

SPECIAL MEETING

- I. CALL TO ORDER

- II. PLEDGE OF ALLEGIANCE

- III. ROLL CALL

- IV. REVIEW AGENDA

- V. OLD BUSINESS
 - a. Consideration of Engineering and/or Design Build Process for Creede Flume Project

- VI. ADJOURN

Trustees: I've included all the material from last week's meeting in the last part of this packet as well as the materials we've received since then in the following order:

- E. Heil Memo
- Bohannan Huston Repsonse Memo
- R. McLaughlin "Memo 1"
- R. McLaughlin "Memo 2"
- C. Dooley Memo
- BH Professional Services Argreement
- Randi



MEMORANDUM

TO: Honorable Mayor Larson and Board of Trustees
FROM: Eric J. Heil, City Attorney
RE: Request for Proposal for Flume Project
DATE: June 23, 2017

Summary: Clyde, Randi and I were able to talk to Christy Doon, Regional Representative of Department of Local Affairs, regarding the Creede Flume Project and impact of a Request for Proposal process. Christy said that Creede may conduct a Request for Proposal process for engineering services and that Creede could simply submit an amendment to the schedule as part of its next quarterly report to DOLA.

Christy was at the Colorado Municipal League Conference with Ken Charles, the Regional DOLA Representative for Southwest Colorado. We asked about a Design-Build process and Request for Proposal. Ken had more experience with Design-Build projects and felt that a Design-Build approach or a "Construction Manager/General Contractor" approach was beneficial because the schedule is expedited and there is better control of costs earlier in the process.

Under a Design-Build approach, a team that includes both the engineer and general contractor is presented as one contract. The schedule is shortened because the engineer works directly with the general contractor so that (1) there is no general contractor bid process after final engineering designs, and (2) the general contractor makes a commitment to construct the project much earlier, thus avoiding delays. The other benefit is that "value engineering" or design revisions to coordinate with actual costs of construction (i.e. "constructability of design") occurs more efficiently.

The Construction Manager/General Contractor ("CM-GC") approach is slightly different in that the Owner contracts separately with the engineering firm for design, but selects a CM-GC earlier in the design process and typically selects the CM-GC through a "Request for Qualifications" approach. Once a project is approximately 60% designed, the CM-GC can begin providing cost estimates for construction. When the project is fully designed, the CM-GC provides "Maximum Cost" figures to construct the project and assumes the risk of construction costs. This process expedites the schedule because the general contractor is selected earlier and is thus committed to a fall 2018 construction schedule and the general contractor is actively contacting and obtaining bids from sub-contractors earlier in the process.

Ken Charles from DOLA will provide examples of RFPs for Design-Build and CM-GC approaches by early next week and I have examples as well. My recommendation is to conduct an RFP as a Design-Build so that there is only one contract that the City has to manage (i.e. combined engineering with the construction contract). The City should expect that the final Maximum Cost numbers will not be available until the designs are 90% complete and that the specific work and materials are more accurately identified. The Board of Trustees should also expect that under any scenario (i.e. Traditional Bid, Design-Build or CM-GC) there will be exclusions for "unknown conditions" which have the potential to increase project costs.

Christy and Ken recommended that Creede conduct only one RFP process and recommended against Creede conducting both an engineering services RFP and a Design-Build RFP concurrently.

REQUEST FOR PROPOSAL SCHEDULE: A Request for Proposal Schedule for a Design-Build process would include:

June 26 - June 30 – Complete RFP language and attachments, incorporate review and comments by Ron McLaughlin, City Engineer.

July 7 – Post RFP on BidNet (Rocky Mountain Procurement), publish notice in paper, and post on other appropriate sites

Aug 1 – On-site visit in afternoon, preliminary interviews by Board of Trustees at 5:30 meeting

Aug 10 – Proposals Due

Aug 15 – Board of Trustees review proposals, select team, authorize execution of Design-Build Contract

Aug 21 – Commencement of Design-Build Contract

Nov 29 – Completion of 90% design and proposal for Maximum Price

Dec 5 – Review and approval by Trustees of design and Maximum Price

This schedule allows the RFP to be posted for 30+ days before the proposal is due and allows the design and Maximum Price to be determined by the end of the calendar year. This schedule can accommodate several additional months if additional meetings, discussion or technical analysis is desired and still remain on schedule for a late summer 2018 construction start because the Contractor is already selected and committed to the project.

FUNDING ARRANGEMENTS: By utilizing the RFP approach, the City of Creede may also request an amendment to the DOLA Grant Agreement to using State Grant funds on a matching basis with City funds, rather than using City funds first and State grant funds thereafter. I think this amendment would provide a positive benefit for Creede's cash flow.

OPTIONS: The Board of Trustees has the following options:

1. **No Change:** Retain Bohannon/Houston, execute engineering services contract, and proceed according to current schedule and contract with DOLA.
2. **Traditional:** Conduct RFP Process for engineering services. Conduct RFP/bid process for General Contractors when complete designs are ready (January, 2018).
3. **CM/GC:** Conduct RFP Process for engineering services and also conduct RFQ (Request for Qualification) process to hire Construction Manage/General Contractor to consult and participate during the design phase.
4. **Design-Build:** Conduct RFP Process for a complete Design-Build proposal.

RECOMMENDATION: Based on input from DOLA on the benefits of a Design-Build approach and the general benefits and sentiment expressed by the Board of Trustees in using an RFP process, I recommend that the Trustees strongly consider approving an RFP process for Design-Build as described in this memo. I am available by phone to participate in the next Trustees meeting to discuss this matter. If the Trustees agree with this recommendation then I would work with Clyde, Randi and Ron McLaughlin to prepare Design-Build RFP materials.

PROPOSED MOTION: "I move to direct staff to proceed with a Design-Building Request for Proposal process as outlined in Eric Heil's June 23, 2017 memorandum."

Thank you, Eric

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MEMORANDUM

DATE: June 22, 2017

TO: Clyde Dooley, City of Creede

FROM: Craig Hoover, PE 

SUBJECT: Engineering for Flume Rehabilitation

Bohannon Huston has been partnering with the City on the Willow Creek Flume since 2011. We are deeply invested in the community and this project and remain interested in seeing it through to its successful completion. We understand the importance of this flume to the City and have been working and are continuing to work with the City to help complete the numerous steps required to rehabilitate the flume. As such we appreciate the opportunity to respond to comments provided to the City by Merrick & Company in two recent memos and offer clarification regarding our proposal and what all is included in our proposed scope of work.

Our proposal includes the all services the City will need to evaluate the existing conditions of the flume (today), develop and document the design including detailed hydraulic modeling, bid the project, and provide construction administration. Construction management, which is primarily construction inspection, is not included. The distinctions between construction administration which is included and construction management which is not are described more fully herein. If there are services that the City chooses to complete themselves, such as preparing contract documents, the scope and fee could be reduced accordingly. However as presented, our proposal provides the City with a turnkey design that once completed will enable you to enter into a construction contract for the rehabilitation of the flume.

BHI would also like to note that we appreciate the comment provided by Merrick & Company with the review of our Scope of Work. It is clear to us that they have the best interest of the City of Creede in mind. While we have not had the opportunity to work with them on this project, we look forward to partnering and collaborating with them to the successful completion of this project.

Two memos from Merrick & Company regarding our proposal for the Willow Creek Flume have been provided to Bohannon Huston for our review and response. The two memos are dated June 5, 2017, and June 19, 2017, and are herein referred to as Memo 1 and Memo 2 respectively.

Below we provide the comments from each of the two memos along with our responses.

Memo 1 (June 5, 2017)

Comment 1:

The scope proposes a lump sum fee for Predesign. The predesign phase was the subject of the completed report. If that Report is valid and complete, there should be no further need for Preliminary Phase work.

Response 1:

The predesign phase proposed by Bohannon Huston is not a rehash of the Preliminary Engineering Report (PER) but a verification for current conditions since the PER was prepared. The name of our first phase should be called design analysis and documentation rather than predesign. This phase provides additional needed information including: survey of the flume's current condition and any new voids—past void survey was completed in April 2015, over two years ago—and detailed hydraulic modeling to support the design, which was not a part of the PER. This detailed hydraulic modeling will be part of the documentation of the design which is an important part of the design process and provides the City a record of the design decisions.

Comment 2:

To be fair to both Creede and the Engineer, lump sum type fees are only appropriate when the scope is well established and agreed upon.

Response 2:

We believe the scope is well established and agreed upon based on our many conversations with City staff and the analysis completed with the Preliminary Engineering Report (PER) in 2015. BHI has a thorough grasp of the proposed improvements and the necessary steps to complete the design plans to complete this project. BHI feels confident the scope is well established and agreed upon between BHI and the City. If the City does not feel the scope is well established or agreed upon, we'd recommend we review this information together.

Comment 3:

The Predesign Report should be the basis/foundation for the remainder of the Project. Good estimates for funding and for estimated consultant costs are dependent on the quality and completeness of the Predesign Phase.

Response 3:

BHI certainly agrees with this comment and would expect any thorough engineer to provide this response for consideration. Further, we also understand the importance of keeping our clients apprised of the construction costs as additional information is collected and design details are further developed.

The PER and additional information and analysis obtained and prepared as part of the Flume Investigation Update and Predesign Coordination (included within the Scope of Work dated May 26, 2017) will collectively form the basis/foundation for the remainder of the project. The PER scope was limited to only look at two options, the concrete curb and concrete cloth. The PER provides design concepts and conceptual level cost estimates. While the design memorandum will provide documentation and justification for the details of the design.

Comment 4:

Based on our knowledge of the Project scope, the estimated cost of the included items for the Design Phase is very high.

Response 4:

We believe our proposed fee is fair and reasonable given the level of effort expended to develop this project and effort required going forward to prepare a turnkey project design as described above and in more detail below. The fee was prepared using a man-hour estimate with a detailed task breakdown that in our experience is necessary to complete the project.

The fee for the turnkey design includes the following items:

- Coordination with the City
- 60% design review meeting in Creede
- Monthly telephonic updates to the Board of Trustees with up to two in-person Board updates
- Development of a project work plan
- Engineering Site Investigation by both civil and structural engineers
- Field Survey to update visible voids locations and sizes
- Refinement of flume rehabilitation concept
- Creation of a detailed hydraulic model of the flume using HEC-RAS
- Preparation of a design memorandum documenting the updated site investigation, concept refinement and hydraulic modeling all based upon work completed in the PER
- Quantification of voids and characterization of void replacement options
- Preparation of detailed construction plans, including civil and structural design information
- USACE 404 permitting coordination
- Preparation of project specifications
- Quantity take-offs
- Preparation of construction cost estimates
- Preparation of contract documents
- Printing of plans and documents during the design phase
- Overall project QA/QC and project management

The fee also includes the following items to be completed as part of the bidding and construction phases:

- Bidding support
- Attendance at pre-bid meeting
- Attendance at bid opening
- Construction Administration which includes:
 - Attendance at the pre-construction meeting
 - Review of shop drawings and submittals
 - Up to two field construction coordination meetings

Comment 5:

The nature of the Project will result in much higher construction Phase costs. Although, in some cases, Towns have used different firms for inspection services, believe this practice may involve increased risk and divided responsibilities. In this case, Construction Administration services should be transferred also. A lump sum format for this type of work is impractical. There is no definition of "Construction Administration" scope and "Construction Management" is excluded. The Construction Phase costs for the Project should predominate; plan on over \$100,000.

Response 5:

BHI agrees with this comment and we have previously discussed this with Clyde Dooley, prior to receiving the memo and comment form Merrick & Company. As discussed with Clyde, we had already recommended the City contract for Construction Management Services on a time and materials basis. However, these services would be negotiated or contracted at a later date.

We did not and have not proposed the Construction Management services be completed on a lump sum basis. Please note Construction Management and Construction Administration services are two distinctly different sets of services. Construction Administration includes the elements outlined in our Response 5. These services are typically well defined and conducted on a Lump Sum Basis as BHI has proposed.

Construction Management includes construction inspection, geotechnical/materials testing, reporting, change orders, pay estimates, and production of final record drawings. These services are almost always conducted on a Time and Materials basis as the level of effort can vary throughout the construction duration.

Comment 6:

Exhibit A leaves a lot of costs still to be paid by Creede. The exclusions are more detailed than the inclusions. The proposed hourly rate schedule does not define qualifications for categories and leaves billings at the discretion of the Engineer.

Response 6:

Plan reproduction, distribution, and advertising during bidding were not included in our proposal. All other expense costs associated with the design were included. In our Response 4 we have provided additional detail including a list of the included design, bidding and construction administration items. Since we are proposing the design be completed on a lump sum basis, an hourly rate schedule is not applicable and hence not included. The project will be billed on a percent complete basis.

Memo #2 (June 19, 2017)

Comment 1:

Creede paid for the Preliminary Engineering Report. An additional budget in the range of \$40,000.00 for predesign work indicates that the report is not adequate as a project basis.

Response 1:

See Response 1 to Memo 1 Comment 1. Also, what Ron is referring to as predesign work is an important part of the design services that includes detailed hydraulic modeling and the site investigation and void update that were not part of the PER. This work provides important documentation for the design.

Comment 2:

Estimating a lump sum for final design cannot be done accurately until the Preliminary Phase is adequate and accepted. The report estimate (Table 2) for final design was \$72,600, (compared to \$120,000 from revised proposal).

Response 2:

We respectfully disagree. It is common practice to develop a scope and fee for the entire design—preliminary and final—and contract for all the design work together. In our experience this contract structure is much more common than the two-phase approach where preliminary and final design are separated as suggested in the comment. When the scope is well defined, which we believe it is, there is no reason to have a two-step process that ultimately requires additional effort and time for the City.

Comment 3:

Our estimate for all engineering services (Feb 2008 Preliminary Report which assumed the concrete curb alternate) was \$190,000 with the design phase being approximately \$50,000.

Response 3:

Not being the author of the 2008 report, we cannot speak to the details of the numbers and information provided in this comment. We can speak to our scope and fee and believe it is fair and reasonable.

Comment 4:

Most of the engineering cost for this project should be attributed to construction inspection / construction phase services.

Response 4:

Construction management will be a considerable effort. The development of detailed construction plans and specifications, as we are proposing, will ensure the project can be readily implemented and constructed and will help minimize construction issues and costs.

MEMORANDUMJune 19th, 2017

TO: City of Creede, c/o Mr. Clyde Dooley, Manager

FROM: Ron McLaughlin, PE & PLS, Engineer

CC: Eric Heil, Attorney

RE: Design Phase - Willow Creek Flume

I am unable to attend the June 20th meeting. Please refer to my June 5th memorandum, which covers most of my review of the Bahannan Houston proposal

Other specifics as to engineering cost:

- Creede paid for the Preliminary Engineering Report. An additional budget in the range of \$40,000.00 for predesign work indicates that the report is not adequate as a project basis.
- Estimating a lump sum for final design cannot be done accurately until the Preliminary Phase is adequate and accepted. The report estimate (Table 2) for final design was \$72,600, (compared to \$120,000 from revised proposal).
- Our estimate for all engineering services (Feb 2008 Preliminary Report which assumed the concrete curb alternate) was \$190,000 with the design phase being approximately \$50,000.
- Most of the engineering cost for this project should be attributed to construction inspection /construction phase services.

To summarize my recommendations: do not accept the proposal; initiate a Request for Qualifications - do not characterize as "bid" or emphasize cost at this point.

This advice and future overview is made as the Town Engineer, representing only Creede's interests.

Also a requested comment: Flume deterioration here is almost entirely due to freeze – thaw action; cavitation damage has not been witnessed - if here, would be minimal.

Respectfully submitted,



Ron McLaughlin, PE & PLS, Engineer



MEMORANDUM

June 5, 2017

TO: City of Creede, c/o Mr. Clyde Dooley, Manager

FROM: Ron McLaughlin, PE & PLS, Engineer

CC: Eric Heil, Attorney
Randi Snead, Clerk

RE: **Engineering for Flume Rehabilitation**

I have reviewed the proposed Professional Services Agreement proffered by Bohannon Huston, dated May 19th, 2017. Clyde and Eric have addressed detailed legal and administrative provisions. Following are some overview observations which I think are significant.

1. The scope proposes a lump sum fee for Predesign. The predesign phase was the subject of the completed report. If that Report is valid and complete, there should be no further need for Preliminary Phase work.
2. To be fair to both Creed and the Engineer, lump sum type fees are only appropriate when the scope is well established and agreed upon.
3. The Predesign Report should be the basis/foundation for the remainder of the Project. Good estimates for funding and for estimated consultant costs are dependent on the quality and completeness of the Predesign Phase.
4. Based on our knowledge of the Project scope, the estimated cost of the included items for the Design Phase is very high.
5. The nature of the Project will result in much higher construction Phase costs. Although, in some cases, Towns have used different firms for inspection services, believe this practice may involve increased risk and divided responsibilities. In this case, Construction Administration services should be transferred also. A lump sum format for this type of work is impractical. There is no definition of "Construction Administration" scope and "Construction Management" is excluded. The Construction Phase costs for the Project should predominate; plan on over \$100,000.

6. Exhibit A leaves a lot of costs still to be paid by Creede. The exclusions are more detailed than the inclusions. The proposed hourly rate schedule does not define qualifications for categories and leaves billings at the discretion of the Engineer.

This project should be reviewed and approved by the Town Engineer. At this point, I would like to establish the situation where, for this project, I will represent Creede's interests only. This means we will not participate in any Proposals for Design Phase services.

I will be in Creede Tuesday, June 15 and be available for work sessions or individual meetings. This is (I understand) a significant \$1.5 million project for Creede. We want it done right – and not require significant maintenance/replacement costs for the next 50 years.

BHI AGREEMENT

TO: Mayor & Trustees
FROM: Clyde
SUBJECT: Services Agreement
DATE: June 6, 2017

Craig emailed us the attached professional services agreement late last night. I talked with Eric this morning and he was satisfied with the legal issues raised earlier. I received the attached memo from Ron this morning and as you can see as the town engineer, he has some concerns he wants us to be sure and be aware of. He'll be in town on the 13th (his memo says the 15th, but I think that's a typo) and if you'd like we can see about having a short work session with him before our P&Z meeting that night.

Craig called me yesterday to go over my concerns about the Scope of Services "Exhibit A" and Associated Fees and explained them to my satisfaction.

My first question on Exhibit A, was about the agreement not including a design for water management for scanning & construction. Craig explained that engineers design and specify the performance specifications and leave the means & methods up to the contractor.

The other big concern I had was the Construction Inspection not being a part of the agreement. Craig explained that the level of inspection is better determined after at least half the design plan is put together. A complicated design may require more inspection whereas a simple design may only require full time inspection to begin with and then drop off to half or partial inspection once everyone is comfortable with the work.

Craig also talked about the associated billing involving extra printing and payment processing which Randi and I talked about and with a little more clarification between us three, I think will also be satisfied.

So in short, I think we're about 95% done in getting this agreement the way we want it. It is a big project for us and as Ron said, we want to do it right, so I recommend we schedule a quick special meeting before or after our work session on the 20th. Craig or Alandren should be able to attend and I'll see if Ron's available. Ron has some concerns he'd like to talk with us about and I think we'll be able to work those out and all feel more we've done our best to leave no questions un-answered.

There're also one more question I have for Eric in paragraph 2.2 that also should be pretty easy to negotiate.

Ron mentioned concerns about the "exclusions are more detailed than the inclusions" on page 3 of 3 in Exhibit A. I'll ask Craig if the following sounds a little better on his end - without losing anything.

Exhibit A page 3 of 3:

One bid package will be prepared and the City will be responsible for digital and/or paper reproductions of the plans and advertising.

The City will be responsible for associated expenses involving public hearings, utility locations, local easements, right-of-ways, boundary surveys, access agreements and local permits.

The successful contractor will be responsible for water management for scanning and construction as well as the As-Builts.

An inspection schedule and quote will be provided for negotiation midway through the design process.

Ron's memo disagrees with a "Lump Sum" and we should discuss that more, because the first agreement draft we got from Bohannon Huston was "time & materials" and totaled \$145,200. I'll have to double check with Craig, but I think after one of our conversations, he changed the Scope of Services to reflect a "Lump Sum" total of 136,600. So that's a topic we should be able to clarify by our meeting on the 20th.

Craig - I think the only thing I left out was the Geotechnical services. Otherwise - what do you think?

PROFESSIONAL SERVICES AGREEMENT

Project/Services Name: ENGINEERING SERVICES for Creede Willow Creek Flume Rehabilitation

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between Bohanan Huston Inc., a corporation of the State of Colorado, whose business address is Meridian One, 9785 Maroon Circle, Suite 140, Englewood, CO 80112-5928 ("**Contractor**") and the City of Creede, Colorado ("**City**"), a statutory town of the State of Colorado (individually a "**Party**" and collectively the "**Parties**")

RECITALS AND REPRESENTATIONS

WHEREAS, the City desires to have certain professional services performed as described in this Agreement; and

WHEREAS, the City has been awarded state grant funds by and through the GRANT AGREEMENT between STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS and CITY OF CREEDE, Project/Award Number EIAF 8319 ("**DOLA Grant Agreement EIAF 8319**") which imposes additional terms and conditions; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the City desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 SERVICES AND CONTRACTOR PERFORMANCE

1.1 Services and Work Product. As directed by and under the supervision of the City Manager for the City of Creede, the Contractor shall provide the City with the services described in **Exhibit A – Engineering Services ("Services")**. "**Work Product**" shall consist of deliverables and/or product to be created, provided or otherwise tendered to the City as described in the Services. The Services shall be construed to meet the minimum requirements for the provision of engineering services as set forth in DOLA Grant Agreement EIAF 8319.

1.2 Changes to Services. The City may request a change or changes in the Services. Any changes that are mutually agreed upon between the Board of Trustees of the City and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and the Mayor on behalf of the Board of Trustees.

1.3 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

1.4 Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the City that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

1.5 Patent Indemnification. Contractor shall indemnify, defend and hold City harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by City of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to City.

1.6 Safety. When and to the extent that Contractor or any of its employees, agents or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all of its employees, agents and subcontractors to comply, with applicable safety rules and security requirements.

1.7 Qualified Personnel. Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide City with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of City.

1.8 Removal of Personnel by City. City may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from City of such dismissal. City will not be required to pay salary or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from City.

1.9 Representations and Warranties. Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

1.10 Maintenance of and Access to Records. Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or termination of not less than five (5) years. City will have the right to copy and audit during regular business hours all records of any kind which in any way relate to the Services, whether created before, during or after the termination of this Agreement. Access to such records will be provided to City at no cost. NOTWITHSTANDING THE FOREGOING, Contractor shall also maintain records in compliance with Paragraph of 9 of the DOLA Grant Agreement EIAF 8319.

1.11 Disclosure of Adverse Information. Contractor will promptly disclose to City any and all information which Contractor may learn or which may have a material adverse impact on the Services or the Work Product or City's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the City, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

A. Lump Sum. The Contractor shall perform the Services and shall invoice the City for work performed based on the rates and/or compensation methodology described in **Exhibit A**. Total compensation (including all reimbursable expenses) shall not exceed **ONE HUNDRED THIRTY-SIX THOUSAND, SIX HUNDRED DOLLARS (\$136,600.00)**.

B. Reimbursable Expenses. The following shall be considered "reimbursable expenses" for purposes of this Agreement:

- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the Internal Revenue Service as a deductible business expense)
- Printing and Photocopying Related to the Services
- Long Distance Telephone Charges Related to the Services
- Charges incidental to securing needed information (e.g., charges imposed to obtain recorded documents)
- Postage and Delivery Services
- Lodging and Meals (*only* with prior written approval of the City as to dates and maximum amount)

C. Non-reimbursable Costs, Charges, Fees, or Other Expenses. Any fee, cost, charge, fee, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost and shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

D. Increases in Compensation or Reimbursable Expenses. Any increases or modification of compensation or reimbursable expenses shall be subject to the approval of the Board of Trustees of the City and shall be made only by written amendment of this Agreement executed by both Parties.

2.2 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall be submitted in accordance with the phased lump sum payment schedule set forth in Exhibit A.

2.3 City Dispute of Invoice or Invoiced Item(s). The City may dispute any Contractor time, reimbursable expense, and/or compensation requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

3.0 CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1 The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the City such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

3.2 The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

3.3 The Contractor shall provide all of the Services in a timely and professional manner.

3.4 The Contractor shall promptly comply with any written City request for the City or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.

3.5 The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

3.6 The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall be effective on **June 7, 2017, at 12:01 a.m.**, ("**Effective Date**") and shall terminate at **11:59 p.m. on December 31, 2018**, or on a prior date of completion of the Services or termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to the monthly extension of this Agreement for up to twelve (12) consecutive calendar months if such extension is approved by the Board of Trustees and the Contractor and such extension does not alter or amend any of the terms or provisions of this Agreement.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Board of Trustees.

4.3 City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the City and shall become the property of the City; and

C. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by **Sub-Section 4.3(A)** above. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.

4.4 Termination for Non-Performance. Should a Party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party if the performing Party first provides written notice to the non-performing Party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this **Sub-Section 4.4**, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this **Sub-Section 4.4**, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: **(1)** as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or **(2)** for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

4.6 Reinstatement of Services Following City's Unilateral Suspension. The City may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the City is made within (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

4.7 Delivery of Notice of Termination. Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the person signing this Agreement on behalf of either City or Contractor at the address shown below or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

5.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

- A.** Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
- B.** Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
- C.** Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with

respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:

A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage.

B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE** and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or at the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The City may request and

the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 OWNERSHIP OF DOCUMENTS

6.1 Work Product is Property of City. Upon complete payment for services rendered, the Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of City. City will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of City.

6.2 Obligations of Contractor's Personnel and Subcontractors. Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

6.3 Assignment of Proprietary Rights. To the extent that any title to any Work Product may not, by operation of law, vest in City, or such Work Product may not be considered to be work made for hire, Contractor hereby irrevocably transfers and assigns to City in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights in and ownership of, the Work Product.

6.4 City Furnished Information. Title to all materials and all documentation furnished by City to Contractor will remain in City. Contractor will deliver to City and any all Work Product and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. City's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

6.5 The Contractor waives any right to prevent its name from being used in connection with the Services.

7.0 CONFLICT OF INTEREST

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the

official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, or any City-adopted Code of Conduct or ethical principles.

8.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- 8.1 Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 8.2 Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 8.3 Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
- 8.4 Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

9.0 MISCELLANEOUS PROVISIONS

9.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the Board of Trustees or by a person expressly authorized to sign such waiver by resolution of the Board of Trustees of the City of Creede, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

9.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.3 Affirmative Action. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 9.4 shall not authorize assignment.

9.5 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.6 Article X, Section 20/TABOR. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“**TABOR**”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City of Creede, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

9.7 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Mineral County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting Party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

9.8 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

9.9 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the Board of Trustees for City of Creede. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Board of Trustees for the City of Creede. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

9.10 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

9.11 Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.

9.12 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

9.13 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

9.14 Employment of or Contracts with Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

9.15 Non-Liability of City for Indirect or Consequential Damages or Lost Profits. Parties agree that the City shall not be liable for indirect or consequential damages, including lost profits that result from the City's declaration that the Contractor is in default of the Agreement, so long as the City acts in good faith.

9.16 Indemnity. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its members, affiliates, officers, directors, partners, employees, and agents from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of the performance of the Services, provided that any such claim, damage, loss or expense is caused by any negligent act or omission of Contractor, anyone directly or indirectly employed by

Contractor or anyone for whose acts Contractor may be liable, except to the extent any portion is caused in part by a Party indemnified hereunder.

9.17 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

If to the City:

If to the Contractor

Clyde Dooley, City Manager City of Creede P.O. Box 457 2223 Main Street Creede, CO 81130 manager@creedetownhall.com	Craig Hoover, PE Senior Vice President Bohannon Huston, Inc. 7500 Jefferson St. NE Albuquerque, NM 87109 choover@bhinc.com
With Copy to: Eric J. Heil, Esq. 1022 Summit Drive Dillon, CO 80435 erichellaw@gmail.com	

10.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Creede and the Contractor and bind their respective entities.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS]

THIS AGREEMENT is executed and made effective as provided above.

CITY OF CREEDE, COLORADO

By: _____
Jeffrey A. Larson, Mayor Date

ATTEST: _____
Randi Snead, City Clerk

CONTRACTOR:

By: 
Craig Hoover, Senior Vice President

6/5/17
Date

EXHIBIT A
SCOPE OF SERVICES AND ASSOCIATED FEES
CITY OF CREEDE, A COLORADO TOWN
WILLOW CREEK FLUME REPAIRS
MAY 26, 2017
PAGE 1 OF 3

Scope of Services

For purposes of this proposal, we have organized the required work elements into three phases. Phase A: Flume Investigation Update and Predesign Coordination; Phase B: Design; Phase C: Construction Administration.

A. Flume Investigation Update and Predesign Coordination:

- I. Phase A Subsurface Investigation & Predesign Coordination: As part of this task, BHI's staff will kick off the project and coordinate with the Town of Creede. This includes one trip to Creede for up to two days of flume investigation to update the visible void survey completed by BHI in 2015, including survey of the voids.
- II. Design Analysis: As part of this task BHI will conduct and design analysis to determine and document the final design of the flume rehab approach. This includes: develop and evaluate final options, HEC-RAS modeling and a design memorandum.

Flume Investigation Update & Predesign, Lump Sum Fee of \$39,700.00

B. Design:

- I. Phase B Design: As part of this task, we will prepare construction plans and documents for the repairs of the Willow Creek Flume. This design will consist of plans for filling voids and installing concrete to mitigate issues at the toe on both sides. We will calculate the volume of the repairs based on a combination of BHI's previous survey of the visible voids and the updated survey conducted as part of Task I. The plans will include plan view sheets with a table of the areas for repair with dimensions, volumes and repair type and standard details of the repair types. BHI will also prepare any necessary technical specifications for the repairs. The plans will be prepared under the supervision of and stamped by a Professional Engineer Registered in Colorado.

This task also includes 404 permitting coordination with the USACE and Town of Creede to confirm the appropriateness of the use of Nationwide Permit (NWP) 3 (section (a) which applies to repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure) and that a Preconstruction Notification (PCN) is not required for this project. Should a PCN be required, preparation of PCN or other 404 permit analysis and documentation is not included.

BHI will prepare the contract documents to include the contract, general provisions, notice to bidders, bid proposal, supplemental technical specifications, etc. Two telephone meetings with Creede have been included to coordinate assembly of the construction bid package. Creede will pay for all printing costs. Upon receiving authorization from Creede to proceed, BHI will assist with the bidding process by organizing the distribution of contract documents, preparing for, attending, and documenting the pre-bid meeting. Creede will coordinate and pay for bid advertisements. BHI will respond to Contractor's questions regarding the construction plans during the bid phase and prepare addenda as needed. We

EXHIBIT A
SCOPE OF SERVICES AND ASSOCIATED FEES
CITY OF CREEDE, A COLORADO TOWN
WILLOW CREEK FLUME REPAIRS
MAY 26, 2017
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have assumed any addenda that would be needed will be related to the scope of the project as presented in the final design plans and not related to added work by Creede. BHI will attend the bid opening, assemble the bid tabulation, review the bids, and provide a recommendation of award letter to Creede. Upon notification of award to a contractor, BHI will prepare and submit to the selected contractor seven (7) sets of contract documents for execution of the contract with Creede. Creede will pay for all printing costs.

- II. Design Review, Communication & Coordination: As part of this task we will coordinate with Creede and provide monthly telephonic updates to the Trustees. We will also attend one 60% review meeting with contractors.

Design, Lump Sum Fee of \$80,600.00

C. Construction Administration:

Phase C Construction Administration: As part of this task, BHI will prepare responses to contractor requests for information (RFI's) and review construction material submittals. This task includes up to two trips to Creede for construction coordination and observations by a design engineer.

Construction Admin, Lump Sum Fee of \$16,300.00

Fee Summary:

A. Flume Investigation Update and Predesign Coordination:	Lump Sum \$39,700.00
B. Flume Rehabilitation Design and 404 Permitting:	Lump Sum \$80,600.00
C. Construction Administration:	<u>Lump Sum \$16,300.00</u>

TOTAL LUMP SUM FEE: \$136,600.00

Exclusions/Assumptions

Extent of Agreement:

This scope of work is for site-related improvements within the project limits in accordance with the assumptions and exclusions noted herein.

Should additional services be required beyond the project limits or in addition to those services defined herein, such services will be defined as additional services and compensation will be required.

Assumptions:

- This scope does not include a subsurface investigation and no subsurface void information will be provided.
- This project will be permitted under NWP 3 section (a) which applies to repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure and that no PCN is required.

EXHIBIT A
SCOPE OF SERVICES AND ASSOCIATED FEES
CITY OF CREEDE, A COLORADO TOWN
WILLOW CREEK FLUME REPAIRS
MAY 26, 2017
PAGE 3 OF 3

- Only one bid package will be prepared.
- The project will not be phased into multiple bid packages.
- Creede will pay for plan reproduction, plan distribution, and advertising during bidding.

Furthermore, this agreement does **not** include:

- Design of temporary diversion of water for scanning or construction.
- Services associated with preparation for, or attendance at, public hearings.
- Survey services, other than those specifically described in the above scope of work.
- Geotechnical services.
- Services required in connection with modification to, and removal of any easements which may currently encumber the property.
- Location of the elevation of underground utilities through the use of potholing and/or the horizontal location of underground utilities as field marked by an underground utility locating sub-consultant.
- Drafting for existing easements.
- Drafting of "apparent" Right-of-Way or boundary lines.
- Boundary survey services.
- Right of entry permits to access private lands.
- Permitting documentation, application preparation.
- Coordination of permits other than 404 coordination as listed in the scope of work.
- Review and approval by any agencies other than the Town of Creede.
- Preparation of Record Drawings.
- Construction Inspection / Construction Management services.