AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement for Professional Services; Gothic Road B

Action Requested: Motion

Parties to the Agreement:

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

Summary:

Field work and engineering review for preliminary assessment of the bridge over Slate River on the Gothic Road

Fiscal Impact: $65,637

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, we have included the cost of engineering for this bridge in the 2019 adopted budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/27/2019

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

Comments:
ok db 3/29/19 Please initial and date the handwritten addition to Section IV, B 1. Thanks. db

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 3/29/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 3/29/2019

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

Agenda Date: 4/2/2019

Revised April 2015

Agreement for Professional Services

This Agreement is effective as of March 26, 2019, between Gunnison County (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: Gothic Bridge Feasibility Study.

Client's Authorized Representative: Marlene Crosby
Address: 195 Basin Park Drive
Gunnison, CO 81230
Telephone: 970.641.0044 **email:** mcrosby@gunnisoncounty.org

Project Manager: Steve Kaye
Address: 2000 S Colorado Blvd,Suite 6000
Denver, CO 80222
Telephone: 720.540.6847 **email:** skaye@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

See attached Exhibit A for a detailed scope and fee proposal.

Schedule: See Exhibit A for schedule.

Payment:

The lump sum fee is $71,818 including expenses and equipment. A task breakdown of this cost is included in Exhibit A.

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-2.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

Short Elliott Hendrickson Inc.

By: _____
Paul Wells
Title: Principal

Gunnison County

By: _____

Title: _____

General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Basic Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If Client has requested changes in the scope, extent, or character of the Project or the services to be provided by Consultant, the time of performance and compensation for Consultant's services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for Basic Services, then Consultant shall promptly notify the Client regarding the need for additional services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional services, and to an extension of time for completion of additional services absent written objection by Client.
2. Additional services shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon 7 days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the services provided by Consultant and access to all public and private lands required for Consultant to perform its services.
2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's services, including but not limited to, previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning, deed and other land use restrictions; as-built drawings, electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide services in a timely manner.
4. Client shall require all utilities with facilities within the Client's Project site to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. If requested in the scope of a Supplemental Letter Agreement, then Consultant may provide an Opinion of Probable Construction Cost. Consultant's Opinions of Probable Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Construction Cost prepared by Consultant. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator or negotiate additional services and fees with Consultant.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter or disposer of hazardous or toxic substances, therefore the Client agrees to hold harmless, indemnify and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site – generated by client.

C. Limitations on Consultant's Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars ($500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars ($5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including, without limitation, lost rentals, increased rental expenses, loss of use, loss of income, lost profit, financing, business and reputation and for loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.
3. It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

SECTION V – DISPUTE RESOLUTION

A. Mediation

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or services provided under this Agreement, (except for unpaid invoices which are governed by Section III), shall be submitted to nonbinding mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.

B. Litigation – Choice of Venue and Jurisdiction

1. Any dispute not settled through mediation shall be settled through litigation in the state where the Project at issue is located.

SECTION VI – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service") and Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Consultant shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work for Hire and Consultant shall not be restricted in any way with respect thereto.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its services, Client shall have the right in the form of a license to use Instruments of Service resulting from Consultant's efforts on the Project. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of services are available to Client subject to Consultant's current rate schedule.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

Exhibit A

Building a Better World
for All of Us®

March 26, 2019

Ms. Marlene Crosby
Gunnison County
Public Works Director

RE: Gothic Bridge rehabilitation versus replacement feasibility study

Ms. Crosby:

Short Elliott Hendrickson Inc. (SEH) appreciates the opportunity to provide a proposal for engineering services for the Gothic Bridge rehabilitation versus replacement feasibility study. The current bridge carries Gothic Road over the Slate River and is the primary route between the Town of Crested Butte and Mount Crested Butte.

The existing structure is too narrow and has some observed deterioration. We understand the County desires rehabilitation because it is a lower cost than replacement. This is based on the assumption that it is feasible to rehabilitate the existing structure to be in accordance with current codes and the final rehabilitated structure is reasonably durable.

The two options that will be considered for the feasibility study are rehabilitation and widening of the existing bridge, and in-kind replacement of the existing structure in the same location. The rehabilitation option is anticipated to include retaining the existing driven pile foundations and girders, with reconstruction of the abutments, bridge deck and railing. New piles and girders will likely be needed to widen the existing structure. The replacement option is anticipated to include full replacement with new abutments, girders, deck, and railing with an upgrade in bridge width and span length.

Professional services scope:

1. Geotechnical Engineering Services with existing foundation testing
    a. Subsurface Investigation (2 borings)
    b. Non-Destructive testing of existing HPile to determine pile length of (4 piles)
    c. Geotechnical report with recommendations for existing pile capacity and new pile installation
2. Survey
    a. Topographic survey of the bridge vicinity
    b. Channel cross section survey upstream of bridge for Slate River and
    c. Incorporate ROW plat provided by County into base map
3. Preliminary hydrologic and & hydraulic investigation
    a. Evaluate existing structure for Gunnison County/CDOT hydraulic design requirements

   b. Address floodplain permit impacts for both options.
4. Assessment of Constructability, Construction Traffic Control, grant applicability and ROW impacts for both options.
   a. An SEH structural engineer will visit the site to confirm condition of existing bridge members that are anticipated to remain.
   b. Determine limits of disturbance and staging needs/areas.
   c. Determine preliminary methods for handing traffic during construction (temporary signals, flagging, etc).
   d. Assess applicability for the current structure and sufficiency rating for federal grant opportunities.
   e. Assess potential ROW impacts for each option.
5. Construction cost comparison between both options.
   a. Perform a Preliminary Bridge structure check to verify existing girder adequacy for rehabilitation and size structure for cost comparison.
   b. Quantity take offs with itemized comparison cost estimates.
6. Feasibility Study Summary Memorandum with recommendation
   a. Summary of study performed.
   b. Summary of rehabilitation versus replacement assessment
   c. Recommendation for preferred alternative
7. Review meeting
   a. One review meeting (via video conference call) to go over County review comments
   b. Comment response spreadsheet with resolution of review comments

Deliverables:

1. Geotechnical Report
2. Topographical survey with existing ROW boundaries
3. Feasibility Study Memorandum (total of 2 submittals; one for review and one final)
4. Comment Response spreadsheet

Scope Assumptions and Exclusions:

1. Anything not explicitly included in the scope is explicitly excluded.
2. Existing ROW delineation mapping will be provided by the County. Title commitments and confirmation of ROW delineation are not included.
3. Utility related services including locating, testing holing, mapping, SUE (Subsurface Utility Engineering) and constructability assessment are not included.
4. Environmental permitting related services including US Army Corps of Engineers Section 404 are not included.
5. We assume there will be one round of review comments by the County, resulting in two feasibility memorandum submittals; one for review, and one final with County review comments resolved.

Costs:

Our anticipated costs, including labor, equipment, and expenses for professional services during design scope mentioned above is:

Task	Total Cost
1 – Geotechnical Engineering & pile length testing	***$32,749***
2 – Survey	***$9,008***
3 - H&H assessment	***$6,710***
4 – Assessment for Constructability, Construction Traffic Control, ROW Impacts	***$6,650***
5 – Cost Comparisons	***$3,650***
6 – Feasibility Study Report	***$4,410***
7 – Review Meeting/Comment Resolution	***$2,460***
Totals	***$65,637***

Additional Services:

We will also furnish such Additional Services as you may request. Payment for additional services shall be based on the time required to perform the services and the billable rates for the principals and employees engaged directly on the project, plus charges for expenses and equipment. Additional services will only be performed after receiving written authorization for such services from the County.

Schedule:

The following schedule is anticipated based on the County's desire to perform soil borings after ski season.

- Soil borings on or after April 1, 2019.
- Geotechnical Report approximately 5 weeks from the date of boring.
- Topographic survey will be completed within 4 weeks from authorized notice to proceed, depending on weather/ground cover conditions.
- Submittal of feasibility study to County approximately 6 weeks after the completion of the geotechnical investigation or the survey, whichever is later.
- Allow 1 month for County review and comment, resolution of comments, final submittal of report.

Based on the above schedule we anticipate the final submittal to be on or before September 1, 2019. However, we can work with the County to condense this schedule, if desired.

The anticipated schedule does not account for delays that are beyond our control, which may require a schedule extension.

SEH appreciates the opportunity to present this proposal to Gunnison County. If you have any questions about any part of this proposal please contact Steve Kaye; email: skaye@sehinc.com or phone: 720-540-6847.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.

Paul Wells, PE
Principal

Steve Kaye, PE
Project Manager