

ConsensusDocs® 400

PRELIMINARY DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER



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This Agreement is made this 29th day of January in the year 2020, by and between the

OWNER

Pueblo West Metropolitan District 781 E. Industrial Boulevard, Pueblo West, CO 81007
and the

DESIGN-BUILDER

SEH Design|Build, Inc. 503 N. Main Street, Suite 225, Pueblo, CO 81003
for preliminary services in connection with the following

PROJECT

Civic Building

Notice to the Parties shall be given at the above addresses.



ARTICLE 1 TEAM RELATIONSHIP

1.1 The Owner and the Design-Builder agree to proceed on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Owner and the Design-Builders shall perform their obligations with integrity, ensuring at a minimum that: (a) conflicts of interest shall be avoided or disclosed promptly to the other Party; and (b) the Design-Builder and the Owner warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

ARTICLE 2 DESIGN-BUILDER'S RESPONSIBILITIES

2.1 The Design-Builder shall exercise reasonable skill and judgment in the performance of its services. Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, or as permitted by the law of the State in which the Project is located. The person or entity providing architectural and engineering services shall be referred to as the Design Professional. If the Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Design Professional. The Design Professional for the Project is Short Elliott Hendrickson Inc.

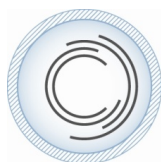
2.2 The Design-Builder is responsible for the following Preliminary Design-Build Services:

2.2.1 OWNER'S PROGRAM The Design-Builder shall assist the Owner in the development and preparation of the Owner's Program, which is an initial description of the Owner's objectives. The Owner's Program may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.2.2 PRELIMINARY EVALUATION The Design-Builder shall review the Owner's Program to ascertain the requirements of the Project and shall verify such requirements with the Owner. The Design-Builder's review shall also provide to the Owner a preliminary evaluation of the site with regard to access, traffic, drainage, parking, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding applicable governmental laws, regulations and requirements. The Design-Builder shall review the Owner's existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its preliminary evaluation. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Owner, in order to determine the most desirable method of achieving the Owner's requirements in terms of cost, technology, quality and speed of delivery. Based upon its review and verification of the Owner's Program and other relevant information, the Design-Builder shall provide a preliminary evaluation of the Project's feasibility for the Owner's acceptance. The Design-Builder's preliminary evaluation shall specifically identify any deviations from the Owner's Program.

2.2.3 PRELIMINARY SCHEDULE The Design-Builder shall provide a preliminary schedule for the Owner's written approval. The schedule shall show the activities of the Owner and the Design-Builder necessary to meet the Owner's completion requirements.

2.2.4 PRELIMINARY ESTIMATE The Design-Builder shall prepare for the Owner's written approval a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The level of detail for the estimate shall reflect the Owner's Program and any additional available information. If the preliminary estimate exceeds the Owner's budget, the Design-Builder shall make written recommendations to the Owner.



2.2.5 Tasks to be provided under the OWNER'S PROGRAM and PRELIMINARY EVALUATION are provided in Exhibit A.

2.2.6 SCHEMATIC DESIGN DOCUMENTS The Design-Builder shall submit for the Owner's written approval Schematic Design Documents based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Projects basic elements, scale and their relationship to the Worksite. One set of these Documents shall be furnished to the Owner. When the Design-Builder submits the Schematic Design Documents, the Design-Builder shall identify in writing all material changes and deviations from the Design-Builder's preliminary evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and preliminary estimate based on the Schematic Design Documents.

2.2.7 Tasks to be provided under the SCHEMATIC DESIGN DOCUMENTS are provided in Exhibit A.

ARTICLE 3 OWNERSHIP OF DOCUMENTS

3.1 OWNERSHIP OF TANGIBLE DOCUMENTS Upon the making of final payment to the Design-Builder, the Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors or consultants and distributed to the Owner for this Project.

3.2 COPYRIGHT The Parties agree that Owner shall not obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by ARTICLE 6 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Design-Builder.

3.3 OWNER'S USE The Owner shall not have the right to use, reproduce or make derivative works of the Design-Build Documents for other projects outside of this agreement without the written authorization of the Design-Builder, who shall not unreasonably withhold consent. The Owner's use of the Design-Build Documents on other projects or without the Design-Builder's written authorization or involvement is at the Owner's sole risk, and the Owner shall indemnify and hold harmless the Design-Builder, the Design Professional and Subcontractors, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from such use of the Design-Build Documents.

3.4 DESIGN-BUILDER'S USE Where the Design-Builder has transferred its copyright interest in the Documents, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole. The Design-Builder shall obtain from its Design Professional, Subcontractors and consultants property rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement.



3.5 ELECTRONIC DOCUMENTS If the Owner requires that the Owner and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Design-Builder shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate Agreement.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide to the Design-Builder all relevant information for the Project, including the Owner's Program, unless the Owner's Program is developed and prepared with the assistance of the Design-Builder as an Additional Service. The Owner shall timely review and approve schedules, estimates, Schematic Design Documents and other documents provided under this Agreement.

4.2 OWNER'S ELECTION TO PROCEED If the Owner elects to proceed with the Project beyond the Preliminary Design-Build Services provided in this Agreement, the Owner and the Design-Builder shall enter into an additional agreement for the completion of the design and the construction of the Project. If the Owner elects not to proceed with the Project, the Owner shall have no further obligation to the Design-Builder other than the payment of compensation as set forth in this Agreement.

ARTICLE 5 CONTRACT TIME

5.1 The Design-Builder's Services provided under this Agreement shall commence on or about February 4, 2020, and shall be completed on or about May 1, 2020. The schedule will be agreed upon during Task 1.0.

ARTICLE 6 COMPENSATION

6.1 The Owner shall compensate the Design-Builder monthly for Preliminary Design-Build Services performed under the Agreement on the following basis:

The lump sum fee is \$181,520 including expenses and equipment. During the course of providing its services, Design-Builder shall be paid monthly based on Design-Builder's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Design-Builder's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Design-Builder for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Design-Builder's services and the services of Design-Builder's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Design-Builder's services at their normal charge out rates.

ARTICLE 7 PROFESSIONAL LIABILITY INSURANCE

7.1 The Design-Builder shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Project Specific Professional Liability Insurance

written for not less than \$5,000,000 per claim and in the aggregate with a deductible not to exceed \$10,000,000. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional.



This Agreement is entered into as of the date entered in ARTICLE 1.

OWNER: Pueblo West Metropolitan District

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

DESIGN-BUILDER: SEH Design|Build, Inc.

BY: Steven Lee Peterson

PRINT NAME: Steven L. Peterson

PRINT TITLE: President

END OF DOCUMENT.



EXHIBIT A

Project Understanding

Pueblo West Metropolitan District (Owner) proposes to design and construct a new Civic Building for the Pueblo West Metropolitan District. The new building will be located on District owned property on Spaulding Avenue, specific parcel yet to be determined, but being a parcel size of approximately 4 acres ±. The size and configuration of the building will be determined during Task 1 to accommodate the Owner's budget. Additionally, the District proposes to design and construct a new storage facility of approximately 2,000 square feet to be located on District owned property at the Public Works Facility located at 280 E. McCulloch Boulevard.

Scope: The Basic Services to be provided by Consultant as set forth herein is provided subject to the attached Agreement for Professional Services.

Unless task is explicitly included in scope of work, task is explicitly excluded.

Our services will consist of:

Task 1.0 – Programming, Budgeting and Concept

- 1.1. Contract Negotiations/Data Gathering & Sharing
 - 1.1.1. Gather owner provided information to include, but not limited to:
 - 1.1.1.1. Previous prepared planning, engineering or geotechnical studies.
 - 1.1.1.2. Legible copies of recorded warranty deed(s) or plats reflecting current ownership.
 - 1.1.1.3. Previously approved agreements with agencies having jurisdiction or approving authority.
- 1.2. Develop Project Management Plan
 - 1.2.1. Prepare a detailed design goals and objectives of Owner's leadership and project representatives/stakeholders.
 - 1.2.2. Prepare a Client Service Planner with Owner.
 - 1.2.3. Prepare Team directory with roles and responsibilities.
 - 1.2.4. Prepare communication plan.
 - 1.2.5. Prepare project schedule that details key milestones and deliverables required to complete project through Schematic Design.
- 1.3. Project Kick-off/Workshop #1 Stakeholder Program & Mission
 - 1.3.1. Assessment of Owner provided information.
 - 1.3.2. Meet with Owner/Stakeholders.
 - 1.3.3. Identify user groups and needs.
 - 1.3.4. Review project scope, budget and objectives to set expectations for project.
 - 1.3.5. Preparation of meeting minutes for distribution and concurrence of attendees.
- 1.4. Develop Program and Concepts
 - 1.4.1. Develop Preliminary Program Statement that identifies programmatic and operational needs prioritization to achieve budgetary goals.
 - 1.4.2. Site analysis, including analysis of parking, vehicular access and pedestrian access necessary to serve the campus.
 - 1.4.3. Functional analysis of building program components, including alternative functional concepts, and recommendation of the option that best meets the needs of this project. This analysis should include floor plan "Bubble" diagrams of functional components and massing diagrams.
 - 1.4.4. Analysis of phasing options if phasing is necessary because of site constraints or for scheduling funding.

- 1.4.5. Analysis of utilities necessary to serve this project. The analysis should include existing utilities and capacity and condition of lines that will serve this project and recommendations for utility upgrades.
- 1.4.6. Identification and documentation of any special design issues that will impact the design of this project, with recommendations for addressing these issues.
- 1.5. Workshop #2 Stakeholders Review & Final Comments.
 - 1.5.1. Present and review “Bubble Diagrams” of building department arrangements to study adjacencies and circulation zones.
 - 1.5.2. Present and review rough order of magnitude cost allocation and budget analysis.
 - 1.5.3. Preparation of meeting minutes for distribution and concurrence of attendees.
- 1.6. Final Program and Concepts.
 - 1.6.1. Prepare a detailed Program Statement that includes a detailed space tabulation of the office and common spaces.
 - 1.6.2. Preparation of finalized conceptual drawings for concurrence.
- 1.7. Conceptual Cost Model
 - 1.7.1. Preparation of conceptual rough order of magnitude cost allocation and budget analysis.
- 1.8. Project Management.
 - 1.8.1. Project Manager will conduct review meetings at defined milestones as indicated in the project schedule.
 - 1.8.2. Perform monthly invoicing and reporting.
 - 1.8.3. Prepare report with each monthly invoice summarizing work completed previous month, work anticipated to be completed the next month, and any specific challenges or opportunities, and budget status.

Task 2.0 – Schematic Design

- 2.
 - 2.1. Initiate Schematic Design Drawings.
 - 2.1.1. Upon concurrence of approved concept and budget, SEH will initiate development of schematic design drawings from the following services:
 - 2.1.1.1. Architectural
 - 2.1.1.2. Civil Engineering
 - 2.1.1.3. Landscape Architecture
 - 2.1.1.4. Structural Engineering
 - 2.1.1.5. Mechanical Engineering
 - 2.1.1.6. Electrical Engineering
 - 2.1.1.7. Plumbing Engineering
 - 2.1.1.8. Technology design for audio-visual, IT, life safety and security systems.
 - 2.2. Workshop #3 –Stakeholder Review & Comments.
 - 2.2.1. Facilitate a workshop for the purpose of stakeholder review and comment of schematic design level documents and cost estimate.
 - 2.2.2. Preparation of meeting minutes for distribution and concurrence of attendees.
 - 2.3. Geotechnical Investigation.
 - 2.3.1. Subcontract with a geotechnical sub-consultant to perform and prepare geotechnical investigation and recommendations.
 - 2.3.2. Perform a visual site reconnaissance to observe existing site conditions, and field locate the borings.
 - 2.3.2.1. Civic Building Site – Eight (8) borings to 30-foot maximum depth or refusal, whichever occurs first
 - 2.3.2.2. Public Works Site – two (2) borings to 30-foot maximum depth or refusal, whichever occurs first.

- 2.3.3. Laboratory testing will be performed on selected soil samples in accordance with recognized standards and local practice and will generally include the following, subject to change based on the subsurface conditions encountered.
 - 2.3.3.1. Gradation Analysis / Atterberg Limits
 - 2.3.3.2. Moisture Content / Unit Weight
 - 2.3.3.3. Unconfined Compressive Strength
 - 2.3.3.4. Swell Test
 - 2.3.3.5. Proctor (maximum laboratory dry density)
 - 2.3.3.6. pH, Resistivity, Redox, Soluble Sulfates, Soluble Chlorides, Sulfides
- 2.3.4. Perform engineering analysis and evaluation of the resulting field and laboratory data for use in preparing geotechnical engineering recommendations for the proposed project. Prepare a report containing our findings, conclusions, and recommendations. One electronic (PDF) copy of the report will be provided. The report will contain the following:
 - 2.3.4.1. A description of the proposed project, including a description of the surface and subsurface site conditions encountered during our field investigation.
 - 2.3.4.2. A Boring Location Plan showing approximate boring locations
 - 2.3.4.3. Boring logs that provide visual and laboratory soil classifications, relative density information, select laboratory testing, major changes in the soil type, and groundwater elevation, as applicable.
 - 2.3.4.4. Laboratory test results.
 - 2.3.4.5. Conclusions pertaining to feasibility of the proposed construction, impacts of geotechnical and geologic features on the proposed construction, and opinions on management of groundwater. A discussion of collapsible/expansive soils will be presented as well as any necessary mitigation approaches.
 - 2.3.4.6. Recommendations related to the geotechnical aspects of site preparation and earthwork.
 - 2.3.4.7. Recommendations pavement design.
 - 2.3.4.8. Seismic design coefficients in accordance with International Building Code.
 - 2.3.4.9. Recommendations for foundation design, including recommended foundation type, allowable bearing capacities, embedment depths, and anticipated collapse/swelling soil or bedrock mitigation, as needed.
 - 2.3.4.10. Appendices that summarize the field investigation and laboratory testing programs.
- 2.4. Topographic Survey. Performed at two locations. (1) Civic Building site located on Spaulding Avenue and being of approximately 4.1 acres; (2) Public Works Yard located at 280 E. McCulloch Boulevard and being approximately 1 acre.
 - 2.4.1. Establish horizontal and vertical control. The horizontal datum will be based on Colorado State Plane Coordinate System NAD83 (2011) South Zone (0503), scale to ground coordinates using published monuments. The vertical datum will be based on NAVD 88. Once control is established, three monuments will be positioned near the project site and coordinates and elevations associated with each monument. These site monuments will be used for design survey and translation to boundary surveys or plats prepared by others.
 - 2.4.2. Topographic survey will cover site, plus 25 feet beyond the site boundaries not adjacent to roadways. The survey will include all adjacent roadway features, drainage features, large trees, toes and top of slopes, signage, surface, underground and overhead utility features, fences and structures.
 - 2.4.3. Subcontract with others to provide utility locate services of wet and dry utilities. Once utility locates have been completed the utility markings will be located in the field by SEH.
 - 2.4.4. Perform a search for monuments in the field. Any monuments found will be then analyzed and compared to the record, property records provided by others, to determine site boundary.
 - 2.4.5. Topographic survey contours will be drawn at one foot intervals.

- 2.5. Complete Schematic Design & Narrative.
 - 2.5.1. Based on comments received during Workshop #3, finalize schematic design drawings and prepare associated narrative for distribution and concurrence from Owner and stakeholders.
- 2.6. Quality Control Schematic Design Review.
 - 2.6.1. Senior staff review of all documents.
 - 2.6.2. Builder review of all documents.
- 2.7. Schematic Design Cost Estimate.
 - 2.7.1. Develop schematic design level estimate presenting detail that outlines construction costs, related project costs, and soft costs.
 - 2.7.2. Present benchmark data and/or other data that supports the recommended budget estimate to be used for establishing fee for next professional services agreement.
- 2.8. Project Management.
 - 2.8.1. Project Manager will conduct review meetings at defined milestones as indicated in the project schedule.
 - 2.8.2. Perform monthly invoicing and reporting.
 - 2.8.3. Prepare report with each monthly invoice summarizing work completed previous month, work anticipated to be completed the next month, and any specific challenges or opportunities, and budget status.

Specific Exclusions/Assumptions

- Right of Entry onto private property will be provided by PWMD.
- Right-of-way plans for property acquisition are not required at this time and all work will occur within PWMD owned properties.
- Legal descriptions for right-of-way acquisition/easements are not required at this time.
- Potholing of utilities is not included. Subsurface Utility Engineering to meet a Level B certification in accordance with ASCE Standard 38 and SB 18-167 is not included, as this project is considered to be associated with site and building construction.
- The fee assumes that the study area and scope of work provided by SEH DB at the time of the proposal will not change. Any modifications to the study area or program that may affect the scope of work will be negotiated as an additional service and commiserate fee adjustment.