AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Amended Scope of Work; Mt Emmons & Coal Creek

Action Requested: Other County Attorney Signature on behalf of BOCC

Parties to the Agreement:

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

Summary:

Requesting approval of the amended scope of work and authorization for County Attorney Baumgarten to sign on behalf of the BOCC for the Mt Emmons & Coal Creek project.

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
Per letter, no fiscal impact. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/3/2019

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

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ( ) No ( )

County Manager Review:

Comments:
Funding is available in the Water Resources Protection Fund to cover these costs.

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/3/2019

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

Agenda Date: 5/7/2019

Revised April 2015

CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT (the "Agreement") made effective the ___ day of February, 2019, by and among the Town of Crested Butte, Colorado whose address is P.O. Box 39, Crested Butte, Colorado 81224 (herein "Crested Butte"), the Board of County Commissioners of the County of Gunnison, Colorado whose address is 200 East Virginia Avenue, Gunnison, Colorado 81230 (herein "Gunnison County"), and Coal Creek Watershed Coalition, a Colorado nonprofit corporation whose address is P.O. Box 39, Crested Butte, Colorado 81224 (herein "Contractor").

RECITALS

The Contractor desires to provide professional services regarding appropriate site-specific water quality standards for Coal Creek;

Crested Butte and Gunnison County desire to engage Contractor to provide services as identified in the Scope of Work attached hereto and incorporated herein by reference as Appendix "A" ("Services"); and

The Contractor desires to provide those Services as identified in Appendix "A".

AGREEMENT

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

1. 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 Appendix "A". 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 Crested Butte 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 January 1, 2019 and shall terminate on December 31, 2019, unless sooner terminated or replaced as provided herein.

3. COMPENSATION AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services, during the Term, Crested Butte and Gunnison County shall equally pay Contractor fees at a rate of sixty and No/100 U.S. Dollars ($60.00) per hour not to exceed the amount of Eleven Thousand Nine Hundred and No/100 U. S. Dollars ($11,900.00) (the "Compensation"). Crested Butte and Gunnison County shall each pay $5,950 to Contractor by April 1, 2019. If this amount is not incurred, the excess paid will be refunded equally to Crested Butte and Gunnison County, or applied to a future contract for the same or similar services, as directed by each, Crested Butte and Gunnison County.

The Compensation shall also compensate Contractor for all travel, meals and lodging expenses reasonably incurred.

This Agreement is subject to Crested Butte and Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Crested Butte or Gunnison County fails or refuses to make such an appropriation, the non-appropriating party reserves the right to terminate this Agreement without penalty to Contractor pursuant to paragraph 12 of this Agreement.

4. STRATEGIC RESULT.

Contractor will assist Crested Butte and Gunnison County with protection of quantity and quality of water resources as expressly directed by the Town Manager and/or Town Attorney, and the County Manager and/or County Attorney, and as otherwise contemplated in the attached Scope of Work. Contractor, its subcontractors, independent contractors, agents, employees, officers and/or director shall not have any communications, written or oral, with the State of Colorado, Mt. Emmons Mining Company and/or Freeport McMoRan, Inc. (collectively herein "MEMC"), its and their subcontractors, independent contractors, agents, employees, officers, director and/or attorneys in regards to the Services or any issues regarding Mt. Emmons regarding the MOU among MEMC, Crested Butte, Gunnison County and the other parties referenced in the MOU dated February 12, 2016 without first obtaining express approval from the Town Manager and/or the Town Attorney, and the County Manager and/or County Attorney. Notwithstanding the foregoing, Contractor's environmental consultant, Ashley Bembenek with Alpine Environmental Consultants LLC may communicate with such persons respecting item No. 6 in the MOU as set forth in Appendix "A" attached hereto.

5. 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 Crested Butte and Gunnison County, listing Crested Butte and Gunnison County as additional insureds, 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 Crested Butte and Gunnison County.

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).

6. 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 Crested Butte or Gunnison County. Contractor does not have any authority to bind Crested Butte and/or 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 Crested Butte or Gunnison County. Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

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 Crested Butte or Gunnison County take for the purpose of complying with any such laws and regulations.

8. IMMIGRATION COMPLIANCE CERTIFICATION.

Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement. 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. 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. 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. Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

9. ADA COMPLIANCE.

The Contractor assures Crested Butte and 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 Crested Butte and Gunnison County rely.

10. MISCELLANEOUS.

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.

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.

NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Crested Butte or 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 Crested Butte and Gunnison County, which consent Crested Butte or Gunnison County may withhold in their 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.

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:

Crested Butte: Town Manager
Town of Crested Butte

P.O. Box 39
Crested Butte, Colorado 81224

Director of Public Works
Town of Crested Butte
P.O. Box 39
Crested Butte, Colorado 81224

With a copy to: Town Attorney
Town of Crested Butte
P.O. Box 39
Crested Butte, Colorado 81224

Gunnison County: County Manager
Gunnison County
200 East Virginia Avenue
Gunnison, Colorado 81230

With a copy to: County Attorney
Gunnison County
200 East Virginia Avenue
Gunnison, Colorado 81230

Contractor: Coal Creek Watershed Coalition
P.O. Box 39
Crested Butte, Colorado 81224

Any 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. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may 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.

16. ENTIRE AGREEMENT.

This Agreement contains the entire agreement among 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.

(Remainder of Page Intentionally Left Blank;
Signature Page(s) To Follow)

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

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Dara MacDonald, Town Manager

ATTEST:
_____
Lynelle Standard, Town Clerk

(SEAL)

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Jonathan Houck, Chairperson of the Board
by David Baumgartner
County Attorney
at direction of
Board of
County Commissioners

ATTEST:
Elizabeth Mense
Deputy County Clerk

(SEAL)

COAL CREEK WATERSHED COALITION,
a Colorado nonprofit corporation

By: Ashley Hom
Name: Ashley Hom
Title: CCWC Vice-President

APPENDIX "A"

(Scope of Work)

October 4, 2018

Dara MacDonald, Town Manager
Town of Crested Butte
PO Box 39
Crested Butte, CO 81224

David Baumgarten, Attorney
Gunnison County
200 E. Virginia Avenue
Gunnison, CO 81230

Subject: 2019 Proposal for the Mt. Emmons and Coal Creek Project

Ms. MacDonald and Mr. Baumgarten:

The Town of Crested Butte and Gunnison County are collaborating with Mt. Emmons Mining Company (MEMC), the Coal Creek Watershed Coalition (CCWC), and other stakeholders to address long-term management of the Keystone Mine site and develop site-specific standards for Coal Creek Segment 12. In the past temporary modifications, which are less stringent than aquatic life standards, were applied to the lower portion of Coal Creek due to uncertainty regarding pollutant sources. In 2017 the stakeholder group developed an interim set of standards, where the aquatic life standards apply for nine months of the year and temporary modifications are only used for three months of the year during snowmelt and high flow.

In the coming years, the stakeholder group will use data collected by CCWC and others to the determine the source of pollutants during snowmelt and high flow. This information will be used to develop protective site-specific standards for Coal Creek. The standards process will culminate with the Regulation 35 hearing in 2022 and includes participation in the temporary modifications hearings in 2020, and 2021. The stakeholder group will also work collaboratively with MEMC to plan and implement clean-up activities at the Keystone Mine property. Local input is vital to assure the project is protective of Coal Creek, the Town's drinking water supply, and the environment. Clean-up activities at the Keystone Mine site are planned for the next several years.

Major Tasks:

During 2019 we expect to meet with the stakeholder group on a quarterly basis to continue water quality data evaluation, discuss management plans for Keystone Mine property, and identify appropriate measures for MEMC's discharge permit compliance schedule. The technical coordinator,

Ashley Bembenek, will communicate with stakeholders before and after meetings, as needed, to assure progress between quarterly meetings.

Project Partnerships and Cost Sharing:

Since signing the memorandum of understanding (MOU) with MEMC and other parties, the Town and County have collaborated to represent local parties on issues related to Coal Creek and the historic Keystone Mine property.

Project Timeline and Cost Estimate:

The timeline is based upon a tentative schedule discussed by the stakeholder group and includes time for quarterly technical meetings and associated travel expenses, water quality data analysis, and to evaluate MEMC's discharge permit and the cadmium compliance schedule. The proposal addresses the technical expertise provided by Ashley Bembenek and assumes that the Town and County will continue to provide necessary legal services, as they have in the past. The anticipated total cost for 2019 is $11,900.00; where the Town and County each contributes $5,950.00. If additional meetings or tasks are developed by the stakeholder group during 2019, it may be necessary to revise this proposal.

Mt. Emmons and Coal Creek Cost Estimate	Cost
Quarterly meetings (includes travel expenses)	$ 4,700.00
Water quality data analysis	$ 3,600.00
Evaluate permit and cadmium compliance schedule	$ 3,600.00
Total Estimated Cost for 2019	**$11,900.00**
Cost for Town of Crested Butte:	**$ 5,950.00**
Cost for Gunnison County:	**$ 5,950.00**

Please contact me to discuss any questions or concerns that you may have regarding the proposal. Thank you for your support.

Sincerely,

Ashley Bembenek
Technical Coordinator
Coal Creek Watershed Coalition
(970) 251-0029
abembenek@yahoo.com

April 19, 2018

Dara MacDonald, Town Manager
Town of Crested Butte
PO Box 39
Crested Butte, CO 81224

David Baumgarten, Attorney
Gunnison County
200 E. Virginia Avenue
Gunnison, CO 81230

Subject: Amended Scope of Work for the 2019 Mt. Emmons and Coal Creek Project

Ms. MacDonald and Mr. Baumgarten:

As you know, the Town of Crested Butte and Gunnison County are collaborating with Mt. Emmons Mining Company (MEMC), the Coal Creek Watershed Coalition (CCWC), and other stakeholders to address long-term management of the Keystone Mine site and develop site-specific standards for Coal Creek Segment 12. This document outlines a revision to the scope of work for the 2019 Mt. Emmons and Coal Creek Project contract signed by the Town, County, and CCWC.

When this scope of work was developed in October 2018, the parties understood that the Water Quality Control Division Permits Section intended to renew the Keystone Mine permit in 2019. On April 17, 2019, the Permits Section notified CCWC that the Keystone Mine permit will not be renewed in 2019. The Keystone Mine permit will not be renewed until at least 2020.

This change of plans, due to the Permits Section's backlog, necessitates an adjusted approach to the project. Both the Town and County are strong advocates of a watershed-based approach to managing water quality issues. Given the multitude of man-made and natural pollutant sources in the Coal Creek Watershed, a watershed-based approach to permitting, water quality standards, and water quality management is particularly important for this project.

Rather than review the specifics of the Keystone Mine permit, work this year will evaluate the water quality impacts associated with major metal sources in the Coal Creek Watershed including the Standard Mine, Fen and Gossan, and the Keystone Mine site. This water quality analysis will provide data necessary for upcoming permit reviews and the site-specific standards process. <u>This proposed change will not increase the cost of the project. The purpose of this amendment is document changes in the technical approach to the project.</u>

Major Tasks:

During 2019 we expect to meet with the stakeholder group on a quarterly basis to continue water quality data evaluation, discuss management plans for the Keystone Mine property and the Standard Mine site, and identify appropriate measures for discharge permits in the watershed. The technical coordinator, Ashley Bembenek, will communicate with stakeholders before and after meetings, as needed, to assure progress between quarterly meetings.

Project Timeline and Cost Estimate:

The timeline is based upon a tentative schedule discussed by the stakeholder group and includes time for technical meetings and associated travel expenses, water quality data analysis, and to evaluate water quality issues related to permitting in the watershed. The proposal addresses the technical expertise provided by Ashley Bembenek and assumes that the Town and County will continue to provide necessary legal services, as they have in the past. The anticipated total cost for 2019 is $11,900.00; where the Town and County each contributes $5,950.00. If additional meetings or tasks are developed by the stakeholder group during 2019, it may be necessary to revise this proposal.

Mt. Emmons and Coal Creek Project Tasks	**Cost**
Quarterly meetings (includes travel expenses)	$ 4,700.00
Water quality data analysis for standards	$ 3,600.00
Water quality data analysis for watershed permits	$ 3,600.00
Total Estimated Cost for 2019:	**$11,900.00**
Cost for Town of Crested Butte:	**$ 5,950.00**
Cost for Gunnison County:	**$ 5,950.00**

Please contact me to discuss any questions or concerns that you may have regarding the amended proposal. If you accept the changes to the technical approach for the project, please signed the attached page to document your acceptance of this amendment. Thank you for your support.

Sincerely,

Ashley Bembenek
Technical Coordinator
Coal Creek Watershed Coalition
(970) 251-0029
abembenek@yahoo.com

IN WITNESS WHEREOF, the parties have accepted this amendment to the scope of work as documented in Appendix "A" and dated April 19, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Dara MacDonald, Town Manager

Attest:

_____
Lynelle Standard, Town Clerk

BOARD OF COUNTY COMMISSIONERS ON THE COUNTY OF GUNNISON, COLORADO

By: _____
David Baumgarten, County Attorney at the direction of the Board of County Commissioners

Attest:

_____
Elizabeth Mense, Deputy County Clerk

COAL CREEK WATERSHED COALITION
A Colorado nonprofit corporation

By: _____
Ashley Hom, CCWC Vice President