AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Ratification of Cty Manager's Signature; Service A

Action Requested: Other Ratification of County Manager's Signature

Parties to the Agreement:

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

Summary:

Requesting ratification of County Manager's signature on the traffic engineering contract with McDowell Engineering for Lot 22 development.

Fiscal Impact: 17,830

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, can be covered in budget. kw

Reviewed by: GUNCOUNTY1\kweak Discharge Date: 4/10/2019

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

Comments:
ok db 4/11/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/11/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/11/2019

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

Agenda Date: 4/16/2019

Revised April 2015

McDowell Engineering
1099 Capitol Street, Suite 208
PO Box 4259, Eagle, CO 81631
(970) 623-0788

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

Client: Gunnison County
Address: 200 E. Virginia Avenue
Gunnison, CO 81230
Phone: 970-641-8560
Contact/email: John Cattles (jcattles@gunnisoncountyorg)

Project Number:
Project Name: Gates Co Multifamily
Project Address: 1410 Blaze Trail Rd A&B Gunnison, CO
Project Owner: Gunnison County
Date: April 5, 2019

This document constitutes our agreement for professional engineering services and compensation as specified below.

Services specifically included are noted below:	Lump Sum $	Lump Sum QTY	PE $170 QTY	DE $115 QTY	TOTAL	In Contract?
Due Diligence						
Due Diligence					$0	No
Traffic Engineering						
Traffic Data Collection					$0	No
Count Days/Time ☐ Sun ☐ Mon ☐ Tues ☐ Wed ☑ Thur ☐ Fri ☐ Sat						
Morning Hours	$350	3			$1,050	Yes
A) 6am-8am B) 7am-9am C) 8am-10am D) Other: B						
Evening Hours	$350	3			$1,050	Yes
A) 3pm-5pm B) 4pm-6pm C) 5pm-7pm D) Other: B						
12-Hour Turning Movement Count	$1,200	1			$1,200	Yes
Agency Traffic Analysis Scoping			2		$340	Yes
Traffic Memo					$0	No
Transportation Impact Study					$0	No
Trip Generation Analysis (Level 1)					$0	No
Auxiliary Turn Lane Analysis (Level 2)					$0	No
Transportation Impact Study (Level 3)	$5,500	1			$5,500	Yes
Traffic Modeling					$0	No
Traffic Signal Timing					$0	No
Corridor Progression Analysis					$0	No
Synchro (HCM LOS)			6		$1,020	Yes
RODEL (Roundabouts)			4		$680	Yes
VISSIM (Microsimulation Analysis and Visualization)					$0	No
Other:					$0	No
Traffic Engineering Analysis					$0	No
MUTCD Signal Warrant					$0	No
MUTCD Stop Control Analysis			4		$680	Yes
TDM Analysis (Travel Demand Management)					$0	No
Custom Trip Generation Analysis					$0	No
Multimodal Analysis					$0	No
Heavy Vehicle Analysis					$0	No
Speed Study					$0	No
Sight Distance Analysis			1		$170	Yes
Traffic Calming Analysis					$0	No
Crash Data Analysis					$0	No
Parking Analysis					$0	No
Other:					$0	No
Traffic Engineering Review Services					$0	No
Municipality Review Services					$0	No
Peer Review Services					$0	No
Other:					$0	No

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Transportation Planning					
Background Growth Analysis				$0	No
Land Use Projections				$0	No
Transportation Plan Recommendations				$0	No
Transportation Engineering					
Intersection Plans - 3 Schematic Alternatives			24	$4,080	Yes
Roundabout Geometrics				$0	No
Traffic Control Plans				$0	No
Signing and Striping Plans				$0	No
Truck Turning Templates				$0	No
Transportation Engineering Review Services					
Municipality Review Services				$0	No
Peer Review Services				$0	No
Other:				$0	No
Agency Permitting					
Access Permit Application & CDOT Submittal*	$700	1		$700	Yes
Design Waiver Request				$0	No
Local Agency Project Administration				$0	No
PUC (Railroad)				$0	No
Meetings and Coordination					
Design Team Meetings and Coordination			4	$680	Yes
Public Agency Meetings and Coordination			4	$680	Yes
Board and Council Meetings				$0	No
Presentation Graphics				$0	No
Expert Witness Prep and Testimony					
Expert Witness Prep and Testimony (Witness Rates Apply)				$0	No
Subcontracted Work					
Subcontracted Work				$0	No
Other					
Other:				$0	No
			Contract Total	**$17,830**	

Notes:
Peak hour turning movement count data at the intersections of SH 135 & Spencer, SH 135 & Colorado, Colorado & Spencer. 12 hour turning movment counts at Colorado and Rock Creek Road East for stop warrant analysis.
Schematic intersection alternatives at Colorado & Site Access include: standard 3-legged tee, access onto curve, and mini roundabout. Truck turning templates are not included. Layouts are intended for feasiblity conversations with the City.
***Access Permit Application if required. CDOT will require if site traffic increases traffic volumes on SH 135 access by >20%.**

The Owner and/or Client agrees to limit McDowell Engineering's liability and its employees' liability on account of property or consequential damages to the Owner, Client, and all construction contractors or subcontractors on the project arising from McDowell Engineering's negligence, professional acts, errors, or omissions, such that the total aggregate liability of McDowell Engineering to all those named shall not exceed the amount of this contract. Traffic and

☐ Fixed Fee of ☑ Hourly with Estimate **$17,830** ☐ Retainer Due Prior to Start of Work

If you are in agreement with the scope and conditions of this letter, please indicate by signing below and returning a copy to this office as our authorization to proceed.

By: Matthew Birnie **Agency:** Gunnison County, CO
Title: County Manager **Date:** 4-05-2019

McDowell Engineering, LLC
2019 TERMS AND CONDITIONS

1. SERVICES

1.1. Client desires to retain McDowell Engineering, LLC to provide Client with certain Services (as defined below) with respect to the Client's project on the Project Site as described in the Scope of Work.

2. DEFINITIONS

2.1. "Scope of Work" shall mean the proposed work described on the attached Services Agreement, which specifies the Services, the scope thereof, and the applicable fees for the Services. The Scope of Work shall be governed by these Terms and Conditions.

2.2. "Services" shall mean the work to be performed by McDowell on the Client's project, subject to the terms of this Agreement, as specified in the Scope of Work.

3. CHARGES, PAYMENT AND TAXES

3.1. Fees for Services. Unless otherwise expressly stated in the Scope of Work, Services shall be provided on a time and material ("T&M") basis at McDowell's *Fee Schedule* rates current when the Services are performed (which rates shall be set forth in an attachment to the Scope of Work). The Fee Schedule may be modified at the commencement of each calendar year and, as modified, shall be effective thereafter. If the parties agree upon a cost limit for the Project, it shall be stated in the Scope of Work and shall be deemed the maximum amount to be paid by Client on a T&M basis. If the Services are to be provided on a Fixed Fee basis, said Fixed Fee is the amount that shall be paid by Client for the Services provided in the Scope of Work, which Fixed Fee shall be billed and paid monthly based upon McDowell's estimate of the percentage of the work completed. If the Scope of Work is modified, McDowell shall provide the Services for new or additional work on a T&M basis not subject to the cost limit or Fixed Fee unless a written change order modifying the cost limit or Fixed fee for the modified Scope of Work is signed by the parties.

3.2. Reimbursable Expenses. Client shall reimburse McDowell for reasonable travel, communications, equipment rental, consultant's fees, disposal fees, reproduction, delivery and express shipping fees, subcontractor fees and expenses and other out-of-pocket expenses incurred in conjunction with the Services. All such reimbursables shall be charged and billed at 1.15 times the direct out-of-pocket expense.

3.3. Invoicing and Payment. McDowell shall invoice Client monthly, unless otherwise agreed in the Scope of Work. Payment of all invoiced amounts shall be due within 30 days from the last day of the month for which services were rendered (the"Grace Period") (e.g., payment for work performed in September would be due by November 1). Any amount payable by Client hereunder that remains unpaid after the Grace Period shall be subject to an interest rate of 1.5% per month, compounded daily, and interest shall accrue commencing with the first day of the Grace Period, until the amount is paid. In the event any amount payable by Client hereunder remains unpaid after the Grace Period, in addition to other remedies available, McDowell shall be entitled, but not obligated, without terminating this Agreement to cease all work provided pursuant to this Agreement until paid in full, which cessation shall extend all time-related obligations of McDowell.

3.4. Taxes and Governmental Fees. The fees and rates described above do not include any applicable taxes or fees levied or charged by any governmental entity. If McDowell is required to pay any federal, state or local taxes or fees based on or in connection with its performance of the Services under this Agreement (other than taxes based on McDowell's income), such taxes and fees shall be billed to and paid by Client as a reimbursable expense pursuant to the provisions of Paragraph 3.2 above.

3.5. Retainer. In the event Client has provided to McDowell a Retainer, said Retainer shall be applied to amounts due under the final invoice submitted by McDowell upon completion of the work; provided, however, that if Client fails to timely pay an earlier invoice, McDowell may utilize any or all of the Retainer to pay such invoice and Client shall immediately replenish the Retainer. The Retainer may be utilized by McDowell to satisfy, in whole or in part, any default of Client. In the event the Retainer is in an amount in excess of amounts remaining due from Client, McDowell shall refund such excess to Client within thirty (30) days following completion of the work.

3.6. Accuracy of Invoices. Client agrees that invoices from McDowell to Client are correct, conclusive, and binding on Client unless Client, within thirty (30) days from the date of the invoice, notifies McDowell in writing of alleged inaccuracies, discrepancies, or errors in the invoice.

3.7. Fee Adjustment Due to Cessation of Work. In the event that Client requests McDowell to suspend or cease performance of the work or McDowell ceases its performance as provided under the terms of this Agreement, Client agrees to pay additional fees and expenses resulting from such suspension of work on a T&M basis as a modification to the Scope of Work.

3.8. Lien Rights. Client agrees that McDowell shall have a mechanic's lien upon the privately owned real property included within the Project Site for all unpaid sums due pursuant to this Agreement. Client further agrees and specifically acknowledges that all Services provided as set forth in the Scope of Work, as may be amended, shall be conclusively deemed to have been provided as an improvement to and upon the privately owned real property within the Project Site. If Client is a governmental entity or the Project Site is a public project, the foregoing shall not apply, but McDowell shall retain all rights pursuant to C.R.S. §38-26-101 et. seq.

3.9. Rate Revisions. McDowell adjusts the attached Fee Schedule annually on January 1. Projects extending beyond January 1 of each year shall be subject to the new Fee Schedule.

4. PROJECT

4.1. Access to Project Site. Client agrees to cooperate in every way requested by McDowell to expedite the commencement and completion of the work set forth in the Scope of Work. Client agrees to provide McDowell access to the Project Site and to make available any records, documents, deeds or other items requested by McDowell for the reasonable performance of the work. If the Client does not own privately owned real property within the Project Site, Client shall provide to McDowell written authorization from the owner of such property to perform the work described in the Scope of Work.

4.2. Right of Entry. Client grants McDowell, its agents, employees, consultants, contractors and subcontractors the right to enter the Project Site for the purpose of studying, researching, sampling and testing as necessary to perform the Services.

4.2. Advertising. Client grants McDowell, its agents, employees, consultants, contractors and subcontractors the right to provide basic project information such as a project description, location, and summary for future advertising purposes.

5. TERM AND TERMINATION

5.1. Term. This Agreement shall commence on the Commencement Date set forth in the Scope of Work and continue until the work is completed and full payment has been received.

5.2. Termination for Breach. Either party may terminate this Agreement if the other party is in material breach of this Agreement or the Scope of Work and has not cured such breach within 15 days of written notice specifying the breach. Consent to extend the cure period for a non-monetary breach shall not be unreasonably withheld, so long as the breaching party has commenced efforts to cure during the 15-day notice period and pursues cure of the breach in good faith.

5.3. Termination for Cause. McDowell may terminate this Agreement upon 15 days written notice to Client in the event that:

5.3.1. Client should become insolvent or have a receiver appointed over any of its assets;

5.3.2. Proceedings are instituted by or against client for winding up, reorganization, or bankruptcy;

5.3.3. Client makes an assignment for benefit of or composition with its creditors;

5.3.4. Client, a governmental entity, or other cause beyond control of McDowell causes the work to be discontinued for a period in excess of ninety (90) days; or

5.3.5. Due to matters beyond the control of McDowell, the work described in the Scope of Work has not been completed by the end of the second year from the Commencement Date.

5.4. Effect of Termination. The parties' rights and obligations under Article 3, Article 6, and Section 7.2 shall survive termination of this Agreement and completion of the Services. Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief. Termination shall not relieve Client of its obligation to pay: (a) all charges that accrued prior to such termination, (b) all charges incurred by McDowell after such termination in connection with
the withdrawal of equipment and personnel from the Project Site, and (c) lost profits and overhead unless the termination results from McDowell's breach.

6. WARRANTY, REMEDY AND LIMITATION OF LIABILITY

6.1. Warranty. McDowell warrants that the Services shall be performed consistent with generally accepted standards of care of professional engineers in the locality of the Project Site.

6.2. Limitations on Warranty. Client must report any deficiencies in the Services to McDowell in writing within 60 days of completion of the Services in order to receive the warranty remedy described below. THE WARRANTY HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.3. Limitation of Liability/Exclusive Remedy. For any claim against McDowell (whether it is for breach of warranty, for tort, for breach of contract, or otherwise), McDowell shall not be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, or use incurred by the Client or any third party. The risks have been allocated such that the Client agrees to the fullest extent permitted by law that McDowell's maximum liability to Client for any warranty claims, damages, or breaches arising out of this Agreement and the provision of its Services shall, at McDowell's choice, be one of the following: (a) McDowell's re-performance of the Services or (b) the fees paid to McDowell under this Agreement.

6.4. Indemnification. Client shall indemnify, defend and hold McDowell harmless from and against any and all demands, suits, causes of action, judgments, expenses, attorneys' fees and losses (collectively, "Claims") arising out of or in connection with bodily injury (including death) to persons or damage to property resulting from conditions at the Project Site, the inaccuracy of data or information supplied by Client, and the negligent acts or omissions of Client, its agents or employees.

6.5. Estimates. McDowell makes no representation or warranty concerning the estimated quantities, land areas, or probable costs made in connection with surveys, maps, plans, specifications, reports or drawings, other than that all such quantities, areas, and costs are estimates only.

7. GENERAL

7.1. Governmental Approvals. If set forth in the Scope of Work, McDowell agrees to assist and advise client in obtaining the necessary governmental approvals for the project; provided, however, that all services provided in connection with such governmental approvals shall be paid on a T&M basis notwithstanding any cost limit or Fixed Fee. McDowell does not make any warranties or representations regarding the likelihood or timing of governmental approvals.

7.2. Documents. McDowell shall have the right to retain the original copies of all documents, reports, plans, drawings, specifications, field notes, calculations or estimates prepared by McDowell in performing the Services (the "Documents") all of which shall remain the property of McDowell and may be used by McDowell without Client's consent. Client agrees not to use or rely on any Documents other than in connection with the Project without McDowell's prior written consent. Any such use of or reliance on the Documents without McDowell's permission is at Client's sole risk, and Client shall indemnify, defend and hold McDowell harmless from any and all Claims arising from such unauthorized use. Upon request and payment of the costs involved and provided Client is not then in breach of this Agreement; McDowell shall provide copies of the Documents to Client.

7.3. Subcontracting. McDowell shall be authorized to subcontract any of the Services, but such subcontracting shall not relieve McDowell of any of the responsibilities or obligations under this Agreement. The fees and expenses of such subcontractors shall be deemed reimbursables. Subject to the limitations set forth in Article 6 above, McDowell shall be and will remain responsible to Client for the acts, errors, omissions or neglect of any subcontractor's officers, agents, and employees.

7.4. Force Majeure. McDowell shall not be responsible for damages or delay in performance caused by events beyond the control of McDowell, including without limitation, acts of God, strikes, lockouts, accidents, the actions of governmental entities, failures of Client or others to provide timely information to McDowell, or otherwise.
7.5. Third-Party Beneficiary. Client and McDowell agree that there are no express, intended, or implied third-party beneficiaries to this Agreement, and this Agreement may only be enforced by the undersigned parties.
7.6. Relationship between the Parties. McDowell is an entity independent from Client and is in direct control of its direction and timing of actions. This Agreement does not establish a joint venture, agency or partnership between the parties, nor does it create an employer-employee relationship. Each party shall be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. McDowell is not responsible for the performance of work by third parties (other than McDowell subcontractors), including without limitation construction contractors.

8. MISCELLANEOUS
8.1. Governing Law. The laws of the State of Colorado shall govern this Agreement, and all matters arising out of or relating to this Agreement.
8.2. Jurisdiction. Any legal action or proceeding relating to this Agreement shall be adjudicated in the Eagle County Court, State of Colorado, or the United States District Court for the State of Colorado, except that any action involving perfection or foreclosure of a mechanic's lien shall be adjudicated in the District Court for the county in which the Project Site is located. McDowell and Client agree to submit to the jurisdiction of, and agree that venue is proper in, the aforesaid courts in any such legal action or proceeding. McDowell shall be awarded all attorney fees and costs it incurs in enforcing this agreement.
8.3. Notice. All notices, including notices of address change, required or permitted to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first-class mail to the addresses for the parties listed in the Scope of Work.
8.4. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force.
8.5. Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.
8.6. Successors and Assigns. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Neither party may assign its interest herein without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the above, no assignment shall operate to relieve the assignor of its obligations hereunder.
8.7. Entire Agreement. This Agreement and the Scope of Work constitute the complete agreement between the parties and supersede all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. Neither this Agreement nor the Scope of Work may be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage, or custom shall be deemed to amend or modify this Agreement or the Scope of Work. It is expressly agreed that any terms and conditions of any request or proposal for services by Client shall be superseded by the terms and conditions of this Agreement, including the Services Agreement, these Terms and Conditions, and the Fee Schedule.

McDOWELL ENGINEERING LLC
TRANSPORTATION ENGINEERING CONSULTANTS EAGLE • BROOMFIELD • GRAND JUNCTION 970.623.0788 • MCDOWELLENG.COM

McDowell Engineering, LLC
2019 FEE SCHEDULE

I. PROFESSIONAL SERVICES:

CATEGORY	HOURLY RATE
Senior Project Manager	$170.00
Senior Transportation / Traffic Engineer	$170.00
Engineering Review Services for Municipalities	$170.00
Transportation / Traffic Engineer	$115.00
Public Meetings – City Council, Planning Commission, etc.	$170.00
Expert Witness Preparation and Testimony	$300.00
Administration / Clerical	$70.00

II. SUB-CONSULTANTS: Unless agreed otherwise in the Professional Services Agreement, McDowell Engineering adds a 15% markup to invoices from sub-consultants to cover administrative and project management expenses.

III. MILEAGE: Unless agreed otherwise in the Professional Services Agreement, McDowell Engineering charges for all project related mileage at the rate of $0.75 / mile.

IV. TRAVEL TIME: Unless agreed otherwise in the Professional Services Agreement, McDowell Engineering charges for travel time to and from the project site.

V. REPROGRAPHICS: McDowell Engineering charges the following rates for reprographics: $0.20 each for black and white letter, $0.50 for color letter, $3.00 per square foot for other black and white photocopies and prints. $200.00 each for DVD-ROM with electronic drawing files.

Any items not listed, or reprographics provided by outside printing companies will be charged at McDowell Engineering's cost plus 15%.

VI. DELIVERY SERVICES: McDowell Engineering will add a 15% mark-up to all messenger and overnight delivery service fees.

VII. OUT-OF-TOWN EXPENSES: On projects requiring overnight lodging, McDowell Engineering charges a per diem rate for meals, lodging, and related expenses. The per diem rate will be McDowell Engineering's costs plus 15%.

VIII. RATE REVISIONS: McDowell Engineering adjusts this Fee Schedule annually. Projects extending beyond December 31 of each year shall be subject to the new Fee Schedule.

McDowell Engineering LLC
Transportation Engineering Consultants
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