AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contractor Agreement; Spallone Construction; Const

Action Requested: County Manager Signature

Parties to the Agreement: Spallone Construction

Term Begins: 4/1/16 **Term Ends:** 12/31/2016 **Grant Contract #:**

Summary:

Re-route of the City sewer main that runs under the Courthouse. Project is part of Courthouse construction project, is designed and engineered.

Fiscal Impact: 77,776.00

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
This project was included in the 2016 budget. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/30/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 3/29/2016 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/1/2016

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

Agenda Date: 4/5/2016

Revised April 2015

CONTRACTOR AGREEMENT

This Contractor Agreement ("Agreement") made effective the ___ day of _____, 2016, is by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 ("Gunnison County") and _____, whose address is _____, Gunnison, CO 81230 ("Contractor").

RECITALS

Contractor to perform construction services for Gunnison County at the Courthouse site, located at 200 E. Virginia, Gunnison, CO (hereinafter "Services"). Gunnison County desires to engage Contractor to provide Services according to this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES.

   Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the services as more specifically set forth on in Construction Documents for the Gunnison County Courthouse FGMP dated 5/16/2014, Construction documents consist of the Drawing set and the Project Manual, see Exhibit "A" for alterations and exclusions to the Construction Documents. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. TERM.

   The term of this Agreement shall commence on the date first set forth above and shall terminate when the scope of services is complete, but not later than December 31, 2016, unless sooner terminated or replaced as provided herein.

3. COMPENSATION, BONUS AND EXPENSES.

(a) In exchange for Contractors performance of the Services, during the Term, Gunnison County shall pay Contractor fees as more specifically set forth in Exhibit “B”.

(b) The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth herein.

(c) This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement without penalty to Contractor pursuant to paragraph 13 of this Agreement.

4. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement that Contractor shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage’s required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

(a) Worker’s Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.

(b) Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

(c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 for any injury to two or more persons in any single occurrence.

5. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind

Gunnison County in any manner whatsoever.

Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

6. INDEMNIFICATION.

Contractor agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement.

This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

7. DISCRIMINATION.

The Contractor agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

8. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

(b) Contractor certifies that Contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

(c) Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

(d) Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

(e) Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

9. ADA COMPLIANCE.

The Contractor assures Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be exclude from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

10. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

11. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Contractor and, therefore, Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of

either party.

12. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms outlined in Exhibit A.

13. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager
Gunnison County
200 E. Virginia
Gunnison, Colorado 81230
Phone: 970-641-0248

With a copy to: Board of County Commissioners
of the County of Gunnison, Colorado
200 E. Virginia
Gunnison, Colorado 81230

Contractor: _____

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

14. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the state District Court governing Gunnison, Colorado.

15. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall

have and recover against the other party, in addition to all court costs and disbursements, such sum as the court may adjudge to be reasonable attorneys fees and expert witness fees.

16. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy Clerk

CONTRACTOR

By: _____

EXHIBIT A
Construction Documents

- Construction Documents for the Gunnison County Courthouse FGMP dated 5/16/2014, Construction documents consist of the Drawing set and the Project Manual. Both have been made available to the contractor electronically.
-The following sections of the Project Manual shall be excluded:

Division 01 29 00 Payment Procedures
Division 01 31 00 Project Management and Coordination

- Division 01 29 00 and 01 31 00 shall be replaced by EXHIBIT B

EXHIBIT B
Project Cost, Payment Terms, Coordination

Contractor agrees to perform the work as set forth in the Construction Documents and this contract for a fixed sum as set forth below:

Court House Sewer 2016				
GENERAL	**UNIT**	**QNTY**	**RATE**	**TOTAL**
MOBE	LS	1	$3,000.00	$3,000.00
MH/PRECAST BASE	EA	1	$4,000.00	$4,000.00
MH W/CAST IN PLACE BASE	EA	2	$5,500.00	$11,000.00
8"SEWER	LF	529	$64.00	$33,856.00
6"SEWER	LF	0	$46.00	$0.00
6"TIE IN	EA	0	$500.00	$0.00
4"SEWER SERVICE STUB	EA	0	$500.00	$0.00
4"WATER SERVICE	LF	0	$70.00	$0.00
HOT TAP	EA	0	$3,000.00	$0.00
ASPHALT-NOT INCLUDEDED	SF	6400	$4.05	$25,920.00
8" ROOF DRAIN	LF	0	$24.00	$0.00
STORM MH	EA	0	$2,200.00	$0.00
10"ADS	LF	0	$40.00	$0.00
STORM TIE IN	EA	0	$450.00	$0.00
12"ADS CULVERTS	LF	0	$28.00	$0.00
12" END SECTIONS	EA	0	$200.00	$0.00
DRY WELL	EA	0	$750.00	$0.00
4" DRAIN PIPE	LF	0	$18.00	$0.00
12" DRAINS	EA	0	$250.00	$0.00
TOTAL BID				**$77,776.00**

-Payment shall be made as services included in the bid are complete net 30 days. The Owner shall withhold 10% as retainage until project is 100% complete, inspected, and accepted by the City of Gunnison.
-Invoices shall be delivered to Gunnison County, C/O Facilities and Grounds, 200 E. Virginia, Gunnison CO 81230, or emailed to jcattles@gunnisoncounty,org. Invoices shall reference work completed as listed under “general” in the table above. Copies of inspection reports as applicable shall also be included.
-Final inspection and acceptance of work shall be required before retainage is released. Final inspection shall be completed by Facilities and Grounds Director, John Cattles and City of Gunnison Public Works Director along with the Contractor.