the bottom right corner of the page.

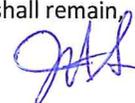
5. Billing and Payment. Owner shall pay Consultant in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Owner is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Owner invoices for the balance due, which shall be due and payable immediately upon submission. If Owner objects to all or any portion of any invoice, Owner will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due. In such event, Owner shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Consultant reserves the right to withhold all reports or deliverables and suspend any and all services, including but not limited to expert witness services such as testifying at deposition or trial, unless and until payment is made by Owner in accordance with this Agreement. Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued.

6. Disputes. The Owner shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Owner has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed where the project is located. This certification shall: (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy and venue for the same shall be where the project is located. Upon written request by either party to this Agreement for mediation of any dispute, Owner and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Owner and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. ~~Any cause of action brought against Consultant shall be brought within one year of the work or services performed under this Agreement.~~

7. Documents. Processes used and documents prepared or provided by Consultant while working for the Owner are solely provided as instruments of service to the Owner for use on the project. ~~They are and shall remain the property of Consultant, who reserves all rights thereto.~~

8. Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant. ~~, for Services provided under this Agreement or \$50,000 whichever is less.~~

9. Intellectual Property and Work Product. (i) All processes, procedures, work product, materials, methodologies or services used or provided by CONSULTANT in connection with this Project was, shall remain,



or will always be, the intellectual property of CONSULTANT. Nothing in this Agreement shall operate as a waiver of ownership or a sale of ownership of any CONSULTANT intellectual property. (ii) Owner represents and warrants that Owner owns and/or has the right to use the intellectual property that is contained in any instrument, report, media, drawing, design, submittal, or document that Owner provides to CONSULTANT in connection with the Project, and that said Owner-provided document does not and shall not infringe, misappropriate, or violate the intellectual property rights of any third-parties (iii) ~~All documents including reports, electronic media, and drawings, prepared or furnished by CONSULTANT and its subconsultants pursuant to this Agreement are instruments of service in respect of this Project and CONSULTANT will retain an ownership and property interest therein whether or not the Project is completed.~~ The Owner may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by the Owner, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than the Owner. Accordingly, the Owner will, to its fullest extent permitted by law, defend, indemnify and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from any unauthorized reuse of the documents or disbursement by Owner to third parties. If it is necessary to distribute any documents to an unrelated third party, both the third party and Owner agree: (a) the third party is bound by all of the conditions and limitations of this Agreement and related documents; and (b) the third party is bound by all limitations of liability or indemnity provisions.

10. Default; Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, Consultant will be paid for services performed through the date of termination, reimbursable expenses incurred plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

11. Notices. Except as otherwise herein expressly provided, every notice, demand, consent, request, approval or other documents or instruments required or permitted to be served upon any of the parties hereto shall be in writing and shall be deemed to have been given when delivered by messenger, by electronic facsimile transmission or by the U.S. mails (and if mailed, shall be deemed received two (2) business days after the postmarked date thereof), with the cost thereof borne by the delivering party, and addressed to the parties as follows:

To Owner: City of Douglas, WY.
J.D. Cox – City Manager
P.O. Box 1030, 101 N 4th St.
Douglas, WY 82633

To Consultant: NV5, Inc.
John Sattler, Sr. Vice President
3459 Ringsby Court, Suite 205
Denver, CO 80216

Either party may change its address for notices by delivering notice to that effect in the manner above provided.

12. Relationship between the Parties; No Restrictions. This Agreement is not intended to result in any agency, partnership, employment or joint venture between the parties hereto or limit or restrict Consultant from performing services for any other building or projects at any time and wherever located and whether the same as or similar to the services to be performed by Consultant.



13. Successors and Assigns. Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement.

14. No Third Party Beneficiaries. The rights and obligations of the parties hereto are intended for the sole benefit for the parties hereto, and except as otherwise expressly herein provided, are not intended for the benefit of, and may not be enforced by, any third party.

15. Non-Solicitation. Owner agrees that during the term of this Agreement and for a period of one (1) year following the last day Consultant performs any service for the Owner, that neither Owner nor any of its officers, employees, agents or any firm owned or controlled by Owner will directly or indirectly, without Consultant's written consent, solicit or hire any person who is a current employee of Consultant or who has been Consultant's employee within one (1) year of the last day of Consultant's time of the project. Owner shall also be proscribed from encouraging any employee to resign or otherwise leave Consultant's employ. Owner acknowledges that the damages that will result to Consultant upon a breach of Owner's obligations under the clause will be difficult to quantify, and will be substantial, with damages including but not limited to lost profits, cost of replacement, cost of training and the like. Accordingly, if Owner violates the terms of this Agreement, Owner shall pay Consultant damages in the amount of two times (2x) the annual compensation of said employee.

16. Entire Agreement; Modifications. This Agreement and associated Proposal, constitutes the entire agreement between the parties hereto regarding the subject matter hereof, and supersedes all prior agreements, whether written or oral, with regard thereto. No representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No change, modification or amendment shall be made to this Agreement unless set forth in writing and signed by the parties hereto.

17. Severability. The provisions of this Agreement are severable, and should any provision be found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provisions hereunder.

18. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State where the project is located. In the event of a lawsuit, the proper venue shall be in the county where the project is located.

19. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provisions thereof.

PROPOSAL ACCEPTED BY: **CITY OF DOUGLAS, WY**

AUTHORIZED SIGNATURE: _____

NAME & TITLE: _____

DATE ACCEPTED: _____



CITY OF DOUGLAS, WYOMING STANDARD ADDENDUM

SOVEREIGN IMMUNITY/ GOVERNMENTAL CLAIMS

The City does not waive its sovereign immunity or its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. Any actions or claims against the City under this Agreement must be in accordance with and are controlled by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq. (1977) as amended.

INTERPRETATION

The Parties hereto agree that (i) the laws of Wyoming shall govern this Agreement; (ii) any questions arising hereunder shall be construed according to such laws; and (iii) this Agreement has been negotiated and executed in the State of Wyoming and is enforceable only in the courts of Wyoming and the Eighth Judicial District.

INCORPORATION OF ADDENDUM INTO ORIGINAL CONTRACTUAL ARRANGEMENT

The signing of this Standard Addendum shall incorporate the Addendum into the original contractual arrangement between the parties. It is further intended that in the event of any inconsistency between the Agreement and its other attachments and the Standard Addendum, that the terms of the Standard Addendum be construed as final and binding.

INDEMNIFICATION

Contractor agrees to defend, indemnify and hold harmless the City and its public employees from any and all claims arising from the services performed by Contractor under this Agreement or related to this Agreement.

AVAILABILITY OF FUNDS

Payment by the City is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services, the Agreement may be terminated by the City at the end of the period for which the funds are available. The City shall notify the other party at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the City to terminate this Agreement to acquire similar services from another party.

INSURANCE

Contractor shall carry liability insurance including property damage and bodily injury with minimum limits of not less than \$1,000,000 occurrence and \$2,000,000 aggregate. If Contractor will use automobiles in performance of the Agreement, Contractor must carry automobile liability insurance covering all owned, non-owned and hired autos with minimum limits of \$500,000 combined single limit. Contractor must carry any workers' compensation coverage and employer's stop gap liability coverage required by law. Insurance shall be placed with insurers licensed to do business in Wyoming. Policies other than workers' compensation and employer's liability must name the City, its trustees, officers, and employees as additional insureds. Certificates must be on file with City Risk Management prior to any work and must be kept current throughout the term of the Agreement.

City of Douglas, Wyoming

Signature Date

Name/Title

Contractor

 7/29/2024

Signature Date

John H. Sattler, Sr. Vice President NV5, Inc.
Name/Title

Item

Owner’s Representative/Program Services Proposal from NV5 for the Douglas Community Center

Responsible Staff Contact

J. D. Cox, City Manager

Recommendation

Approve Owner’s Representative/Program Services Proposal from NV5 for the Douglas Community Center

Executive Summary

On May 13, 2024, the City Council formally approved Amundsen Associates, LLC, to design the new Douglas Community Center for \$834,600. In addition, Amundsen has partnered with RB+B Architects. Other parties that Amundsen has brought on board include West Plains Engineering, Lower & Co., Tallgrass Landscape Architecture, DL Adams Associates, JB Engineers (GeoTechnical), and K-Mack Consulting.

From the City’s perspective, the following have served on the City’s design committee: Councilmember Ron McNare, Councilmember John Bartling, City Manager J. D. Cox, Community Development Director Clara Chaffin, Public Works Director John Harbarger, and Parks Supervisor Brandon Frye.

Shortly after beginning weekly design committee meetings with the architects, the City’s Design Committee wished to fully consider and evaluate the possibility of the utilization of geothermal technology. Fully realizing that the technology would cost more initially, the City Manager made contacts with two other government agencies and learned that indicated that the geothermal payback of the additional cost was between 10-12 years. The same research also yielded how crucial it would be to properly evaluate, design and construct the geothermal technology.

Through various interactions with the architects and engineers on the project, the City’s Design Committee has become concerned that the geothermal expertise available on the current design team lacked experience and expertise in this area. Further exacerbating the concerns are recent submittals from the architects that changed the estimated cost from \$18-\$20M to \$28M and also submissions that Geo Thermal study (not the actual install) would cost \$64,250 and that additional design fees would be \$87,000-120,000.

Finally, the City’s Design Committee has been interested in having a competent Owner’s Representative for the construction project as well. It follows and will flow nicely that the same firm will represent us throughout the Project.

NV5 came highly recommended by Montana State University as an excellent Owner’s Rep that saved the University far more than it had spent on the design and construction. Following



subsequent conversations/interviews with NV5, the City Design Committee invited NV5 to submit a proposal.

The proposal for \$269,816.00 submitted by NV5 includes the following phases and timelines:

1. Concept Development (ongoing and evolving)
2. Design – SD due July 30th
3. Bidding – 30-45 days to implement a traditional bid process
4. Construction – Starting June 2025 & 12-14 months in duration
5. Project Closeout – typically 60 days in duration
6. Warranty – anticipate a 2-year period commencing @ Substantial Completion of the Work

Alignment to Strategic Doing (SD) and/or Other Plans

<u>SD24 Outcome</u>	Fun, Uplifting, Neat & Tidy Community
<u>SD24 Strategy</u>	
<u>SD24 KPI</u>	FUN-09B; FUN-10B
<u>2014 Master Plan</u>	Parks, Recreation, and Trails. Goal A1. Maintain a City-wide system of parks and recreation system that serves residents of all ages, abilities, income, and location within the community. Goal A5. Encourage diverse, affordable, and year- round recreation opportunities for all age groups.
<u>2015 Downtown Master Plan</u>	n/a

Budget/Fiscal Impact

<u>Fund/Department</u>	57-5571-2153
<u>Project/Line Item(s)</u>	1000
<u>Budgeted Amount</u>	\$ 601,575.00 *
<u>Anticipated Amount</u>	\$ 269,816.00

**Budget/Financial Note: A total of \$10M was budgeted between this line for architect/engineering (#2153) as well as construction (#6542), which has a budget of \$9,398,425. The selection of the architects noted above for \$834,600 and then the Owner’s Rep for \$269,816 will bring this item to a total of \$1,104,416. This amount is over the \$601,575 originally budgeted for line #2153, but is well under the \$10,000,000 budgeted for the Community Facility.*

Action Requested/Recommended Motion

Approve the Owner’s Representative/Program Services Proposal with NV5 in the amount not to exceed \$269,816 and authorize the City Manager to sign all associated documents.

Reviewed/Approved

- | | |
|--|--|
| <input type="checkbox"/> Community Development | <input checked="" type="checkbox"/> Public Works |
| <input type="checkbox"/> Law Enforcement | <input checked="" type="checkbox"/> Legal |
| <input checked="" type="checkbox"/> City Manager | <input checked="" type="checkbox"/> Finance/City Clerk |