



BOARD OF TRUSTEES

REGULAR MEETING AGENDA

May 2, 2018
7:00 PM
151 Grant Avenue
Firestone, CO 80520

- 1. Call to Order & Roll Call**
- 2. Pledge of Allegiance**
- 3. Discussion/Action Item**
 - 3.a.** Discussion on Scope of 2018 THK Irrigation Contract
- 4. Executive Session**
 - 4.a.** Executive Session pursuant to C.R.S. 24-6-402(4)(g) and 24-6-402(4)(e), for (i) consideration of documents protected by the mandatory nondisclosure provisions of the Colorado Open Records Act (records submitted by non-finalists, C.R.S. 24-72-204(3)(a)(XI), and (ii) determining positions, developing strategy and instructing negotiators relative to matters that may be subject to negotiation - Interim Town Manager recruitment.
- 5. Report from the Executive Session**
- 6. Adjournment**

* Individuals that desire to address the Board of Trustees are requested to sign up at the table at the entrance to the meeting room. Each individual will be provided an opportunity to speak (limited to two minutes) during Public Comment. Maximum time permitted for all Public Comment is 30 minutes.

If you need special assistance in order to participate in a Board of Trustees meeting, please contact the Town Manager's Office at 303-833-3291 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

INDEPENDENT CONTRACTOR AGREEMENT BY AND BETWEEN THE TOWN OF FIRESTONE AND THK ASSOCIATES, INC. FOR PROFESSIONAL CONSULTING SERVICES – 2018 Irrigation

1.0 PARTIES

The parties to this Agreement are the **Town of Firestone**, hereinafter referred to as the "Town," and **THK ASSOCIATES, INC.**, a Colorado Corporation, hereinafter referred to as the "Contractor."

2.0 RECITALS AND PURPOSE

- 2.1 The Town desires to engage the Contractor for the purpose of providing professional consulting services as further set forth in the Contractor's Scope of Services (which services are hereinafter referred to as the "Services").
- 2.2 The Contractor represents that it has the special expertise, qualifications and background necessary to complete the Services.

3.0 SCOPE OF SERVICES

The Contractor agrees to provide the Town with the specific Services and to perform the specific tasks, duties and responsibilities set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference. The contractor shall furnish all tools, labor and supplies in such quantities and of the proper quality as are necessary to professionally and timely perform the Services. The Contractor acknowledges that this Agreement does not grant any exclusive privilege or right to supply Services to the Town. In its sole discretion, the Town may contract with other Contractors to provide the same or similar services during the term of this Agreement.

4.0 COMPENSATION

- 4.1 The Town shall pay the Contractor for Services requested and rendered under this Agreement at the hourly rates set forth in Exhibit A. Task prices and task costs for specific items of the Services shall not exceed the task pricing and costs shown in Exhibit A, and costs may not be reallocated between categories. In no case shall the total cost of Services exceed \$38,500 (the "Maximum Contract Amount"), and the Contractor shall bear costs incurred in performing the Services that exceed the Maximum Contract Amount. The Town shall pay, at the rates set forth in Exhibit A, mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.) which are deemed necessary for performance of the Services and which are pre-approved by the Town Manager. The foregoing amounts of compensation shall be inclusive of all costs of

whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The Scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No Town employee has the authority to bind the Town with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

- 4.2 The Contractor shall submit monthly an invoice to the Town for Services rendered during the previous month, indicating the nature of the Services performed, the time expended thereon, and the dates of service and a detailed expense report for pre-approved, reimbursable expenses incurred during the previous month. The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the Town. The Contractor shall provide such additional backup documentation as may be required by the Town at no cost to the Town. The town shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one-half percent (0.5%) per month unless the delay in payment resulted from unsatisfactory work or documentation thereof.

5.0 PROJECT REPRESENTATION

- 5.1 The Town designates Bruce Nickerson, Town Manager, as the responsible Town staff to provide direction to the Contractor during the conduct of the Services. The Contractor shall comply with the directions given by Mr. Nickerson and such person's designees.
- 5.2 The Contractor designates Peter Elzi and Kevin Shanks as its project managers and as the principals in charge who shall be providing the Services under this Agreement. The Services shall not be provided by persons other than Peter Elzi and Kevin Shanks.

6.0 TERM

The term of this Agreement shall be January 1, 2018 to December 31, 2018, unless sooner terminated pursuant to Section 13, below. The Contractor's Services under this Agreement shall commence upon execution of this Agreement by the Town and shall progress so that the Services are completed in a timely fashion consistent with the Town's requirements.

7.0 INSURANCE

- 7.1 The Contractor agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsection 7.1.1 through 7.1.3. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by

reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. The coverages required below shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:

- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
 - 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall include the Town of Firestone, its officers and its employees, as additional insureds, with primary coverage as respects the Town of Firestone, its officers and its employees, and shall contain a severability of interests provision.
 - 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Contractor providing Services to the Town of Firestone under this Agreement.
- 7.2 The Contractor's general liability insurance, automobile liability and physical damage insurance shall be endorsed to include the Town, and its elected and appointed officers and employees, as additional insureds, unless the Town in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. Such policies shall contain a severability of interests provision. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.
- 7.3 Certificates of insurance shall be provided by the Contractor as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of

contract upon which the Town may immediately terminate the contract, or at its discretion 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 Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

- 7.5 The parties understand and agree that the Town is relying on, and does not waive or intend to waive any provisions of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the Town, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the Services hereunder, if such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Contractor shall further bear all other costs and expenses incurred by the Town or Contractor and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, error, omission or other fault of the Contractor. The Town shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

9.0 QUALITY OF WORK

Contractor's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.

10.0 INDEPENDENT CONTRACTOR

The parties agree that the Contractor is an independent contractor and not an employee of the Town and any persons employed by Contractor for the performance of work hereunder shall be

independent contractors and not agents of the Town. Contractor shall have the right to contract and represents that it does contract for similar services with others. Any provisions in this Agreement that may appear to give the Town the right to direct Contractor as to details of performing the Services or to exercise a measure of control over the Services mean that Contractor shall follow the direction of the Town as to end results of the Services only. This Agreement shall not, in any way, be construed to create a partnership or any other kind of joint undertaking or venture between the parties hereto. The Town will not pay a salary or hourly rate, instead of a fixed or contract rate. The Town will not withhold Social Security, Medicare, State or Federal taxes. Earnings in excess of \$600.00 per year will be recorded on IRS Form 1099-MISC and reported to the IRS.

AS AN INDEPENDENT CONTRACTOR, CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS EXCEPT AS MAY BE PROVIDED BY THE INDEPENDENT CONTRACTOR NOR TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME OTHER ENTITY. THE CONTRACTOR IS OBLIGATED TO PAY ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED OR PAID PURSUANT TO THIS CONTRACT.

11.0 ASSIGNMENT

Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due or which may become due hereunder without the Town's prior consent.

12.0 DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of the Agreement, such party may be declared in default.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party for material breach or default of this Agreement of the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.
- 13.2 In addition to the foregoing, this Agreement may be terminated by the Town for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Contractor will be paid for the reasonable value of the Services rendered to the date of termination,

not to exceed a pro-rated daily rate, for the Services rendered to the date of termination, and upon such payment, all obligations of the Town to the Contractor under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION AND AUDIT

The Town and its duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 DOCUMENTS

All drawings, computer input and output, analyses, plans, documents, photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed for the Town in performance of the Services are and shall remain the sole and exclusive property of the Town. All such materials shall be promptly provided to the Town upon request therefor and at the time of termination of this Agreement, without further charge or expense to the Town. Contractor shall not provide copies of any such material to any other party without the prior written consent of the Town.

16.0 ENFORCEMENT

Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Weld County in connection with any dispute arising out of or in any matter connected with this Agreement.

17.0 COMPLIANCE WITH LAWS; WORK BY ILLEGAL ALIENS PROHIBITED

Contractor shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the Town; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

17.1 Exhibit B, the "Town of Firestone Public Services Contract Addendum-Prohibition Against Employing Illegal Aliens," is attached hereto and incorporated herein by reference. There is also attached hereto a copy of Contractor's Pre-Contract Certification which Contractor has executed and delivered to the Town prior to Contractor's execution of this Agreement.

18.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements of understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

19.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the Town:

Town of Firestone
Attn: Town Manager
151 Grant Ave.
Firestone, Colorado 80520
Telephone: (303) 833-3291
E-mail: bnickerson@firestoneco.gov

If to the Contractor:

THK ASSOCIATES, INC
ATTN: Kevin Shanks, Principal
2953 S. Peoria St., #101
Aurora, CO 80014
Telephone: (303)-770-7201
E-Mail: kshanks@thkassoc.com

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may be similar notice given, change the address to which future notices or other communications shall be sent.

In witness whereof, the parties have executed this Agreement to be effective as of the day and year of signed by the Town.

TOWN OF FIRESTONE
a Colorado Municipal Corporation

By: Paul Sore

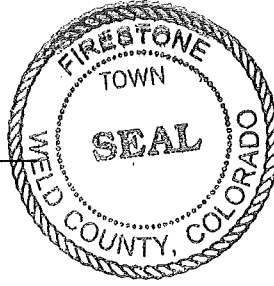


Paul Sorensen, Mayor

Attest:

Leah Vanarsdall

Leah Vanarsdall, Town Clerk



CONTRACTOR:

THK ASSOCIATES, INC.

a Colorado Corporation

By: Kevin Shanks

Title: Vice-President

Date: _____

Exhibit A

Scope of Services

Irrigation As-builts

THK will perform additional field work to develop complete as builts for Settlers and Mountain Shadows Parks. As part of the original scope of work, only areas being considered for native seed were addressed. As builts will include existing head locations, types and nozzles, valve locations and sizes, sensor locations, backflow locations and any visible deficiencies in the system including breaks and leaks.

Additional Field work (assume 4 days) \$6,080.00
As-built drawings \$3,220.00

Construction Documentation for Native Seed conversion

Using base maps developed for irrigation as-built plans, THK will develop construction documents (CDs) for native seed conversion. CDs will include:

- Demolition plans – noting all sod areas to be demo, existing features to remain (i.e., trees, planting areas, etc)
- Seeding Areas – noting all areas to be re-seeded with native seed
- Erosion control measures – assumed blanket locations along trails and/or high traffic areas, tackifier, etc.
- Compost composition, rate and till depth based on collected soil sample analysis
- Native seed mix
- Irrigation system adjustments to account for native seed areas including changes to zones, changes to equipment (i.e., 4" high spray vs. 6" high spray), and recommended clock run times based on native grass water requirements

Documents will be prepared so that they can be used by a contractor or internally by the Town's staff. The primary difference in cost between constructing internally and hiring a contractor is the administrative bidding procedures such as completing general conditions, bid schedules, forms, pre-bid meetings, etc. that would never occur for an internal Town project.

Develop Construction Documents..... \$7,500.00
Bidding and Specifications (General Conditions, forms, pre bid meeting, etc.)..... \$1,800.00

Manual of Native Seed Management

THK will develop a manual for the Town's use to establish and maintain native seed areas. The manual will include sections including, but not limited to:

- Soil Testing
- Watering
- Fertilization
- Weed Control

- Native grass maintenance

Develop Manual of Native Seed Management..... \$4,500.00

Irrigation Technician Training and Oversight

THK has assumed two days a month for a period of seven months during the 2018 season to spend one day in the field with new irrigation technicians to provide training and oversight for irrigation maintenance operations. THK has also included up to 4 hours a month for general coordination with the Town as needed.

Training and Oversight..... \$15,400.00

TOTAL FEE.....\$38,500.00

THK ASSOCIATES BASE RATE FEE SCHEDULE: 2017

LAND AND DEVELOPMENT PLANNING/LANDSCAPE ARCHITECTURE CHARGE-OUT RATES:

Principal	\$150.00
Professional Landscape Architect	\$120.00
Senior Landscape Architect	\$110.00
Design Professional	\$95.00
Technical	\$80.00
Clerical	\$70.00

Labor rates include provisions for salary, taxes, insurance, and profit.

Schedule of Expenses

Mileage	\$.53.5/mile
Xerox Copies (8.5" x 11") black & white	\$.10/each
Color Copies (8.5" x 11")	\$1.25/each
Xerox Stickyback (8.5" x 11")	\$2.00/each
Plotter Paper - Bond	\$.25/s.f.
Plotter Paper – Bond/Color	\$5.00/s.f.
Plotter Paper – Vellum	\$7.50/s.f.
Plotter Paper – Mylar	\$10.00/s.f.
Diazo Black Line Paper	\$.65/s.f.
Dry Mount/Foam Core	\$3.00/s.f.
Air Transportation	at cost
Lodging and Per Diem	at cost
Parking	at cost
Direct Materials	at cost
Other Consultants	at cost

Exhibit B

Town of Firestone Public Services Contract Addendum Prohibition Against Employing Illegal Aliens

Prohibition Against Employing Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor will participate in either the E-Verify program or the Department program, as defined in C.R.S. § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Contractor is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Contractor shall:

- a. Notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If Contractor violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, Town may terminate the contract for breach of contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Town.

**Pre-Contract Certification
In Compliance with C.R.S. Section 8-17.5-102(1)**

From: THK ASSOCIATES, INC.
(Prospective Contractor)

To: Town of Firestone

As a prospective independent contractor for the above-identified project, I (we) do hereby certify that, as of the date of this certification, the undersigned does not knowingly employ or contract with an illegal alien; and that the undersigned will participate in the E-Verify employment verification program administered jointly by the United States Department of Homeland Security and the Social Security Administration or the employment verification program of the Colorado Department of Labor and Employment Program, as defined in C.R.S. § 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of any employees hired since the date of this contract to perform work under this contract.

Executed this _____ day of _____, 20____.

Prospective Contractor: THK ASSOCIATES, INC

By: _____

Title: _____

State of Colorado

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

The foregoing Certification was acknowledged before me this _____ day of _____, 20____, by [Name] _____ for THK ASSOCIATES, INC.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public