# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**AgendaTitle:**
Deputy County Manager's Reports; Standard Agreement for Professional Services; DOWL; Construction Materials Testing for Gunnison Whitewater Park

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** DOWL and Gunnison County

**Term Begins:** **Term Ends:** **Grant Contract #:** Project # 7141.74129.01

**Summary:**
DOWL (formerly Buckhorn Geotech) is providing testing services for the Whitewater Park project.

**Fiscal Impact:** Time & Materials Based Fee structure

**Submitted by:** Marlene Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:

This agreement is a part of the GOCO project and included in the budget.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/11/2015

**County Attorney Review:** (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\atrezise Discharge Date: 3/11/2015 Certificate of Insurance Required Yes ( ) No (●)

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 3/12/2015

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: DCM Report

Agenda Date: 3/17/2015 Follow Up Agenda Date:

*Revised April 2013*

DOWL

**DOWL Project No.:** 7141.74129.01

# STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of February 13, 2015 between ***Gunnison County, 195 Basin Park Drive, Gunnison, CO 81230*** **(Client)** and **DOWL, *312 N. Main Street, Gunnison, CO 81230*** **(DOWL).** Client and DOWL agree that DOWL will perform the professional services identified in Exhibit A associated with:

Construction Materials Testing for Gunnison Whitewater Park

Representatives: **CLIENT:** Gunnison County

**DOWL:** Wayne Pandorf

**SCOPE OF SERVICES:**

See EXHIBIT A - SCOPE OF SERVICES

**COMPENSATION by CLIENT to DOWL:**

Reimbursement shall be on a *Time & Materials* basis, DOWL shall invoice no more often than monthly for services performed in the previous month in accordance with the unit rates set forth in EXHIBIT B.

The following are hereby made a part of this AGREEMENT by attachment:

**Terms and Conditions** (3 pages)
**Exhibit A - Scope of Services** (1 page)
**Exhibit B – Payment Schedule and Reimbursable Expenses** (1page)

Services covered by this Agreement will be performed in accordance with the attached Terms and Conditions and any Exhibits, Attachments, and/or Special Conditions. This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, persons authorized to commit the resources of the Parties have executed this Agreement as follows:

Accepted for **Client:**

By: _____

Title: _____

Date: _____

Accepted for **DOWL:**

By: _____

Title: Sr. Project Manager

Date: 2-13-15

Tax ID No or SSN: 92-0166301

3/2/15

DOWL

# DOWL
# STANDARD CONTRACT TERMS AND CONDITIONS

## SECTION 1 - SERVICES OF DOWL

**A. Basic Services**
DOWL shall provide Client the services as described in this Agreement within the periods stipulated herein. Services will be paid for by Client as indicated herein.

**B. Schedule**
DOWL's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time are specified in this Agreement, DOWL's obligation to render services hereunder will be for a period that may reasonably be required for the completion of said services.

**C. Authorization to Proceed**
Execution of this Agreement by Client will be authorization for DOWL to proceed with the Work as scheduled, unless otherwise provided for in this Agreement.

**D. Delay**
If in this Agreement, specific periods of time for rendering services are set forth, or specific dates by which services are to be completed, are provided, and if such periods of time or dates are changed through no fault of DOWL, the rates and amounts of compensation and time for completions provided herein shall be subject to equitable adjustment

**E. Changes/Additional Services**
The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by the Client. For some projects the scope may not be fully definable during the initial stages and/or the Client may at any time during the term of this Agreement make changes within the general scope of the Agreement. If such facts discovered as the Project progresses, or changes that are requested by the Client, change the cost of, or time for, performing the services hereunder, DOWL will promptly provide Client with an amendment to this Agreement to recognize such changes.

## SECTION 2 - TERMS OF PAYMENT

**A. Invoicing**
DOWL will submit invoices to Client for services rendered and reimbursable expenses incurred each month. Invoices will be prepared in accordance with DOWL's standard invoicing practices. Such invoices will represent the value of the completed Work and will be in accordance with the terms for payment in this Agreement.

**B. Progress Payments**
Invoices are due and payable within 30 calendar days of the date of the invoice. If Client fails to pay undisputed invoices when due, the amounts due will be increased at the rate of 1.0% per month from said 30th day. In addition DOWL may at any time, without waiving any other claim against the Client, and without thereby incurring any liability to the Client, suspend or terminate performing work hereunder in accordance with Section 5.C of this Agreement. Payments will be credited first to interest and then to principal. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

## SECTION 3 - OBLIGATIONS OF CLIENT

**A. Furnish Data**
Client shall provide all criteria and full information as to Client's requirements for the Project and furnish all available information pertinent to the Project, including reports and data relative to previous designs or investigations at or adjacent to the site. Client shall provide such legal, independent cost estimating, and insurance counseling services as may be required for the Project.

**B. Representative**
Client will designate a person to act with authority on Client's behalf in respect of all aspects of the Project.

**C. Timely Review**
Client will examine DOWL's studies, reports, drawings and other project-related work products and render decisions required in a timely manner.

**D. Prompt Notice**
Client will give prompt written notice to DOWL whenever Client observes or otherwise becomes aware of hazardous environmental conditions or of any development that affects the scope or timing of DOWL's Scope of Services or any defect in the Services of DOWL or the work of any Contractor.

**E. Site Access**
Client will arrange for safe access to and make provisions for DOWL and DOWL's subconsultants to enter upon public or private property as required for DOWL to perform the Services under this Agreement.

## SECTION 4 - OBLIGATIONS OF DOWL

**A. Independent Contractor**
DOWL is an independent contractor and will maintain complete control of and responsibility for its employees, subcontractors and subconsultants. DOWL shall also be solely responsible for the means and methods for carrying out the Scope of Services and for the safety of its employees.

**B. Performance**
DOWL will perform its Services using that degree of care and skill ordinarily exercised under the same conditions by Design Professionals practicing in the same field at the same time in the same or similar locality. Professional services are not subject to, and DOWL cannot provide any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranty or guarantee contained in any purchase order, requisition or notices to proceed issued by the Client are specifically objected to.

**C. Technical Accuracy**
Owner shall not be responsible for discovering deficiencies in the technical accuracy of DOWL's work. DOWL shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in the Client furnished information.

**D. Publicity**
DOWL will not disclose the nature of its Scope of Services on the Project, or engage in any publicity or public media disclosures with respect to this project without the prior written consent of Client.

DOWL

**E. Insurance**

DOWL will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with statutory requirements, and DOWL's business requirements. Certificates evidencing such coverage will be provided to Client upon request.

**F. Compliance with Laws**

DOWL will use reasonable care to comply with applicable laws in effect at the time the Services are performed hereunder, which to the best of its knowledge information and belief, apply to its obligations under this Agreement.

**G. No responsibility for Site Safety**

Construction contractors shall be solely responsible for the supervision, directions and control of their work; means, methods, techniques, sequences and procedures of construction; safety precautions and programs and compliance with applicable laws and regulations.

**H. No responsibility for Contractor Performance**

DOWL shall not be responsible for the quality of any Contractor's work, or for any Contractor's failure to furnish or perform its work in accordance with the contract documents.

**I. Equal Opportunity Employment**

DOWL is committed to the principles of equal opportunity and affirmative action in employment and procurement. DOWL does not discriminate against applicants, employees, or suppliers on the basis of factors protected by federal or applicable state laws.

## SECTION 5 - GENERAL CONSIDERATIONS

**A. Reuse of Documents**

1. All documents are instruments of service in respect to this Project, and DOWL shall retain an ownership and property interest therein (including the right of reuse at the discretion of DOWL) whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the Project. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification of DOWL will be at Client's sole risk. Client shall indemnify and hold harmless DOWL and DOWL's Consultants from all claims, damages, losses, and expenses, including attorney fees arising out of or resulting therefore.

2. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by DOWL. Files in electronic media format are furnished for convenience.

3. Because data stored in electronic media format can deteriorate or be modified, inadvertently or otherwise, without authorization of DOWL, the party receiving the electronic files agrees to perform acceptance tests or procedures within 60 days, after which the receiving party shall have deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by DOWL. DOWL will not be responsible to maintain documents stored in electronic media format after acceptance by Client.

4. DOWL makes no representations as to long term compatibility, usability, or readability of documents resulting from use of software application packages, operating system, or computer hardware differing form those used by DOWL at the beginning of this Project.

**B. Indemnification**

1. DOWL agrees to indemnify and hold harmless Client from and against any liability, damages and costs, (including reimbursement of reasonable attorney's fees and costs of defense) arising out of the death or bodily injury to any person or the destruction or damage to any property, arising during the performance of professional services under this Agreement, to the extend caused by the negligent acts, errors, and omissions of DOWL or anyone for whom DOWL is legally responsible. DOWL's defense obligations under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of the engineer's actual liability obligation hereunder.

2. ~~Client agrees to indemnify and hold harmless DOWL from any liability, damages and costs, (including reasonable attorney's fees and costs of defense) to the extent caused by the negligent acts, errors, and omissions of the Client, Clients contractors, consultants, and anyone for whom Client is legally responsible~~

3. DOWL's total liability to Client and anyone claiming by, through or under Client for any claim, cost, loss or damage caused in part by the negligence of DOWL and in part by Client or any other negligent entity or individual, including any potential defense obligations shall not exceed the percentage share that DOWL's actual negligence bears to the total of all other negligent entities and individuals

**C. Termination / Suspension**

1. Client may terminate this Agreement for convenience. In such event, DOWL will be entitled to compensation for Services performed up to the date of termination, including profit related thereto, plus any expenses of termination.

2. The obligation to provide further Services under this Agreement may be suspended by either party upon 7 days written notice or terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof (including Client's obligation to make payments required hereunder) through no fault of the suspending or terminating party, and defaulting party does not commence correction of such nonperformance within five (5) days of written notice and diligently completes the correction thereafter.

**D. Consequential Damages / Limitation of Liability**

To the fullest extent permitted by law, DOWL and Client 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 agree that DOWL'S total liability to Client under this Agreement shall be limited to **$5,000.**

**E. Limits of Agreement**

This instrument contains the entire Agreement between the parties, and no statement, promise or inducements made by either party that are not contained in this written Agreement shall be valid or binding. This Agreement upon execution by both parties hereto, can only be amended by written instrument signed by both parties.

**F. Severability and Survival**

The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity of unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

**G. Waiver**
No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

**H. Choice of Law and Venue**
The parties agree that any action at law or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Colorado, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance.

**I. Material Adverse Effect**
This Agreement may be amended if an event, change or effect creates a material adverse effect upon the operation of DOWL. Such material adverse effect may be created by, or be the effects of Acts of God (including fire, flood, earthquake, storm, or other natural disaster), war (whether declared or not declared), terrorist activities, labor dispute, strike, lockout or interruption or failure of electricity or telephone service which materially impairs DOWL's ability to operate business in accordance with the provisions of this Agreement.

**J. No Third Party Beneficiaries**
Nothing contained in this Agreement nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any.

**K. Successor, Assigns, and Beneficiaries**
Neither Client nor DOWL 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 as mandated or restricted by law. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

**L. Statutes of Limitation**
To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

**M. Authority**
The person signing this Agreement warrants that they have the authority to sign as, or on behalf of, the party for whom they are signing.

**Exhibit A to Standard Agreement for Professional Services**
**Scope of Services**

*A qualified technician will be provided on an as-scheduled basis to observe soil compaction methods and/or test soil density and moisture content using a nuclear density testing gauge. Any retesting necessary is to be charged to the contractor.*

DOWL

DOWL Project No.: 7141.74129.01

**Exhibit B to Standard Agreement for Professional Services**
**Payment Schedule and Reimbursable Expenses**

*Costs are based on 2014 CO – Montrose Fee Schedule include the following:*

*Laboratory/Field Technician - $60 per hour*
*CMT/Laboratory Manager - $90 per hour*
*Staff Engineer - $100 per hour*
*Administrative Assistant - $65 per hour*
*Senior Project Manager - $170 per hour*
*Soil Proctors - $185 each*
*Mileage - $ .75 mile*