AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contract; Professional Services; Alpine Land Consu

Action Requested: County Manager Signature

Parties to the Agreement: Alpine Land Consulting

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

Summary:

We are having issues with the distribution of wastewater into all three tank units in the Somerset system which is requiring extensive pumping

Fiscal Impact: Unknown at this time

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Estimated costs $4,640. This wasn't anticipated in 2019 budget, so will impact fees needed in 2020 budget.ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 9/26/2019

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

Comments:
ok db 9/25/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 9/25/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/27/2019

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

Agenda Date: 10/1/2019

Revised April 2015

ALPINE LAND CONSULTING
CIVIL ENGINEERING & LAND PLANNING

CONTRACT FOR LIMITED PROFESSIONAL SERVICES

The undersigned hereby retains Alpine Land Consulting, LLC (ALC) to provide services on the following terms and conditions:

1. **Contracting Party and Address ("Contracting Party"):**
   Board of County Commissioners of Gunnison, Colorado Darryl
   200 E Virginia Ave, Suite #104
   Gunnison, CO 81230
   Representing Town of Somerset

2. **Ordered by:**
   Ken Johnson
   AAA Septic and Drain
   P: 970-323-8703
   E: alkster425@live.com

3. **Legal Description and Project Name ("Project"):**
   Lots 8 and 9, Block 8, Somerset, Gunnison County, Colorado. (Parcel #3185-080-07-001)

4. **Description of Services:**
   Prepare Onsite Wastewater Treatment System (OWTS) report and recommendations for Town OWTS system updates and improvements for one (1) submittal to Gunnison County:
   i. Existing conditions observations
   ii. Review past construction plans as provided
   iii. Prepare report with recommendations
   iv. Prepare Engineer's estimate of probable construction cost for improvement options as listed in report
   v. Attend one meeting with Town representative
   vi. Attend one meeting with Board of County Commissioners

5. **Estimate of Fees:**
   Services are billed at ALC's standard hourly rates based upon the actual number of hours worked plus reimbursable cost. As a courtesy, ALC is providing an estimate for this Project for the services outlined above at $4,640.00. This estimate, however, is not a guaranteed maximum price and the total fee for services on this project could exceed this estimate.

6. **Reimbursable Cost**
   Estimate of fees above do not include equipment for digging soil investigation holes, copies, express mail, Federal Express, UPS, car mileage, application or review fees from governmental agencies, travel, lodging, filing, or any other miscellaneous fees which are to be reimbursed to ALC.

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7. Ownership of Documents:

Upon Completion of and payment in full for all services, ALC will deliver paper or PDF copies of its work product ("Instruments of Service") to Contracting Party. Contracting Party and its agents then shall have a nonexclusive license to use and copy such Instruments of Service for construction and maintenance of the Project. Contracting party may not sell, transfer or convey the Instruments of Service, the license or any rights in either to any other party. ALC retains and reserves all ownership, intellectual property and copyright interest in the Instruments of Service, including but not limited to, all specifications, CAD drawings and files, data bases and computer software. To the fullest extent permitted by law, Contracting party will indemnify and hold ALC harmless from all claims for injury, property damage or professional negligence arising out of the use of the Instruments of Service by Contracting party or third parties for any reason other than in construction and maintaining the Project.

8. Deliverables:

The signed and sealed paper or pdf copy delivered to Contracting Party is the contract deliverable and CAD files are supplied for the Contracting Party's convenience only. In the event of a discrepancy, the signed and sealed paper or pdf copy takes precedence over the CAD files. ALC is not responsible for unauthorized reuse or unauthorized changes made to the CAD files by Contracting Party.

9. Contract Assumptions:

a. All existing County OWTS construction plans and as-builts will be email at the start of the project.
b. Recommendations will not include final design that maybe utilized for construction
c. No formal submittal to the State of Colorado will be completed
d. This is an existing conditions and recommendations are to improve system not bring it into compliance with current regulations

10. Contract Excludes the Following:

Construction plans, civil construction plans, application fees, preparing application or noticing, public meetings, bid documents, landscape design, wetland delineation, flood plain delineation, topographic surveying, construction management, secure government or regulatory approvals, and anything not specifically mentioned in item four (4) above.

If any items above become necessary to complete the Project ALC can coordinate or complete the required services per ALC's billing rates, which is available upon request.

11. Indemnification:

Contracting Party shall indemnify and hold ALC harmless from all claims, losses, demands, fines, penalties, damages, and settlements arising out of ALC's services hereunder except and only to

the extent that same was caused by ALC's negligence. Such indemnity includes payment on demand of all sums due, and includes but is not limited to reimbursement of ALC's cost, expenses and attorney fees.

12. Limitations on Liability:

a. ALC's total liability (including cost, expenses, interest, and attorney fees) to Contracting Party for damages arising from ALC's performance of services for the Project shall be limited to the total, aggregate amount paid to ALC under this Contract. This limitation of liability extends to claims of any kind or label, including but not limited to, claims for breach of contract, breach of warranty, negligence, strict liability, contribution and indemnity.

b. In the event of a dispute between the parties, Contract Party agrees to make claim against ALC as a limited liability company only, and shall not make claim against any individual, officer, director, manager, owner, employee or agent of ALC (collectively, "Individuals"). Individuals against whom claims of any kind or label are asserted shall be deemed intended third party beneficiaries of this section, and shall have standing to challenge such claims. Upon dismissal of such claims, a court, arbiter or other neutral shall award Individuals all cost, expenses and attorney fees incurred in defending and challenging such claims.

13. Right of Entry:

Contracting Party grants to ALC, and, if the Project site is not owned by Contracting Party, warrants that permissions has been granted for, a right of entry onto the site from time to time by ALC, its employees, agents and subcontractors for the purpose of providing ALC's services.

14. Underground Utilities:

With respect to existing utilities in and around the Project site, Contracting Party acknowledges that ALC is not a construction contractor and does not have the means to independently establish the location of underground utilities. Therefore, ALC must rely on information generated by utility service providers. ALC shall include notation on its Instruments of Service directing the construction contractor to physically locate all underground utilities prior to mobilizing for construction, and Contracting Party shall, to the fullest extent permitted by law, indemnify and hold harmless ALC, its officers, directors, managers, owners, employees, agents, and subconsultants, from and against all claims, damages, and liability (including ALC's costs, expenses and attorney fees) arising out of or in any way connected with the failure of the construction contractors or utility locate services to properly locate existing underground utilities prior to mobilization, regardless of whether those utilities are "of record".

15. Terms:

All accounts are due and payable within 30 days of billing. After 30 days, all delinquent accounts shall bear interest at the rate of 2% per month. In the event the account is referred to

collection, ALC shall be reimbursed for all attorney fees and cost of collection. Liens will be filed against the real property comprising the Project in accordance with Colorado law on all delinquent accounts.

16. Termination:

This Contract may be terminated by either party upon ten (10) days written notice to the non-terminating party. Contracting party shall compensate ALC for all services rendered and all reimbursable expenses incurred through the date of notification.

17. Standard of Care:

In providing services pursuant to this contract ALC agrees to adhere to the same standards of care, skill and diligence that are ordinarily exercised by other reasonable prudent and competent design professional who provide similar services in the vicinity of the Project at the same time. No other warranty or guarantee, express or implied, is made.

18. Dispute Resolution:

The parties agree to first submit all claims or disputes arising out of or relating to this Contract to mediation as an absolute condition precedent to the filing to any legal or equitable proceedings. The parties will select a mediator who has experience in mediation construction disputes, but if agreement on a mediator cannot be reached within ten business days after a party makes a request for mediation, the requesting party will submit a request for mediation to Dispute Resolution Services, LLC based in Grand Junction, Colorado, who will then select an appropriate mediator. Mediation shall occur within 30 days of the selection of the mediator, and the parties shall share equally in the cost of the mediator. Unless the parties mutually agree to the contrary, mediation will be conducted in Gunnison, Colorado. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Nothing contained in this paragraph shall be construed to prevent ALC from timely exercising its right to assert a mechanics lien against the Project.

Under no circumstances will any claim or dispute between parties arising out of this Contract be subject to arbitration. Each party expressly reserves rights to have claims or disputes decided in a court of law or equity, with the assistance of a judge and jury. The exclusive jurisdiction for any such proceeding will be Gunnison County District Court, Colorado

19. No Third-Party Beneficiaries:

The services provided by ALC pursuant to this Contract are solely for the benefit of the Contracting Party. Neither party intends to confer a benefit on any other person or entity. To the extent that any other person or entity claims a benefit by the services provided by ALC, the parties deem such benefit to be purely incidental and such person or entity shall not be deemed

an intended third-party beneficiary of this Contract, nor shall such person or entity have any rights to bring a claim against ALC pursuant to this Contract.

20. Governing Law:

This Contract and any claim or dispute arising out of it shall be governed by and construed in accordance with the laws of the State of Colorado.

21. Job Site Safety:

In accordance with generally-accepted construction practices, ALC shall have no responsibility for job site conditions during the course of its services or construction of the Project, including the safety of persons and properties and construction means, methods, techniques, and sequences. These are the responsibility of the owners, contractors, subcontractors, and others performing work at the Project.

22. Waiver of Consequential Damages:

ALC and Contracting Party waive claims against each other for consequential damages arising out of or relating to this Contract, and the services provided hereunder. This mutual waiver includes, but is not limited to, claims for losses of use, rent, income, profit, financing, business and reputation, for delay damages of any sort including but not limited to, increased construction and financing cost for loss of management and labor productivity and for lost opportunity to complete other projects. This waiver extends, without limitation, to all consequential damages due to either party's termination under this Contract.

23. Entirety of Agreement:

This is the entire agreement between the parties and shall supersede any other agreements between ALC and Contracting Party relating to the same subject matter. In the case of a conflict or inconsistency between agreements or other contract documents, this Contract shall control. No interest in this Contract may be assigned by either party without the written consent of the other party.

The terms of this Contract shall be considered revoked if Contracting Party does not return a signed copy within 45 days of the date hereof. If Contracting Party does not authorize the commencement of services within six months from the date hereof, this Contract shall be deemed terminated, and a new Contract shall be negotiated.

24. Offer and Acceptance:

This Contract constitutes an offer by ALC when signed and delivered by an authorized representative of ALC. Contracting Party shall be deemed to have accepted the terms of this contract when it has either (1) retuned a signed copy of this Contract to ALC; or (2) begun paying ALC pursuant to the terms of this Contract. In the event that the Contracting Party makes any

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unilateral modifications or alterations to this Contract, such modifications or alterations shall be deemed not to apply and shall not be enforceable unless and until initialed by ALC.

25. Contract Date and Signatures:

Dated this 23rd day of September, 2019

Alpine Land Consulting, LLC	Contracting Party
_____	_____
(Signature)	(Signature)
Gregory E. Anderson, PE	_____
(Print Name)	(Print Name)
Managing Member / President	_____
(Print Title)	(Print Title)
_____	_____
(Date)	(Date)

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