

**INTER-CANYON FIRE PROTECTION DISTRICT
BOARD OF DIRECTORS
MINUTES OF SPECIAL MEETING
Via email/telephone
March 18, 2020**

1. Call to Order:

1A. The ICFPD Board meeting was called to order by Karl Firor at 12:05 hours via email/telephone.

1B. Board Members Present:

via email:

Mike Swenson, President

Karl Firor, Treasurer

Kerry Prielipp, Secretary

Via telephone:

Mike Reddy, Director

2. Guests Present

None

3. President's Report

3a. Approval of Absences.

Ralph Dreher, Director

4. Approval of F&D Contract

Please Note: This meeting was held remotely in order to take safety precautions due to COVID-19. Kelley Wood previously forwarded the revised F&D Contract for Phase I and Phase II to Board members for review.

Karl Firor asked for a motion to approve the F&D Contract for architectural and engineering services Phase I and II.

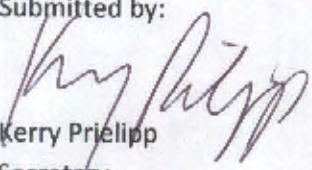
MOTION: There was a motion by Kerry Prielipp with a second by Mike Reddy to approve the F&D Contract for architectural and engineering services Phase 1 and II. The motion passed unanimously.

9. Adjournment


There being no further business before the Board, the meeting was adjourned at 12:15 hours.

Minutes by Kelley D. Wood, District Administrator

Submitted by:


Kerry Prielipp
Secretary
ICFPD Board of Directors

Approved by:


Michael Swenson
President
ICFPD Board of Directors

Attachments:

1. F&D Contract

12 November 2019
Revised 12 March 2020

Inter-Canyon Fire Protection District
Mike Swenson, District Board President
7939 S. Turkey Creek Rd.
Morrison, CO 80465

Cc: Board of Directors, Fire Chief Skip Shirlaw

RE: **Professional A&E and Project Management Services – Proposal & Scope of Services**

Thank you again for the opportunity to work with you and the District on your pending capital improvement project. As mentioned, we take a holistic approach to our capital projects, and we will provide continuous and comprehensive professional consultancy services to the District, i.e., we are a "one-stop shop".

Thus, I am presenting this proposal memorandum to the District to be comprehensive in nature, for planning, architectural, engineering, and project management services for the re-development of Station #1 and Station #3. In summary our services will include, but are not necessarily limited to:

- (1) Full program management services, such as project management and owner's representation
- (2) Detailed Station #1 and Station #3 redevelopment plans
- (3) Full capital planning services
- (4) Operational financial modeling and capital pro-forma modeling, both operationally and capital expenditure
- (5) Capital Project conceptualization
- (6) Land entitlements
- (7) Capital financial consultation services, i.e., funding sources, grant opportunities, etc.
- (8) Complete architectural and engineering services for both Station #1 and Station #3
- (9) Land Surveying for engineering purposes
- (10) Developing all general construction documents and solicitations
- (11) Full project management and over sight services from construction through move-in

In summary, F&D will provide all architectural, engineering, and project management services to complete the proposed redevelopment of Station #1 and Station #3. Our proposal is presented as a comprehensive package and therefore priced as such.

In developing our proposal, we have provided a lump-sum fee (referred to as the A&E fee) for architectural and engineering services and associated activities to complete the construction drawing set for both Station #1 and Station #3. This A&E fee would encompass all activities required to complete a set of construction documents that can be submitted to the general construction community for construction pricing. It also assumes providing project management activities up to the time the project goes out to bid in the construction community.

Our A&E fee is based upon receiving an award of the entire package as outlined for this project. We have provided a fixed fee proposal for Phase I and II project management activities and a budget number for Phase III and IV activities. The phases are as defined in Exhibit A of this proposal. This is due to the fact that at this point in time we do not know if the District will execute both projects simultaneously, serially, or one station and not the other. The exact method of execution will impact the project management fee.

A. SCOPE OF SERVICES

1. **Public Financial Consulting** - We usually refer to this as CAPEX Modeling and Funding activities. Based on the outcome of the Plan, we will need to resolve how the project will be funded. To date, the District has successfully passed a mill-levy increase to service debt associated with capital facility expenditures. F&D will work with the District in terms of securing the funding (identify and select a bank that can properly capitalize the project) that is in compliance with the ballot language. We will also work with the District in terms of developing cash-flow demand models, which will be instrumental in the decision of whether the construction of the two stations is funded parallelly or in series.

Using the Plan as the baseline, we will work with the District in figuring out the capital project needs to help build the financial models associated with them.

2. **Program/Project Management** - As a capstone and to provide continuity to the whole process, we provide comprehensive program management from start to finish. Call it owner's representation, project management, program management, etc., we take a holistic approach to help the District oversee, manage, and lead the capital project effort; i.e., **we will represent the District's interest and the District's interests only!** This model provides a single consulting firm for the District so they do not have to juggle multiple entities and risk changes in the project team over time. We have learned that a critical attribute to project success is ensuring a continuous team that is familiar with the project from inception to completion. That single point of contact is Todd Ficken, PE, principal of F&D.

A summary of program management activities is noted in the attached Exhibit A.

3. **Facility and Space Programming**: Some of this effort has been completed in the Phase I work. F&D will work with the District (and other stakeholders as may be required) to confirm the various area requirements associated with the Phase I efforts, such as but not limited to:

number of and size of offices, open office floor area requirements, restroom sizes and quantity, apparatus storage space requirements, community space requirements, and auxiliary space requirements, i.e., storage, locker rooms, equipment space, etc. Other spaces as required pending final space programming needs.

4. **Planning Submittal Services:** Our proposal includes providing all services that may be required in reference to securing development rights on the parcel in question. Similar to any capital project, the local planning agency, in this case Jefferson County, will have to "vet" the project. There are numerous planning submittal requirements and F&D will provide what is required for submittal. Any planning submittal fee is not included in our proposal. Those fees will be paid directly by the District to the County. In some situations, we have been successful in having the County waive such application fees.

F&D will coordinate the preparation, submittal and processing of submittals associated with all land planning requirements as set forth within Jefferson County land planning code. This will include other aspects as well, such as coordinating land surveying requirements, land submittals, defining utilities, storm water, etc. F&D will work with the District to provide overall coordination for the Development Plan process.

Work is generally defined as follows (this would have to be done for both stations):

- a. Pre-submittal Meetings with the County (a total of two are assumed).
- b. District meetings as required.
- c. Assistance to the District in preparation of the Land Development (Planning) Application(s), in support of securing the necessary entitlements.
- d. Assistance to the District in preparation of Planning Submittal Amendments, including:
 - i. Coordination of submittal items; F&D will coordinate with the District to provide base information in terms of facility requirements.
 - ii. Planning Letter of intent (provided by District) to include with the planning submittal. F&D will draft the letter for District's approval and acceptance
 - iii. Letter from Water and Sewer Providers (as and if required); F&D will coordinate with Jefferson County to ensure that a "will serve" letter will be provided to ensure continued service.
 - iv. Traffic Impact Study; at this time, it is assumed a traffic impact study will not be required, and therefore, this is not included in our fee proposal. If a traffic study does become a requirement, F&D will provide that service for an additional fee.
 - v. Storm Water Drainage / Water Quality Report.
 - vi. Development Plan:
 - Cover Sheet
 - Site Plan

- Landscape Plan
- Grading Plan
- Erosion Control Plan
- Conceptual Elevations
- General Utility Plan
- Parking and Circulation Plan
- Exterior lighting
- Signature Block

e. Planning Submittal Fees are not included in our fee proposal. Any planning submittal fees, entitlement fees, etc. are to be paid by the District directly. F&D will coordinate the fees with the District.

5. **Design Services (Architectural and Engineering)**: Our fees are based upon the scope of work outlined here. This proposal is to include the fees necessary to finalize a plan layout for office space, apparatus bay, community, and storage spaces and to coordinate the infrastructure of the proposed facility with the site for both Station #1 and Station #3.

a. Architectural Design:

- i. Architectural Design Services.
- ii. Architectural documents including specifications as may be required for submittal to government entities that have jurisdiction over review and approval of the project and specifications required for construction.
- iii. Electronic Record Drawings

b. Engineering & Surveying:

- i. Structural Engineering
 1. Structural documents including specifications as may be required for submittal to government entities as have jurisdiction over review and approval of the project.
 2. Structural foundation and framing plans, details, specifications and design criteria to a level sufficient to fabricate structural elements and supports.
 3. Electronic Record Drawings.
- ii. Mechanical/Plumbing Engineering:
 1. Provide Mechanical/Plumbing Design Drawings and specifications.
 2. Provide Fire protection general concept drawings. It is assumed fire protection will be design/build to the general contractor.
 3. Electronic Record Drawings.

- iii. Electrical Engineering:
 - 1. Provide all high voltage (building wiring) electrical engineering from service drop to fixtures, devices, and equipment
 - 2. Provide all IT layout
 - 3. Provide security layout
 - 4. Provide general fire alarm concept drawings
 - 5. Electronic Record Drawings
- iv. Civil Engineering:
 - 1. Geotechnical Analysis of a third-party geotechnical firm's soil analysis
 - 2. Traffic Impact Study – A traffic impact study, if required, would require an additional fee
 - 3. Storm water / Water Quality plan is included in the base design service
 - 4. Utility Design (outside of the building footprint), such as water, sewer, electrical, is included in base design service. This would include engineering required to extend the water utilities system piping
 - 5. Rigid and flexible pavement designs
- v. Land Surveying: Land surveying to support the land planning effort and the design effort is included.
- c. Landscape Design:
 - i. Landscaping design pursuant to County's landscaping requirements. Planting Plans and details.
 - ii. Landscaping hardscape items, such as visual impact screening, fencing, site pathways, and trash enclosures.
 - iii. Electronic Record Drawings.
- d. Interior Design
 - 1. The interior design services will be provided by F&D. The Interior Designer will work closely with the District and shall be responsible for the design, selection, specification, and installation review of all furniture and fixtures throughout the new construction.
- e. Lighting Design
 - 1. Lighting design will be provided by F&D and is included. F&D will coordinate with the District in terms of selecting and specifying light fixtures in all areas. Areas that are to be core and shell only will have simple LED lighting unless otherwise requested by the District.

- f. Other Services Included unless otherwise noted:
- i. One exterior rendering (interior renderings would be extra charge).
 - ii. Graphic signage (Wayfinding) designs and preparation of drawings.
 - iii. Construction cost estimating.
 - iv. Specific Special structural inspections as may be required by IBC, bolt inspections, concrete, etc.
 - v. Third-party testing firm for QA testing will be required, that will include soil compaction, concrete testing, asphalt testing, etc. Third Party testing will be contracted for directly with the District but F&D will make all the arrangements. This particular testing service will be required per Code.
 - vi. Elevator consulting if determined an elevator is required.
 - vii. Phase I ESA and complete facility hazardous assessment work is not included in the base fee, but can be provided for an additional fee if required.
 - viii. Partial Data Cabling or Telecommunications Service design.
 - ix. Lightning Protection Design is not included but can be provided for an add-service fee if required.
 - x. Emergency Operator or UPS System Design is not included, but can be provided for an additional fee if required.
 - xi. Preparing funding documents, i.e., such as the DOLA, bank applications, etc.
 - xii. Providing underwriting support in preparing the underwriting documents.
 - xiii. Coordinating with District's bond counsel. F&D can assist the District is selecting a transactional bond counsel to work with the District's counsel.
 - xiv. Preparing investor reports, if and as required.
- g. Preparation of Construction Documents
- i. This proposal is based upon the assumption that the project schedule will require only one construction package without breaks in the schedule.
 - ii. Preparation of additional packages beyond the one contemplated construction package as well as the issuing and the coordination of bidding and pricing of such packages shall be considered an additional service.
- h. Comprehensive project management and owner representation services are included. Refer to attached for a full description of services.
- i. Items that will be required of the Owner and are not included in our fee proposal:
- i. Geotechnical report: A geotechnical report will be required.

- ii. Material testing, i.e., compaction testing, concrete testing, weld inspections, prism testing, and similar testing is not included in F&D's fee. This service is provided by a third party. The budget does include a line item for this service.
- iii. Services not included in Base Services, but available as an additional service at the request of the Owner:
 - 1. Geotechnical subsurface analysis.
 - 2. Structural Design for detached site walls, signage, or antennas/satellite dishes is not included, but can be provided for an additional fee.
 - 3. Traffic Study and Engineering (if needed, will be an additional fee).
- iv. Hazardous material survey (asbestos) is not included in the base services. F&D can arrange for this service on behalf of the District. This survey is required by the State when any demolition work is planned. F&D is not licensed to perform this service. Budget amount for this service is about \$2,500 per Station.

B. SCOPE OF BASE SERVICES PROVIDED BY PHASE:

- a. Programming Phase:
 - i. Coordination with District to finalize the needs and requirements of the spaces.
 - ii. Finalize exact space requirements in terms of number of spaces and square footages.
 - iii. Finalize an aesthetic concept for the new buildings.
- b. Land Planning (Again if required):
 - i. Development Plan Petition.
 - 1. Pre-Application Meeting with County.
 - 2. Preparation of DRT submittal documents including narrative.
 - 3. Site Plan.
 - 4. Architectural Elevations.
 - 5. Utility Plan.
 - 6. Landscape Plan.
 - 7. Drainage Study/Plan.
 - 8. Lighting Plan.
 - 9. One revision pursuant to County's comment letter. Additional revisions will be subject to additional charges.
- c. A/E Schematic Design Phase:
 - i. Code review.
 - ii. Schematic Design Drawings.
 - iii. Architectural & Engineering Schematic Drawings, including:

1. Site plan.
 2. Building plans.
 3. Building elevations.
 4. Building sections.
 5. Landscape Site Plan.
- iv. Presentation to the District.
 - v. Final review with the District following pricing (one to three meetings assumed).
- d. A/E Design Development Phase:
- i. Architectural and Engineering Design Development Drawings.
 - ii. Design Development Specifications.
 - iii. Presentations to District.
 - iv. Final review with the District following pricing.
- e. Construction Documents Phase:
- i. Response to Design Development Estimate (Value Engineering).
 - ii. Construction Drawings.
 - iii. Construction Specifications (project manual).
- f. Landscape Design.
- i. Complete landscape plan per County's requirements.
- g. Bidding/Negotiation Phase:
- i. Prepare all solicitation documents and administer the construction solicitation process.
 - ii. Assist the District in General Contractor negotiations.
 - iii. Provide a general construction agreement, and assist the District in contract negotiations.
 - iv. Total of three (3) meetings assumed with District and Contractor.
- h. Project Management & Construction Administration Phase (a more comprehensive list is attached hereto):
- i. Pre-construction meeting.
 - ii. Site observation.
 - iii. Review and approval of Contractor's Applications for Payment.
 - iv. Shop Drawing and Submittal Review.
 - v. Preparation of Construction Phase Documentation:
 1. Proposal Requests.

2. Architect's and Engineer's Supplemental Instructions.
 3. Response to Contractor's Requests for Information (RFI's).
 4. Change Orders that are not increases in project scope.
- vi. Project Close-out Services.
1. Punch List walk-through.
 2. Certificate of Substantial Completion.
 3. Review of Operations & Maintenance Submittals.
 4. Preparation of record documents.

C. FEES & REIMBURSABLES

Except as noted, the fee schedules presented are for both Station #1 and Station #3. The fee schedule assumes that the District will retain F&D for all the work associated with the project as noted above. We have broken down the fee proposal into the separate components to illustrate how the costs are allocated or, in the incident that the fees are indeterminable at this time, an estimate of what the fee is suggested.

We will also coordinate our invoicing schedule to align with and accommodate the District cash-flow.

In addition to these fees, there are customary reimbursables (or expenses), such as but not limited to plotting expenses, mail charges, mileage, etc. Reimbursables will be invoiced concurrently with our monthly fee invoices.

- 1) **Architectural and Engineering Services Fee:** Architectural and Engineering Services as outlined above in the Scope of Services herein. The fee for architectural and engineering services which is based on schematic design drawings, design development drawings, construction documentation, and construction bidding will be provided for a fixed fee of five hundred and forty-five thousand dollars (\$545,000).
- 2) **Project/Construction Management & Construction Administration:** Project/Construction Management & Construction Administration Services as noted above is defined as this time as providing Phase I and II services only.
 Project Management Covering Phase I and II: \$45,000
 The phases are as described in **Exhibit A** of this proposal.
- 3) **Land Surveying:** Surveying is in support of developing the required engineering drawings and in support of land planning efforts. Surveying is self-performed by F&D and will be provided for a fixed fee of twenty-five thousand, three hundred, and sixty-five dollars (\$25,365.00).

D. ADDITIONAL SERVICES:

Additional Services shall be computed on a time and expense basis in accordance with our standard hourly rates as follows:

Principal: \$175

Project Manager	\$95.00 - \$150.00
Spec Writer	\$80.00
Project Architect	\$145.00
Project Engineer	\$145.00
Surveyor	\$135.00
Interior Designer	\$70.00
Administrative	\$65.00

From time-to-time, F&D may seek services from sub-consultants. Sub-consultants will have hourly services billed directly to the District without mark-ups. Written authorization will be obtained from the District prior to proceeding with sub-consultants.

E. REIMBURSABLES

Reimbursable expenses are in addition to compensation for basic services and include expenses incurred by F&D's team and consultants in the interest of the project: expenses of reproduction, postage, and handling of drawings and documents, and travel. Requests for reimbursement of any claimed expenses will be supported by copies of actual receipts.

F&D will bill reimbursable expenses at cost.

F. COMMITMENT TO SUSTAINABILITY

We are dedicated to sustainable and maintainable design and environmentally correct construction practices. We will incorporate these design principles into the project with no extra cost because **we believe that sustainable design is a necessity – not a luxury**. It is integrated into the way we approach design and engineering on an everyday basis.

At completion of the project, if it is the District's desire to seek LEED Certification, F&D would gladly take it upon themselves to prepare all the documents of the application and proceed getting the building LEED Certified with the Owner's approval. LEED or other green certifications will require additional fees.

Mike, we value the opportunity to continue our working relationship with your department by assisting the District in moving forward with its capital redevelopment plans of Station #1 and Station #3. If this meets your approval, please sign and return one original copy of this letter agreement for our records and we will prepare a professional services agreement for your review and signature.

Approved and Accepted this day ____ of March, 2020



Todd E Ficken, PE, Principal-in-Charge
F&D International LLC



Mike Swenson, District Board President
Inter-Canyon Fire Protection District

Exhibit A

Project Management & Owner Representation Services

Our general services are as noted below but may include additional services not shown

Phase I – Planning Phase & Financing Phase

- a) Analyze needs, establish goals and initiate planning
- b) Define project scopes, objectives and performance requirements
- c) Coordinate and monitor public and community concerns
- d) Develop required financial reporting format
- e) Prepare all necessary financial packages
- f) Coordinate with bond counsel
- g) Participate in helping the District secure financing
- h) Lead the formation of a collaborative team of design and construction professionals
- i) Develop preliminary budget and comprehensive master schedule
- j) Establish information and reporting systems to meet client requirements
- k) Develop detailed/complete bid documents to assure responsive bids
- l) Serve as buffer between the District and the public handling difficult issues
- m) Develop risk management strategies

Phase II – Pre-Construction Phase

- a) Prepare and manage the General Construction solicitation process
- b) Coordinate all "in-kind" construction related activities
- c) Coordinate with the General Contractor on buildability issues and concerns
- d) Finalize budget
- e) Develop accounting processes and procedures
- f) Finalize construction schedule

Phase III – Construction Phase

- a) On-site project management
- b) Assure that all contractors, subcontractors and other participants fully understand the projects(s) design and requirements at every stage
- c) Assist in all public relations activities
- d) Deliver timely and clear reports to the District concerning construction progress, milestones and other elements

- e) Manage the change order process for maximum effectiveness while minimizing delay and costs
- f) Monitor the construction process to anticipate difficulties, resolve issues early, and keep the work progressing smoothly
- g) Monitor shop drawings
- h) Review progress payments to assure that work milestones are being met and that all current expenses are paid in a timely manner
- i) Coordinate the final stages of construction, including punch lists and similar tasks that must be completed (often in a short time-frame) before project is closed out
- j) Oversee FF&E specifications, selection, delivery and installation of furniture, fixture and equipment including but not limited to, furniture, computers, security cameras, phone and data service
- k) Coordinate all utilities including power, gas, telephones, communication gear and data
- l) Act as liaison to obtain building permits and other governmental approvals necessary for construction
- m) Oversee move-in, use of existing furniture, and hook-up of all IT equipment

Phase IV - Post Construction Phase

- a) Coordinate the submittal of all project closeout documents
- b) Establish warranty and maintenance criteria
- c) Oversee post-construction training sessions with staff and other personnel
- d) Oversee the preparation of Owners Maintenance Manuals (O&M)
- e) Prepare all close-out documentation including as-builts, bonds, and warranties
- f) Provide follow-up services as required by the District

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2020, by and between the Inter-Canyon Fire Protection District with a principal place of business at 7939 S. Turkey Creek Rd., Morrison, Colorado 80465 ("Owner"), and F&D International, LLC an independent professional consultant with a principal place of business at 1930 Central Ave., Unit #B, Boulder, Colorado, 80301 ("F&D") (collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. SCOPE OF SERVICES

- A. F&D shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities, which are described or reasonably implied from the Scope of Services set forth in the attached A&E Professional Services — Engagement and Scope of Services Letter, which is hereafter incorporated into this Agreement.
- B. A change in the Scope of Services shall constitute a material change or amendment of services or work, which is different from or additional to the Scope of Services. No such change, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the Owner. If F&D proceeds without such written authorization, then F&D shall be deemed to have waived any claim for additional compensation, including a claim based on theory of unjust enrichment, quantum merit, or implied contract. Any such change in the Scope of Services shall entitle F&D to an increase in the Contract Sum and Contract Time, as agreed to by the Parties in writing. It is further understood and agreed upon that F&D has the right to refuse to perform or comply with any Owner order or request for additional services or work that would result in a violation of the standard of care.

II. COMMENCEMENT AND COMPLETION OF WORK

F&D shall commence work as set forth in the Scope of Services. Except as may be changed in writing by the Owner, the Scope of Services shall be complete and F&D shall furnish the Owner the specified deliverables as provided and specified in the Engagement and Scope of Service Letter dated November 12, 2019 as revised 21 February 2020 attached hereto.

III. COMPENSATION

In consideration for the completion of the Scope of Services by F&D, the Owner shall pay the F&D a fee amount not to exceed six hundred, fifteen thousand, three hundred and sixty-five dollars (\$615,365.00) ("Contract Sum"), plus allowed reimbursable expenses per the schedule outlined in the attached Engagement and Scope Letter dated 12 November 2019 as revised 21 February 2020. This includes the project manage for Phase I and II only at this time, refer to the Scope letter dated 12 November 2019.

F&D shall be paid on a fixed fee basis in conformance with the Scope of Services Letter for all services performed, consistent with the following terms:

- A. On or before the 15th of each month, F&D shall submit to Owner an invoice describing the Services F&D has performed through the end of the preceding month pursuant to this Agreement and its value ("Completed Work"). Owner shall pay F&D within thirty (30) days

of the invoice. Any payment past thirty (30) days will be subject to eighteen percent (18%) per annum interest charges.

- B. Completed Work shall include all time expended on the Owner's business during the preceding month, such as design work, drafting, research, telephone calls, correspondence, travel time, etc. as well as reimbursable expenses.
- C. F&D shall, as often as requested by the Owner, furnish such information, evidence, and substantiation as the Owner may require to support F&D's invoices.

IV. RESPONSIBILITY

- A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.
- B. The work performed by F&D shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by F&D hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.
- C. It is expressly understood and agreed, notwithstanding any reference to *any* rule or regulation, that F&D has no responsibility or duty for guaranteeing, warranting, directing, or superintending the contractors' work methods, safety of the job site, process, failure to carry out the work in accordance with the contract requirements, timeliness of performance of the work, or any other aspect of construction for which the contractor has responsibility.
- D. The Owner's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- E. Because the Owner has hired F&D for its professional expertise, F&D agree not to employ sub-consultants to perform any of the work required under the Scope of Services.

V. OWNERSHIP

The materials, items, and work specified in the Scope of Services, together with any and all related documentation and materials provided by F&D shall be exclusively owned by the Owner. F&D expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, it shall not constitute a "work made for hire," F&D hereby transfers, sells, and assigns to the Owner all of its rights, title, and interest in such work.

The Owner recognizes that all technical data, evaluations, reports and other work products are instruments of the F&D's services and not designated for use other than what is intended by or reasonably foreseeable to the Parties as of the date of this Agreement. The Owner shall make no other use of the F&D's work product without the prior written approval of the F&D.

VI. INDEPENDENT CONSULTANT

F&D is an independent consultant. Notwithstanding any other provision of this Agreement, all personnel assigned by F&D to perform work under the terms of this Agreement shall be, and

remain at all times, employees or agents of F&D. F&D shall make no representation that it is an employee of the Owner for any purposes.

VII. INSURANCE

- A. F&D agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by F&D in this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.
- B. F&D shall procure and maintain the minimum insurance coverages listed below. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
 - 1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease — policy limit, and one million dollars (\$1,000,000) disease — each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this Paragraph.
 - 2. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability-of-interests provision, and shall be endorsed to include the Owner and the Owner's officers, employees, and consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
 - 3. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
 - 4. Business automobile liability insurance including owned, non-owned and hired vehicle coverage with combined single limits of not less than \$1,000,000 bodily injury and property damage.
- C. Any insurance carried by the Owner, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by F&D.
- D. F&D shall provide to the Owner a certificate of insurance, completed by F&D's insurance agent, as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Owner. The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- E. Failure on the part of F&D to procure or maintain the insurance required herein shall constitute a material breach of this Agreement upon which the Owner may immediately

terminate this Agreement, or at its discretion, the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by F&D to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to F&D from the Owner.

VIII. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the Owner and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement or the Scope of Services if such injury, loss, or damage is proximately caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any sub-consultant of Consultant, or any officer, employee, representative, or agent of Consultant, or which arise out of any worker's compensation claim of any employee of Consultant or of any employee of any sub-consultant of Consultant.

This indemnification shall not apply to claims by third parties against the Owner to the extent that the Owner is liable to such third party for such claim without regard to the involvement of the Consultant.

IX. LIMITATION OF LIABILITY

The Owner recognizes that the F&D's fee includes allowance for funding a variety of risks, which affect F&D by virtue of his agreeing to preform services on the Owner's behalf. In order for the Owner to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Owner agrees to limit F&D's liability.

In recognition of the relative risks and benefits of the Project to both the Owner and F&D, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of F&D to the Owner for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of F&D to the Owner shall not exceed F&D's available insurance limits. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

X. TERMINATION

This Agreement shall terminate at such time as the work described in the Scope of Services is completed and the requirements of this Agreement are satisfied, or upon the Owner's providing F&D with seven (7) days advance written notice, whichever occurs first. If the Agreement is terminated by the Owner's issuance of written notice of intent to terminate, the Owner shall pay F&D for all work previously authorized and completed prior to the date of termination. If, however, F&D has substantially or materially breached this Agreement, the Owner shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Scope of Services, any use of documents by the Owner thereafter shall be at the Owner's sole risk, unless otherwise consented to by F&D.

XI. ILLEGAL ALIENS

- A. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Consultant will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement
- B. Prohibited Acts. Consultant shall not:
1. Knowingly employ or contract with an illegal alien to perform work under this Contract; or
 2. Enter into a contract with a sub-consultant that fails to certify to Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- C. Verification.
1. If Consultant has employees, Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.
 2. Consultant shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
 3. If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Consultant shall:
 - a. Notify the sub-consultant and the Owner within three (3) days that Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien who is performing work under the Agreement; and
 - b. Terminate the subcontract with the sub-consultant if within three (3) days of receiving the notice required pursuant to subsection (1) hereof, the sub-consultant does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Consultant shall not terminate the contract with the sub-consultant if during such three (3) days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.
- D. Duty to Comply with Investigations. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Consultant is complying with the terms of this Contract.

- E. If Consultant does not have employees, Consultant shall sign the "No Employee Affidavit" attached hereto.
- F. If Consultant wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Consultant shall sign the "Department Program Affidavit" attached hereto.

XII. ENVIRONMENTAL CONDITIONS

Owner shall be responsible for disclosing to F&D in writing all known or suspected hazardous or toxic materials at or adjacent to the Project Site. Accordingly, Owner hereby represents that as of the date of this Agreement, to the best of Owner's knowledge, Owner has disclosed in writing that F&D all known or suspected hazardous or toxic materials that exist at or adjacent to the Project Site.

F&D's services under this Agreement do not include services related to unknown or undisclosed hazardous or toxic materials. If F&D encounters or learns of an undisclosed hazardous or toxic material at the Project Site, then F&D shall promptly notify Owner and the appropriate government authorities if F&D reasonably believes such action is required by applicable laws or regulations. F&D also may, at its option and without any liability whatsoever, terminate its services under this Agreement upon 7 days' notice or suspend performance of its services on that portion of the Project affected until such portion of the Project is no longer affected.

XIII. DISPUTE RESOLUTION

Owner and F&D agree to negotiate in good faith all disputes between them for a period of at least thirty (30) days from the date of notice of the dispute before invoking the provisions set forth in paragraphs "A" through "F" below. However, the 30-day negotiation period and this Dispute Resolution section shall not apply to Owner's termination of the Agreement upon 7 days written notice pursuant to Section X.

If a dispute is not resolved through good faith negotiation, then Owner and F&D shall proceed as follows:

- A. Owner and F&D shall submit all claims, disputes and other matters in question between them to mediation which, unless subsequently the parties agree otherwise, shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Mediation Procedures in effect of the Date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation.
- B. Nothing in this Agreement prohibits a party from concurrently filing a demand for arbitration and proceeding with the selection of the arbitrator, but in such event, the party filing the demand for arbitration shall promptly move to stay arbitration proceedings pending the conclusion of mediation. Mediation is a condition precedent to binding arbitration.
- C. Notwithstanding the provisions herein, F&D may proceed in accordance with the applicable law to comply with lien notice, lien filing, or lien foreclosure deadlines prior to resolution of the matter by mediation or by arbitration. In the event a lien foreclosure action is filed prior to completion of mediation or arbitration, F&D shall move to stay the foreclosure action pending mediation and/or arbitration.

- D. The mediation shall be held at a location mutually agreeable to the Parties. In the event the Parties cannot agree to a location for mediation, Denver, Colorado shall be the location for mediation. The Parties shall equally share the costs of mediation, including the mediator's fees and all filing fees. The Parties acknowledge and agree that any agreement reached in mediation is a binding settlement agreement enforceable in any court having jurisdiction thereof.
- E. If a dispute is not resolved in mediation, the Parties shall proceed to binding arbitration administered by the AAA in accordance with its Construction Industry Arbitration and Mediation Procedures in effect on the Date of this Agreement. The Parties agree to a single arbitrator and that Colorado substantive law and the Federal Arbitration Act shall apply. The Parties agree to equally share the arbitrator's fees and all filing fees. The Parties shall mutually agree on a location for the arbitration. Should the Parties fail to agree on a location for the arbitration, then the arbitration shall be held in Denver, Colorado. Judgment on an arbitrator's award may be entered in any court of competent jurisdiction.
- F. The Parties may mutually agree to waive arbitration. In such event, or in the event that the terms of this Section are found unenforceable, for any reason, to a dispute, the venue for any court proceeding shall be the District Court for Jefferson County, State of Colorado.


XIV. MISCELLANEOUS

- A. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.
- B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Parties shall not constitute a waiver of any of the other terms or obligation of this Agreement.
- C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between F&D and the Owner, superseding all prior oral or written communications. In the event there is a conflict between this Agreement and the Exhibit, the Agreement shall govern.
- D. Third Parties. There are no intended third-party beneficiaries to this Agreement.
- E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when presented in person, by United States Mail, or by email to the party set forth on the first page of this Agreement.
- F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
- G. Modification. This Agreement may only be modified upon written agreement of the Parties.
- H. Mutual Drafting. This Agreement shall be deemed to have been mutually drafted by the Parties. The Parties agree that this Agreement shall not be interpreted or construed against any party.
- I. Survival. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- J. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.
- K. Governmental Immunity. The Owner, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Owner and its officers or employees.
- L. Rights and Remedies. The rights and remedies of the Owner under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Owner's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.
- M. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the Owner not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the Owner hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.
- N. Waiver of Consequential Damages. Owner forever waives and releases F&D from any and all claims for consequential damages, including lost revenue or lost profits, directly arising out of or caused by the performance of the Scope of Services, acts or omissions taken pursuant to this Agreement, any dispute between the Parties and/or the termination of this Agreement.
- O. Substantial Completion. For purposes of payment under this Agreement, completion shall be the date upon which work is substantially completed by F&D, not the "date of inspection" by city and county building departments, code enforcement agencies, engineers, or others.
- P. Accrual of Claims. To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- Q. No Liability for Certain Subcontractors. If F&D has been asked by the Owner to subcontract geotechnical, third party testing, laboratory testing services, or other subcontracting services on behalf of the Owner, F&D agrees to do so only as an accommodation to the Owner and in reliance on the Owner's assurance that the Owner will make no claim nor bring any action at law or equity against F&D as a result of this subcontract service. The Owner understands that F&D is neither trained nor knowledgeable in the procedures or results of the subcontractor's services and the Owner shall not rely upon F&D to check the quality or accuracy of these services. In addition, the Owner agrees to the fullest extent permitted by law to indemnify and hold F&D harmless for any damage, liability or cost, including attorneys' fees and costs of defense, arising from the services performed by this subcontractor except only those damages, liability or costs caused by the sole negligence or willful misconduct of F&D.
- R. Probable Costs. F&D's services, if any, relating to probable construction costs and/or total-project costs involving third-party costs are to be made on the basis of F&D's experience, qualifications, and general familiarity with the construction industry. F&D assumes no responsibility for the accuracy of any opinions of probable construction costs or total-project costs. F&D cannot and does not guarantee that costs to the Project will not vary from F&D's estimated costs.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

Inter-Canyon Fire Protection District [Owner]

By: 
Mike Swenson, District Board President

F&D International LLC [F&D]

By: _____
Todd E. Ficken, PE, Principal