AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contractor Agreement; Lot 22 Ditch Culvert

Action Requested: County Manager Signature

Parties to the Agreement:

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

Summary:

Contract to culvert the city ditch on lot-22 to allow for development of workforce housing on the site. This work will go toward the County's contribution to the project.

Fiscal Impact:

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
We have $200,000 in budget for this project. This agreement is within that total budgeted amount. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/2/2020

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

Comments:
ok db 4/2/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/2/2020 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/3/2020

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

Agenda Date: 4/7/2020

Revised April 2015

CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT ("Agreement") is entered into the day of February, 2019, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, whose address is 200 East Virginia, Gunnison, Colorado 81230 ("Gunnison County") and CHRISTOPHER KLEIN CONSTRUCTION, INC., a Colorado corporation, whose address is 487 Blackfoot Trail, Gunnison, Colorado 81230 ("Contractor").

A. RECITALS

Contractor intends to provide services to culvert two ditches on the Lot-22A parcel in Gunnison, Colorado 81230 ("Project"); and

Gunnison County intends to engage Contractor to provide services for the Project according to the terms and conditions of this Agreement.

B. AGREEMENT

NOW THEREFORE, in consideration of the recitals above, the parties agree to the following terms and conditions:

1 . TERM.

The term of this Agreement shall commence on April 3, 2020 and shall terminate on December 31 , 2020 unless sooner terminated or replaced as provided herein ("Term").

2. SERVICES.

During the Term of this Agreement Contractor shall furnish all labor, supervision, and equipment to commence, diligently pursue, and fully and timely complete the services for the Project as described in the plans by SGM titled “Lot 22 Final Site Development Plans” dated March 26th. For the scope of work described on pgs. 34 and 35 “City Irrigation Ditch”.

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, ordinances and codes affecting the Services or the subject matter thereof. Contractor has made itself informed of, and acknowledges the Project's conditions. Contractor further understands and acknowledges that this is a non-exclusive Agreement, 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.

Any proposed changes and/or amendments to the Services shall be submitted in writing to Gunnison County and shall not be permitted without prior written approval of Gunnison County.

3. COMPENSATION AND EXPENSES.

In exchange for Contractor's performance of Services, Gunnison County shall pay Contractor costs plus a fee, as set forth below, excluding costs for culvert materials which have been purchased by the County previous to this agreement and not to exceed $89,574.13 unless otherwise approved by the County, by signed change order.

Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance, subsistence, and profits. Labor and equipment rates may be charged as follows:

Contract Price: The Owner shall pay the Contractor Cost Plus with the following rates:

(a) Labor rates:

Laborers:	$45/hour
Assistant Project Managers:	$55/hour
Apprentice Carpenters:	$55/hour
Carpenter/Operator:	$70/hour
Foreman/Supervisor/Estimator/Project Manager:	$80/hour

(b) Mark up for Materials, Equipment (not CK owned), and Subcontractors:

Materials, Equipment, Subcontractors:	Cost plus 7%

(c) Equipment CK owned (does not include operator, billed off of hour meter and log book):

Forklift 7,000lb:	$60/hour
Forklift 10,000lb:	$90/hour
Backhoe, bobcat, dump truck, mini excavator:	$40/hour
310 Excavator:	$80/hour
Scissor lift	$200/day or $925/month
Trench roller	$2,000/month

Compensation for Services shall be paid by Gunnison County within thirty (30) days upon receipt of Contractor's invoice. Payments shall be mailed to: Christopher Klein Construction, Inc., 487 Blackfoot Trail, Gunnison, Colorado 81230.

4. 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 Gunnison County, listing Gunnison County as an additional insured, 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 Gunnison County.

A. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the Term of this Agreement

B. Comprehensive General Liability Insurance or the equivalent, in an amount not less than Two Million and Noll 00 U.S. Dollars ($2,000,000) for each occurrence and Two Million and Noll 00 U.S. Dollars ($2,000,000) aggregate and Three Million and No/ 100 U.S. Dollars ($3,000,000) excess/umbrella.

C. Comprehensive automobile liability insurance on all vehicles used to carry out the Services, in an amount no less than One Million and No/ 100 U.S. Dollars ($1,000,000).

5. GUARANTEES.

Contractor warrants and guarantees to Gunnison County that all equipment and materials to be furnished pursuant to this Agreement are free from all defects in workmanship and materials for one (1) year after date of completion. 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.

Contractor shall remove from the Project all work or materials rejected by Gunnison County or its inspector, in Gunnison County's sole discretion, for failure to comply with the terms and conditions of this Agreement, whether incorporated in the construction or not. Contractor shall promptly replace the materials or re-execute the work in accordance with this Agreement 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.

6. 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 WHICH ARE RELATED TO THE SERVICES.

7. 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 Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

8. IMMIGRATION COMPLIANCE CERTIFICATION.

A. Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

B. 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.

c. Contractor certifies that it does not now knowing employ or contract with an unauthorized immigrant who will perform work under this Agreement, and that Contractor will participate in either (i) the "E-Verify Program", jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all Contractor's employees who are hired to perform work under this Agreement.

D. 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.

E. Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

9. SOLE SOURCE CONTRACTS.

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of $100,000, then the following provisions apply:

Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor, on behalf of itself , any person who controls ten percent or more of the shares of or interest in the Contractor, and the Contractor's officers, directors and trustees (collectively, "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

The parties further agree that if a Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.

The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.

These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

10. 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 Gunnison County take for the purpose of complying with any such laws and regulations.

11 . ADA COMPLIANCE.

The Contractor assures 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 Gunnison County relies.

12. INDEMNIFICATION.

A. 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 of Contractor or its employees, sub-contractors or agents in connection with this Agreement.

B. This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

13. 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.

Gunnison County shall have the right to stop work at any time for any reason and shall also have the ability to self-perform any portion of the Services.

14. 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:

Gunnison County:	Matthew Birnie, County Manager Gunnison County 200 E. Virginia Gunnison, CO 81230
Contractor:	Christopher Klein Construction, Inc. 487 Blackfoot Trail Gunnison, Colorado 81230

Either 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.

15. 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 Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

16. 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 County, Colorado.

17. COUNTERPARTS: ELECTRONIC TRANSMISSION.

This Agreement may be executed and sent electronically 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 electronic counterparts shall be promptly followed with delivery of original executed counterparts.

18. 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.

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

Gunnison County Manager,

By:_____, Matthew Birnie

CHRISTOPHER KLEIN CONSTRUCTION, INC., a Colorado corporation,

By:_____, Christopher Klein