AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgement of County Manager's Signature; Con

Action Requested:

Parties to the Agreement:

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

Summary:

Please see the attached contract for acknowledgement of County Manager's signature.

Fiscal Impact: $92,575

Submitted by: Josh Ost **Submitter's Email Address:** jost@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Project costs included in budget, no concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/2/2017

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

Comments:

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 11/3/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/3/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 11/7/2017

Revised April 2015

CONTRACT AGREEMENT

1. PARTIES.

This agreement is made and entered into this 23rd day of October, 2017, between THE BOARD OF COUNTY COMMISSIONERS, GUNNISON COUNTY, COLORADO (hereinafter called "Gunnison County"), and Professional Contractor, Inc., (hereinafter called "Contractor"). For the purposes of this agreement, the address of Gunnison County shall be:

195 Basin Park Drive
Gunnison, Colorado 81230

and the address of the Contractor shall be:

125 N. Main Street, Suite B
Gunnison, CO 81230

2. CONTRACT DOCUMENTS.

The entire contract between the parties shall consist of and include:

a. Invitation to Bid;

b. Contractor's Bid Proposal, Bidder Qualification Statement, Subcontractors List, including any amended portions thereof accepted and approved by Gunnison County;

c. Notice of Award;

d. Payment Bond;

e. Performance Bond;

f. Contract Agreement;

g. Notice to Proceed;

h. Change Order Form;

i. Certificate of Substantial Completion;

j. Certificate of Final Completion;

k. Technical Specifications;

l. Site Plan;

m. Conceptual Drawings;

2.2 The provisions of the Specifications and the Construction Plans shall take precedence over any conflicting provisions in the proposal documents or other Contract Documents.

2.3 In case of discrepancy in the figures in the Construction Plans, the matter shall be promptly submitted to Marlene D. Crosby, Public Works Director, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense.

3. SCOPE OF WORK.

The Contractor shall furnish all of the necessary supervision, equipment, materials, tools and supplies and perform all of the labor and other services necessary for the construction of a 20′ x 36′, 3 sided metal storage building with 8′ concrete walls at the Gunnison County Crested Butte Shop. The work is located at 26601 Highway 135, Crested Butte. As referred to in the Invitation to Bid, as described and required by the Contract Documents and referred to herein as the "Project".

All workmen shall be competent and have sufficient skill, knowledge and experience in their class or work and operation of equipment, to perform all work properly and satisfactorily. The Contractor agrees to do the work in a first class, substantial and workmanlike manner to the satisfaction of Gunnison County in strict accordance with the provisions of the Contract Documents, including the Construction Plans and Specifications.

4. TIME OF COMPLETION.

The Contractor shall commence the work required by the Contract Documents immediately after the execution of the NOTICE TO PROCEED. The Contractor agrees that the completion of the Project within the time as set forth herein is of the essence and agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to insure the completion of the work within the prescribed time period.

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this agreement, or any extension thereof, or fails to complete said work within such time, Gunnison County may, in the sole discretion of Gunnison County, by written notice to the Contractor, terminate its right to proceed with the work or such part of the work as to which there has been a delay. In such event, Gunnison County may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and use any or all materials, appliance and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, it and its sureties shall be liable under the terms of the Payment Bond and Performance Bond for the Contractor's refusal or failure to complete the work within the specified time.

The Contractor's right to proceed shall not be so terminated or the Contractor charged with resulting damage if the Contractor be delayed at any time in the progress of the work by any negligent act of Gunnison County, Gunnison County employee or agent, or by changes ordered in the work, or by strikes, lock-outs, fire, unusual delay in transportation, unavoidable casualties or other causes beyond the Contractor's control. Inability to purchase the required materials listed in the Contractor's Proposal shall not be considered to be "beyond the Contractor's control".

If delay is due to a cause beyond the Contractor's control, the time of Completion of the work shall be extended for a period equal to such portion of the period of delay as the Contractor shall be able to show it could not have avoided by exercise of due diligence. The Contractor shall advise Gunnison County in writing within forty eight (48) hours from the beginning of such delay and shall file a written claim for an extension of time within three (3) days after the period of delay has ceased.

5. COMPENSATION.

As consideration for the completion of the Project as required by the Contract Documents, Gunnison County shall pay to the Contractor the sum of Ninety Two Thousand Five Hundred Seventy Five Dollars ($92,575.00) which amount shall be payable as follows:

a. once a month, at a date mutually agreeable, Gunnison County's engineer will compile the quantities of work completed and accepted. An amount equal to ninety percent (90%) of such amount shall be paid. The remaining ten percent (10%) shall be paid upon the issuance of the Certificate of Substantial Completion.

b. If materials stored at the Project site are paid for by Gunnison County, title to such materials shall vest in Gunnison County. If such materials

are stolen, lost or damaged before their incorporation into the Project, they shall be replaced at the Contractor's sole expense.

6. TAXES.

Construction and building materials sold to the Contractor and subcontractors for use on structures, roads, streets, highways, and other public works owned by Gunnison County are exempt from State sales and use taxes. However, such materials may be subject to any sales taxes imposed by local cities and counties and other local taxing authorities.

The Contractor and subcontractors shall apply to the Colorado Department of Revenue for certificates of exemption indicating that their purchase of construction or building materials is for a public project. Completed copies of the Application for Exemption Certificate with the approval of the Colorado Department of Revenue noted thereon should be delivered to Gunnison County prior to issuance of the Notice to Proceed. The Contractor agrees to secure from each subcontractor a copy of that subcontractor's approved Application and furnish a copy to Gunnison County. Bidders shall not include in proposals the exempt State sales and use taxes.

7. BONDS.

The Contractor shall secure and maintain, at the Contractor's expense, Payment and Performance Bonds executed by a corporate surety licensed to do business in the State of Colorado. Such bonds shall be in full amount of the contract price, shall remain in effect for a period of one year from the date of the issuance of a certificate of completion and shall be filed with Gunnison County prior to the commencement of any work on the Project. If the Payment and Performance bonds are not provided to the County within five (5) days of the full execution of this Contract Agreement, this Contract Agreement shall be null and void.

8. INDEMNIFICATION AND INSURANCE.

The Contractor shall indemnify and hold harmless Gunnison County, Gunnison County Public Works Department, and its officers, agents and employees from and against any and all claims, damages, losses, injuries and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work. Nothing in the agreement shall waive governmental immunity provided by statute or otherwise.

The Contractor shall procure and maintain, at its own expense, until completion of all work and acceptance thereof by Gunnison County, all of the insurance coverage's stipulated below. The Contractor shall furnish Gunnison County with a certificate of such insurance acceptable to Gunnison County. Such certificate shall be issued to Gunnison County and shall provide for thirty (30)

days written notice of cancellation or material change in coverage. The certificate shall be filed prior to the start of any work on the Project.

a. Liability Insurance: The Contractor shall procure and maintain Comprehensive General Liability, at its own expense, during the life of this Contract, including completed operations, contractual liability and Automobile Liability Insurance affording coverage for all claims for bodily injury including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under this contract, whether such operations be by the Contractor or by subcontractors under it or anyone directly or indirectly employed by the Contractor or by a subcontractor under it. Such insurance shall provide limits of liability of not less than one million dollars ($1,000,000.00). The Contractor shall furnish current certificates of insurance which shall include a provision that the insurance will not be canceled without thirty (30) days prior notice to Gunnison County. All such insurance shall be written on a Comprehensive Form of Policy. All such shall name as insured Gunnison County and the Contractor and any and all of its subcontractors.

b. Workman's Compensation Insurance: The Contractor shall procure and maintain Workman's Compensation Insurance at its own expense during the life of this contract, including occupational disease provisions for all of its employees. The Contractor shall also require each subcontractor to furnish Workman's Compensation Insurance, including disease provisions for all of the Contractor's employees, otherwise it accepts full liability and responsibility for subcontractor's employees, and shall indemnify and hold harmless there from Gunnison County, Gunnison County Public Works Department, and its officers, agents and employees. In cases where any class of employees engaged in hazardous work under the agreement at the site of the Project is not protected under the Workman's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance, deemed by Gunnison County to be suitable, for the protection of its employees not otherwise protected.

9. SUBLETTING OF CONTRACT.

The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract, or of its right, title or interest therein, without the written consent of Gunnison County.

The Contractor may utilize the services of specialty subcontractors on those parts of the Project which, under normal contracting practices, are performed by specialty subcontractors. The Contractor shall not award work to subcontractors in excess of fifty (50) percent of the contract price without prior written approval

of Gunnison County.

The Contractor shall be fully responsible to Gunnison County for the acts and omissions of its subcontractors and of entities and persons directly employed by it, as it is for the acts and omissions of persons directly employed by it.

Nothing contained in this agreement shall create any contractual relationship between any subcontractor and Gunnison County.

10. GUARANTEES.

The Contractor warrants and guarantees to Gunnison County that all equipment and materials to be furnished under this contract are free from all defects in workmanship and materials. The Contractor shall be responsible to obtain and ensure that all warranties and guarantees provided by manufacturers on equipment and materials furnished under this Contract denominate Gunnison County as an explicit recipient of such warranties and guarantees.

The Contractor shall remove from the Project area all work or materials rejected by Gunnison County or its inspector in Gunnison County's sole discretion for failure to comply with the Contract Documents, whether incorporated in the construction or not. The Contractor shall promptly replace the materials or re-execute the work in accordance with the Contract Documents and without expense to Gunnison County which are or become defective in the sole discretion of Gunnison County, due to such defects within one (1) year after date of receipt by Gunnison County. The Contractor shall also bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

Should the Contractor fail to proceed promptly in accordance with the guaranty, Gunnison County may have in its sole discretion such work performed at the expense of the Contractor.

11. PRE-CONTRACT EXAMINATION.

The Contractor hereby warrants that, before submitting its proposal, the Contractor examined all Construction Plans and became well and fully informed as to the materials and character of work required, the relationship of all the particular parts of the work and it visited and inspected the site, observing and examining the conditions existing.

After execution of the agreement, no consideration will be granted for any misunderstanding of the materials to be furnished or the work to be done, it being mutually understood that the tender of the proposal carried with it an agreement to this end and all other conditions mentioned in the Contract, and implied a full and complete understanding of them and all Construction Plans,

drawings, notes, indications, and requirements.

Should anything be omitted from the Construction Plans necessary to the proper completion of the work herein described, it shall be the duty of the Contractor to so notify Gunnison County before signing the agreement, and in the event of the failure of the Contractor to give such notice, it shall make good any damage or defect in its work caused thereby without extra charge. No allowance will be made for lack of full knowledge of all conditions, except such underground conditions as are determined after commencement of the work and were unknown to the Contractor.

12. ACCESS AND INSPECTION.

Gunnison County and its designated inspector shall at all times have access to the work. The Contractor shall provide proper facilities for such access and for inspection of the work. The inspector designated by Gunnison County is, in the first instance, the judge of the performance of the contract as it relates to compliance with the Construction Plans and Specifications, quality of workmanship and material. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

Gunnison County's inspector may order that portions of the work be uncovered, exposed or made available for observation, inspection or testing. The Contractor shall provide all necessary labor, materials, tools and equipment to comply with the inspectors' order. If such portion of the work is determined to be defective, the Contractor shall bear all costs involved, including the cost of reconstruction. If such portion of the work is determined to be in substantial compliance with the Contract Documents, the Contractor shall be compensated in accordance with Section 16 (Changes and Additional Work).

13. MEASUREMENTS.

The Contractor shall verify all measurements at the site. All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to Gunnison County's Public Works Director before any work affected thereby has been performed. No compensation will be allowed for differences between actual dimensions and those indicated on the Construction Plans. Differences shall be submitted to Gunnison County's engineer for consideration before proceeding with work, and in the event of the failure of the Contractor to so notify Gunnison County's engineer, the Contractor shall make good any damage or defect in its work caused thereby, without extra charge to Gunnison County.

14. NON-DISCRIMINATION.

In connection with performance of work under this agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, sex, color, national origin or ancestry; and further agrees to insert the foregoing provision in all subcontracts hereunder.

15. PROTECTION OF WORK AND PROPERTY.

The Contractor shall continuously maintain adequate protection of its work and materials, secure the property from trespass and entry by the public, and protect the property from injury or loss arising in connection with the agreement and adequately protect adjacent property as provided by law and the Contract Documents.

The Contractor shall at all times conduct its work so as to assure the least possible obstruction to traffic and adjacent residents. The safety and the protection of persons and property of the general public and residents along the street, highway and areas adjacent to the work shall be provided for by the Contractor.

The Contractor shall make good any damage, injury or loss, except such as may be:

a. directly due to errors in the Contract Documents;

b. directly caused by agents or employees of Gunnison County; or

c. directly due to causes beyond the Contractor's reasonable control and not due to its fault or negligence.

The Contractor shall take all necessary precautions for the safety of employees, subcontractors and the public on the work and shall comply with all applicable provisions of federal, state, municipal, county or any other political subdivision's safety laws and building codes to prevent accident or injury to persons on, about or adjacent to the premises where the work is being performed. It shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall take all other action necessary to assure the safe passage of pedestrians and automobiles.

16. CHANGES AND ADDITIONAL WORK

Gunnison County may in its sole discretion order changes within the scope of the work without invalidating the contract. Such changes may be made without notice to the Surety and the Surety shall not be released there from. Such changes shall not require work beyond the geographical limits of the original project unless the contract is modified.

No deviations from the Construction Plans will be permitted except those specifically authorized by a written change order issued by the engineer. Any completely executed change order shall be considered authorization to proceed with the additional work. If the Contractor proceeds without this authorization, it shall forfeit any claim for additional compensation for the work so performed.

Payment for work occasioned by these changes shall be made in accordance with the provisions set forth below. The completion time shall be adjusted accordingly.

Gunnison County may increase or decrease the originally awarded contract quantities, provided that the aggregate of such alterations do not change the total contract cost or the total cost of any major contract item by more than twenty (20%) percent (total cost being based on the unit prices and estimated quantities in the awarded contract). Alterations which do not exceed the twenty (20%) percent limitation shall not invalidate the contract, and the Contractor agrees to accept payment for such alterations as if the altered work had been a part of the original contract.

Should the aggregate amount of altered work exceed the twenty (20%) percent limitation herein specified, such excess altered work shall be covered by supplemental agreement. If Gunnison County and the Contractor are unable to agree on a unit adjustment for any contract item that requires supplemental agreement, Gunnison County reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

If Gunnison County deems it expedient to correct damaged work or work not performed in accordance with the agreement, an equitable deduction from the contract price may be authorized by change order.

17. FINAL INSPECTION, ACCEPTANCE, AND SETTLEMENT.

When the work is complete and ready for final inspection, the Contractor shall file a written notice with Gunnison County's Engineer that the work, in the opinion of the Contractor, is complete under the terms of the agreement.

Within ten (10) days after the Contractor files written notice that the work is

complete, the Engineer and the Contractor shall make a "final inspection" of the project to determine whether the work has been completed in accordance with the Contract Documents. A final list shall be made by the inspector in sufficient detail to fully outline to the Contractor:

1. Work to be completed, if any.

2. Work not in compliance with the Construction Plans, if any.

3. Unsatisfactory work for any reason, if any.

Four (4) copies of the list will be counter-signed by the inspector and will then be transmitted to the Contractor (two copies) and Gunnison County (two copies).

Gunnison County will not authorize final payment until all items on the list have been completed, a certificate of completion issued, and the notice of contractor's settlement published.

Before Gunnison County may advertise, the Contractor shall deliver to Gunnison County all guarantees and warranties, all statements to support State sales and use tax refunds, and one (1) set of as-built drawings showing all job changes.

Upon completion of the foregoing, the Project shall be advertised by a notice of contractor's settlement by two (2) publications of the notice, the last publication appearing at least ten (10) days prior to the time of final settlement. On the date of final settlement thus advertised, and after the Contractor has submitted a written notice to Gunnison County that no claims have been filed, final payment and settlement shall be made in full.

If any unpaid claim for labor, materials, supplies, equipment or damages to third parties is filed before payment in full of all sums due the Contractor, Gunnison County shall withhold from the Contractor sufficient funds to insure the payment of such claim until the same shall have been paid or withdrawn, such payment or withdrawal evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or its duly-authorized agent or assignee.

18. CANCELLATION OF CONTRACT.

Failure of the Contractor to comply with any of the requirements of the agreement and the Specifications may be considered as evidence of the inability on the part of the Contractor to maintain the quality and service standards deemed necessary and shall be sufficient cause for the cancellation of the agreement and the initiating of legal action against the Performance Bond of the Contractor.

19. VENUE.

Venue for any and all legal actions regarding the transaction covered herein shall lie in the District Court in and for the County of Gunnison and State of Colorado. This Contract Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

20. 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.

21. 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 the Board of County Commissioners of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

(d) IMMIGRATION COMPLIANCE CERTIFICATION. Contractor certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this contract. Contractor further certifies that it has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this contract. Finally, Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program (operated by the Department of Homeland Security).

22. INDEPENDENT CONTRACTOR.

(a) 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.

(b) 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.

Witness our hands on the date first set forth above.

BOARD OF COUNTY
COMMISSIONERS OF GUNNISON
COUNTY, COLORADO

By_____
~~Phil Chamberland, Chairperson~~
Matthew Birnie, County Manager

Attest:

_____

GUNNISON COUNTY SEAL COLORADO

CONTRACTOR

By_____
President

Attest:

_____
Secretary