AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgment of County Manager Signature; MJM Co

Action Requested:

Parties to the Agreement:

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

Summary:

Requesting acknowledgment of County Manager's signature on the Consulting Agreement with MJM Project Consulting, LLC for the airport renovation. The signed agreement is attached.

Fiscal Impact:

Submitted by: Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 3/15/2019

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 3/19/2019

Revised April 2015

STANDARD CONSULTING AGREEMENT FOR OWNER'S REPRESENTATION SERVICES

This Consulting Agreement is entered into by and between ***MJM Project Consulting, LLC*** hereinafter referred to as "Consultant" and the Board of County Commissioners of the County of Gunnison, Colorado, hereinafter referred to as "Client".

1. The Consultant agrees to provide consulting support services as an independent contractor, by rendering its opinion to the Client in accordance with the Client's request for advice, guidance and recommendations in support of its development, direction and management of its real property development project, the **Gunnison County Airport Renovation ("Project")** located in Gunnison, Colorado, ("Project"). This service shall be provided in consideration of, and on a Fee and Reimbursable expense basis in accordance with the Fee Schedule incorporated and included with this agreement as "Exhibit A."
   a. The Consultant agrees that it will adhere to the following procedures pursuant this Agreement:
      (1) The Consultant shall report to the Client findings and conclusions developed during research of the various phases of its performance hereunder, and provide, as required, support and assistance as requested by the Client.
      (2) All services performed under this Agreement shall be subject to review by the Client at all times.
      (3) All efforts in performance of this Agreement by the Consultant shall be performed at the direction of the Client's Representative and single point of contact, which has been designated as **Matthew Birnie, County Manager.**
   b. The **Consultant shall commence performance of this Agreement on 11 March 2019** and shall continue performance hereunder until such time as determined by agreement of the parties. Both of, or either of, the beginning date and completion date may be changed by agreement of the parties. In the event that services continue beyond a specific completion date, Client shall continue to compensate the Consultant per the terms and conditions of this Agreement.

2. In support of the Consultant's services, the Client agrees that it will provide the Consultant with all necessary data, plans, records, and information gathered to perform this service and that the Client will make available specific representatives of its organization staff, and other consultants to assist the Consultant on an as needed basis at no cost to the Consultant.

3. In consideration of the services provided by the Consultant, the Client shall pay the Consultant in accordance with the following provision:
   a. The Client shall pay the Consultant for actual services performed hereunder in accordance with the Fee Schedule, which is attached to this agreement in **"Exhibit A", as dated** 14 **March 2019**.
   b. The Client shall compensate the Consultant for reimbursable expenses in accordance with the terms defined in the attached "Exhibit A".

4. The following payment provisions shall apply:
   a. In consideration for the above, Consultant shall be paid for work performed within (15) days of Client's receipt of invoice. Consultant shall invoice for services on a monthly basis.
   b. The Consultant shall not be required to perform any work for the Client when any amount due and payable hereunder by the Client shall be in default.
   c. Interest in the amount of 1 ½% per month shall be applied to any unpaid balances beyond the (15) day payment terms of this agreement.

5. It is understood and agreed that all information and/or data which is generated by the Consultant, and/or which is obtained by the Consultant as a result of this agreement with the Client, shall be considered confidential to the extent permitted by law. Unless specified otherwise by the Client's authorized

representative, the Consultant shall not disclose, any such information and/or data to any other person, firm or organization. Information and/or data created by the Consultant shall remain the property of the Client, and Consultant is authorized to retain a copy of such Consultants project documents for its confidential files.

6. In the event that the Client shall make a determination, in the exercise of its business judgment, to change, alter, amend or modify any material or documents prepared by the Consultant pursuant to this Agreement, the Consultant shall not be responsible or liable for the consequences of such action on the part of the Client.

7. The Consultant's role is to assist the Client, working through and in concert with the Client's Representative, the County Attorney and the Client Representative's staff members working on the Project, as **an independent contractor**, in the performance of certain Client Representative's project development management and project executive decision-making and administrative duties and responsibilities for, and on behalf of the Ownership of the Project. The Client carries a responsibility for effectively communicating to the Consultant, Client's desires and directions with respect to desired actions to be taken toward the implementation of Client's goals and objectives and decisions made as executive managing director of the project. In response thereto, Consultant will strive on a best effort basis in communication and facilitation, toward goals of achievement, by the Client's other contracted parties employed during the Phases of the project, of Client's interests and project goals and objectives established by the Client. Consultant does not provide real property development pro forma generation, cost estimating, scheduling (other than in consultation with the Client's Representative in setting major project milestones), appraising, legal, architectural programming, architectural design, engineering, geotechnical, space planning, systems commissioning, testing, inspection or similar professional services. The consultant does not provide independent direction to the Client's other professional consultants or internal company staff members.

   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.

8. As a Consultant, there is no promise made of successful influence over, nor guarantee of cost, quality, overall project or individual project intended phase(s) duration adherence, or safety considerations of the Project, nor for successful implementation by the Client's Representative and/or others, or successful application of any processes or procedures recommended by the Consultant for application or utilization on the Project. The Consultant's activities are those of providing advice and recommendations, and efforts toward facilitation, coordination and as communicator on behalf of the Client, in support of, and as advisor to the Client's Representative, Project staff members working on the project, and the Client's attorney(s). The Consultant's activities are those of a facilitator, via support of, and council to the Client's Representative, of the programming, design, preconstruction and construction processes employed on the project.

9. The Consultant is not an attorney and is not the Project Manager or Project Director. With regard to any work or services performed by the Consultant in the generation, drafting, preparation or any other involvement with any service solicitation documents, contractual documents and forms of agreements intended to be made for purposes of establishing legal contracts between the Client and any other of its professional consultants, builders or other parties to contracts with the Client, it is the Client's responsibility and obligation to submit such documents for review toward approval of, or separate modification by the Client's own attorney(s) or other legal or other representatives and interested parties; and any other parties to which the Client is responsible for obtaining such or related approval(s). Consultant can, upon Client's direction, consult with said attorney(s) or other parties. It is the Client's responsibility alone to obtain any necessary permission, which may or may not arise, to utilize, and to pay any associated fees or costs which may be required for the use of any proprietary draft forms of contract and any other legal documents such as, but not limited to standard AIA documents or similar commonly utilized design and construction industry

forms, formats and/or templates, to which modifications and other changes are or may be made for use on, or are otherwise utilized in application on the Project.

10. The Consultant has no authority to assume or create any commitment or obligation on behalf of or to bind Client in any respect whatsoever and shall not represent that it has such authority or otherwise hold itself out as having such authority.

11. 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.

12. In the event that any dispute shall arise with regard to any provision or provisions of this Agreement, the Agreement shall be subject to, and shall be interpreted in accordance with, the laws of the State of Colorado. Jurisdiction shall be in the State of Colorado, and venue shall lie in the County of Gunnison, Colorado.

13. In the event that the Consultant is required to provide consulting services beyond the term of this agreement, or support the project team, or provide support as a matter of resolution of the completion and/or close out of services, or provide added services including support for legal action, the Consultant will be compensated by the Client based on the hourly rates established in Exhibit A hereof, plus reimbursable expenses.

14. This Agreement may be terminated at any time by either party upon thirty (30) days written notification or otherwise by mutual consent of the parties. Client will compensate Consultant for reasonable costs, for demobilization of services, that are set forth in Exhibit A in the event that the Consultants services are terminated without proper and timely notice. In the event that any party to this Agreement shall be deemed to be in default according to the terms and conditions of the Agreement, such party shall have an opportunity to cure said default; in the event that any such default is not cured within (10) days of the date of the act, event or occurrence of the default, then this Agreement shall be terminated and the parties may pursue their respective remedies pursuant to this Agreement.

15. The Client, by executing this agreement, accepts that the Client shall not hire away any staff individual from the Consultant. In the event that the Client does hire a staff individual(s) within 12 months of the Consultant providing services to the Client, the Client shall compensate the Consultant at a rate of 75% of the staff individual's annual base salary. This compensation is due and payable within 30 days of the staff individual's 1st day of work with the Client. This compensation shall apply to any and all of the Clients business ventures.

16. **Client shall require the Project Programming Entity, Architect, Construction Manager/General Contractor and all Subcontractors to name the Client and Consultant as additional insured under their respective general liability policies, including completed operations coverage provided for the project.** Products and Completed Operations insurance shall, at a minimum, be maintained by such other parties per the State statutes where the work is being performed. In the event of an OCIP program the Consultant shall be a named insured.

17. This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior proposals, arrangements and/or understandings between the parties hereto with regard to the Project. No statements or representations by either party, which are contrary to, or in addition to, the terms and conditions of this Agreement shall be of any force or effort. This Agreement may not be altered, changed, amended, or modified except by mutual agreement of the parties thereto in writing. 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. 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.

18. Each party hereto represents and warrants that the person executing this Agreement on behalf of such party is authorized to sign this Agreement on behalf of such party.

19. It is also acknowledged by the Client that the Consultant has no control over municipalities, utilities, other regulatory agencies, etc., as may affect performance of the services of the Consultant. 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.

In witness whereof the parties acknowledge and execute this Agreement on this 14 day of March, 2019.

CONSULTANT:
MJM Project Consulting, LLC

By: _____
Michael J. Mismash
Title: Principal

GUNNISON COUNTY:
The Board of County Commissioners of the County of Gunnison, Colorado

By: _____
Matthew Birnie
Title: Gunnison County Manager

ATTEST:
Elizabeth Mense
Deputy County Clerk

End of Agreement

GUNNISON COUNTY SEAL COLORADO

"EXHIBIT A"
to
Consulting Agreement Between
MJM Project Consulting LLC, and the Board of County Commissioners of the County of Gunnison, Colorado
Gunnison County Airport Renovation Project

1. FEE SCHEDULE:

a. The hourly, daily and weekly billing rates for Client requested and authorized Tasks and Services of Consultant, that the Consultant, may choose, at his sole discretion, to accept or reject, to be provided by Consultant for this Project, shall be applied via "hourly rate," "daily rate" or "weekly rate" measure of task/service-applied compensation, and shall be justified for Client's consideration toward approval for payment via supporting Timesheet indicating time expended by Consultant working on such service tasks undertaken by the Consultant on Client's behalf, supporting monthly invoices for payment. Said billing rates are as follows:

- MJMPC LLC Principal — Hourly Rate: $ 125/hour
- MJMPC LLC Principal — Daily Rate: $ 1,000/8 hour workday
- MJMPC LLC Principal — Weekly Rate: $ 5,000/5 day workweek

The Not-to-Be-Exceeded ("NTBE") without prior acknowledgement by the Client, Billable Monthly Fee compensation amount (i.e. "top-set" monthly billable amount) established is:

- MJMPC LLC Principal — (NTBE) Monthly Rate* — $ **8,500.00**/month

Per *Outline of "Scope of Consultant Services Needed," as provided to the Consultant by the Client via email on 9 March 2019; and Fee Proposal of the Consultant provided to the Client via email in response thereto as dated 10 March 2019; both incorporated in this Exhibit A by reference. Term of Consultant Service is for Final Programming/Early Design & Preconstruction Phase of the Project, from services commencement on 11 March 2019 and projected to extend through 31 October 2019, or through establishment by agreement between the Client and it's Construction Manager General Contractor (CM/GC) of choice, of the Project Initial Guaranteed Maximum Price (IGMP) of Construction, to be based upon the Client-Approved Schematic Design level of Construction Contract Documents prepared by Client's Architect of choice, whichever occurs first. Should IGMP be established after 31 October 2019, due to a longer than currently projected Final Programming/Early Design & Preconstruction Phase duration through IGMP Establishment, Consultant shall continue to be compensated via the above established basis until IGMP is established by agreement between the Client and it's CM/GC, or the cancellation of the project by the Client. The above expressed Monthly Rate maximum billable amount of $8,500.00 is based upon the Projected Design/Preconstruction Phase duration of 7.5 months (34 weeks), commencing on 11 March 2019 and projected as ending on or about 31 October 2019. Thus, the total*

maximum projected Fee for Consultant Services during the Final Programming/Early Design & Preconstruction Phase of the Project, as defined above, is <u>$63,750</u> ($8,500 X 7.5 months, or equivalent, on an average basis, to working on the project for 3 hours per workday or 15 hours per workweek).

b. Additional Services billing rates are as follows:

- Any Litigation/Court-related Support Services (requested by Client) $ 200/hour

c. The billing rates will be applied to time spent working directly on the project and will include reasonable vehicular travel time to and from meetings in Gunnison, Colorado or elsewhere and the Consultants home office.

d. Consultant retains the right to reasonably increase these billing rate(s) and basis for reimbursement of expenses at the beginning of each calendar year and Client agrees to not withhold its approval of such reasonable increases.

2. SCOPE OF SERVICES:

The Scope of Services to be provided by the Consultant is as follows, for the ***<u>Final Programming/Early Design & Preconstruction Phase of the Project</u>***, as defined above:

Scope of services to be provided (as interpreted by Consultant from description provided by Client to Consultant via email on 9 March 2019):

- Contract development for Client retention of a project architect, and to assist Client to engage project CM/GC and Architect intended to be mutually at-risk for the adherence to the eventually established and Client-Approved Final Guaranteed Maximum Price (FGMP) for Total Project Construction Cost to Client
- Provide leadership in development and facilitation of Owner's solicitation and selection process for CM/GC engagement
- Contract development for Client retention of the project CM/GC
- Provide leadership of pre-construction process to mutually agreed upon (initial) guaranteed maximum price ("IGMP") via Owner-CM/GC Contract for construction
- Client's expressed Budget for Total Project Construction Cost as to be provided to its Project Architect to which budget amount said Architect will be requested to design the Project, and which amount shall be the intended target not to be exceeded in project construction delivery by the eventual CM/GC is $12 million.

Potential continuing Consultant involvement and basis of payment for Consultant services on the Project on behalf of the Client during Design Phases subsequent to the completion of a Schematic Design, if approved by the Client, and the establishment of the IGMP, shall be separately negotiated between Consultant and Client pending decision of Client to proceed with design phases subsequent to Schematic Design, and the Construction Development of the Project; and the Consultant's decision to continue to offer provision of further consulting services during such additional Design and Construction Phases beyond Client-Approved Schematic Design and IGMP establishment.

3. REIMBURSABLE EXPENSES:

a. Additional Services outside of the scope set forth above, if acceptable to and provided by the Consultant, if not compensated via established Hourly, Daily or Weekly Rates, as set forth above in item 1.a., shall be charged at actual costs incurred plus a mark-up of 10%; and any Reimbursable Expenses related thereto provided through the Consultant shall be reimbursed by the Client at actual cost.

b. Included in Consultants' fee structure are standard overhead costs and minimal Consultant office supplies. Client will compensate Consultant for reimbursable expenses required beyond those expenses, which are considered standard for these professional consultation services. The following are considered examples of expenses beyond Consultant's standard scope and compensation via Fee:

1. Professional Liability Insurance. If Client requires Consultant to provide such coverage, if obtainable, the cost therefor shall be provided at actual cost to the Client for reimbursement without mark-up.

2. Out-of-region travel, beyond a 50 mile radius of Consultants' home/office, shall be billed by the Consultant for reimbursement by the Client on the IRS allowed cost per mile basis.

3. Costs of printed copies, including but not limited to paper and ink, of periodic reports, memos, and/or correspondence initially incurred by Consultant, if any, beyond those via electronic copy/email.

4. Costs or office supplies, postage or long distance charges, if related to Consultant's service work on the project and if initially incurred by Consultant.

5. Project specific requirements not typically included in consultants' regular tools for services. Such items may include, but are not limited to, software, hardware, and equipment not currently being utilized by Consultant, or manuals, books or standards required by specific municipalities or outside regulatory or other agencies involved within the specific project.

6. Any other direct and specific expenses required to provide services.

4. TAXES:

Consultant is responsible to pay all applicable taxes as related to this agreement. Payment of each invoice is considered full payment for services rendered for the term of the invoice, and Client is not liable for any taxes, dues, etc. beyond the amount invoiced.

Consultant Initial: _____ **Client Initial:** MB

Date: 3-14-2019 **Date:** 3-14-2019

---End of "Exhibit A"---