

ARKANSAS VALLEY CONDUIT COMMITTEE MEETING
AVC Boone Reach Boundary Survey
Action Report

Date: July 7, 2022

Agenda Item: VII.B.

STAFF RECOMMENDATIONS:

Executive Director and staff recommend that the Committee recommend to the Enterprise Board to authorize the Executive Director for execution of a Professional Services Contract with the Farnsworth Group to provide preliminary right-of-way and railroad mapping services for a portion of the AVC Boone Reach.

BUDGET IMPLICATIONS:

The boundary survey services as proposed is to be provided by the Enterprise estimated at \$49,200 including a contingency for unexpected conditions of \$4,500. The boundary survey services are normally a part of Reclamation provided services for the project. The services are not budgeted in the Enterprises part of the AVC project, however, the AVC Fund Balance account, as established by the Board, can be used as a contingency for these services.

PREVIOUS BOARD ACTION AND/OR ACTIVITY:

None

ISSUE SUMMARY DESCRIPTION:

In June 2022, Reclamation expressed concerns to the District that the Reclamation procurement process for obtaining boundary surveys for the AVC Trunk Line was experiencing delays. They indicated that further delays in obtaining boundary surveys for the section of the Boone Reach from the Avondale turnout to Boone could potentially delay final design and construction contracting. To prevent potential delays to the project, Reclamation requested, and District staff agreed to provide these services to expedite the process and maintain the project schedule. Staff contacted the Farnsworth Group who previously provided preliminary land planning for AVC for Reclamation between 2014 and 2019. Their familiarity with the project, background knowledge, and ability to respond quickly was considered in requesting their services to assist us on this task.

AVC Boone Reach Boundary Survey

July 7, 2022

On June 22, 2022, the Farnsworth Group submitted a proposal to provide the requested services. Farnsworth estimated a completion of six weeks from a Notice to Proceed and an estimated fee of \$44,700 with a suggested 10% contingency of \$4,500 for a total estimated fee not-to-exceed \$49,200. The scope of services includes the necessary research, permitting, and boundary identifications to establish the property boundaries along the pipeline reach. Establishing the boundaries will facilitate final design of the AVC Trunk Line.

SUGGESTED MOTION:

I move to recommend that the AVC Committee recommend to the Southeastern Colorado Water Activities Enterprise Board to authorize the Executive Director to execute a boundary survey services agreement with the Farnsworth Group for the AVC Boone Reach.

ATTACHMENTS: Attachment 1: Draft, Contract for Professional Services Between the Southeastern Colorado Water Activity Enterprise and the Farnsworth Group.

ATTACHMENT 1
Contract for Professional Services
Between the
Southeastern Colorado Water Activity Enterprise
and
Farnsworth Group

This Contract is entered on _____, ____ between the Southeastern Colorado Water Activity Enterprise (“SECWCD”), 31717 United Avenue, Pueblo, CO 81001, and _Farnsworth Group (“Contractor”), whose address is __5613 DTC Parkway, Suite 1100, Greenwood Village, CO 80111. SECWCD and Contractor are jointly referred to herein as the “Parties.”

RECITALS

WHEREAS, the SECWCD desires to employ Contractor’s services for preliminary right-of-way and railroad mapping _____; and

WHEREAS, Contractor desires to provide such services to SECWCD under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

Terms of Agreement1. _____ Services of the Contractor. During the Term of this Agreement, Contractor hereby agrees to provide the SECWCD with boundary information along the specified portions of the Boone Reach of the AVC Trunk Line. All work shall be in accordance with the attached Exhibit A. To the extent there is any discrepancy between Exhibit A and this Agreement, this Agreement shall prevail.

1. Payment and Fee Schedule. – As set forth in Exhibit B or otherwise below, Contractor shall provide SECWCD with an invoice on a monthly basis for services performed and reimbursable expenses. SECWCD shall pay Contractor’s invoice on the last day of each month for services performed and reimbursable expenses during the preceding month. Within 20 days of billing, the SECWCD will remit billed amounts to Farnsworth Group. _____.

2. Term of the Agreement. This Agreement shall be in effect from _____, 20__ until December 31, 2022__, unless otherwise agreed upon in writing or terminated as specified below.

2.1 Termination for Cause: If, through any cause, the Contractor fails to fulfill its obligations under this Agreement in a timely, proper, or satisfactory manner, or if the Contractor violates any of the covenants, conditions, or stipulations of this Agreement, SECWCD shall thereupon have the right to immediately terminate this Agreement upon giving written notice to the Contractor of such termination and specifying the effective date thereof. SECWCD may at its sole discretion permit the Contractor to remedy the cause of a contemplated termination without waiving SECWCD's right to terminate the Agreement. In the event of a termination for cause or if the Contractor is unable to perform under this Agreement, SECWCD may complete the work by other means and Contractor shall be liable for all reasonable costs in excess of what SECWCD would have paid had there been no termination for cause.

2.2 Termination for Convenience. SECWCD in its sole discretion may terminate this Agreement at any time by giving written notice as specified herein to the Contractor, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated for convenience by SECWCD, then the Contractor will be paid for the portion of work or services that have satisfactorily completed at the time of the termination.

3. Personnel Assignment. - Unless otherwise agreed to in writing by the Parties, Contractor will perform all services under this Agreement by and through the persons of Fred Easton, PLS, Senior Survey and GIS Manager. In the event the Contractor does not have persons as part of its regular staff that perform certain professional services, then such services may be performed by practicing subcontractors outside the employ of Contractor with written approval of SECWCD.
4. Communication and Coordination. - Contractor shall regularly coordinate and communicate with the SECWCD regarding status of the work on a weekly basis _____ . SECWCD may direct that such coordination and communication include progress updates, review meetings, and/or work sessions.
5. Project Manager/SECWCD Designee - SECWCD designates Kevin Meador, P.E., Principal Engineer _____ as the primary person who will communicate with the Contractor, but Contractor will remain available to work with other SECWCD staff or board members upon request.
6. Reimbursable Expenses. – Except for those reimbursable expenses specifically identified in Exhibit A or approved in writing by SECWCD as reasonably related to or necessary for Contractor's services, all other expenses will not be reimbursed.
7. Professional Responsibility. – Unless otherwise specified, Contractor's work shall be performed with the standard of care, skill, and diligence provided by competent professionals who perform work of a similar nature in accordance with all applicable

codes, plans, specifications, and industry standards. Contractor's work shall be performed to SEWCDC's reasonable satisfaction.

8. Independent Contractor. – In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of SEWCDC. The Contractor shall be solely and entirely responsible for his/her employees, agents, servants, and subcontractors during the term and performance of any services or work under this Agreement. The Contractor, at its own expense, shall procure and maintain workers' compensation insurance as required by law. Pursuant to Colorado's Workers' Compensation Act § 8-40-202, Contractor understands and agrees that its employees are not entitled to workers' compensation benefits from SEWCDC. Contractor further understands and agrees that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement and compliance with federal and state law.
9. Indemnification. – The Contractor agrees to indemnify, defend, and hold harmless, SEWCDC, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorneys' fees and costs, arising out of damage or injury to persons, entities or property caused or sustained by any person(s) as a result of the Contractor's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.
10. Intellectual Property. – SEWCDC shall have title and all intellectual and other property rights, in and to any designs, data, the results of any tests, surveys, inspections, all photographs, drawings, drafts, studies, estimates, reports, models, notes, and any other materials or work product, whether in electronic or hard copy format, created by Contractor pursuant to this Agreement.
11. Insurance. – During the Term of the Agreement, Contractor agrees to maintain insurance of the following types and amounts: (i) Commercial General Liability Insurance to include products liability, completed operations, contractual, broad form property damage and personal injury in the amount of \$1,000,000 for each occurrence and \$2,000,000 as a policy aggregate; (ii) Business Automobile Liability with a combined single limit of \$1,000,000 applicable to all owned, hired and non-owned vehicles used in performing services under this agreement; (iii) Professional Liability (Errors & Omissions) with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate for damages or claims arising out of the rendering, or failure to render, any professional services, as applicable; (iv) Workers' Compensation/Employer's Liability Insurance as required by Colorado statutes. Contractor shall include SEWCDC and its officials and employees as additional insured for Commercial General Liability and Business Automobile Liability.
12. Damages. – Notwithstanding anything else set forth in this Agreement, if Contractor fails to comply with any term of this Agreement, Contractor shall be liable to SEWCDC for all damages arising from the breach, including but not limited to attorneys' fees and costs.

13. Colorado Governmental Immunity Act – The parties understand and agree that SECWCD has not waived any of its rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
14. Notice. - Any notice, bill, invoice, or other record required in connection with this Agreement shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the address stated below. Either party may change its address stated below by giving notice of the change in accordance with this paragraph.
15. Assignment. - This Agreement may not be assigned by Contractor without SECWCD's prior written consent.
16. Non-Waiver. - The waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach.
17. Amendment. - No change, modification, or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both SECWCD and Contractor.
18. Conflict of Interest. - The Parties agree that no SECWCD officer or employee shall have any personal or beneficial interest in the services provided herein. The Contractor agrees not to hire or contract for services with any employee or officer of SECWCD which would be in violation of C.R.S. § 24-18-105. The Contractor agrees that it will not engage in any transaction, activity, or conduct that will result in a conflict of interest to SECWCD, which is to be determined at the sole discretion of SECWCD.
19. Compliance with Applicable Laws – During the performance of this Agreement, Contractor agrees to strictly adhere to all applicable federal, state, and local laws, regulations, and rules, including all licensing and permitting requirements.
20. Records Retention. – Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by SECWCD and any authorized federal, state or local government personnel.
21. Integration. – This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements or understandings between SECWCD and Contractor.
22. Choice of Law. – This Agreement shall be governed by, and construed and enforced in accordance with, the laws of Colorado without regard to conflicts of law principles.
23. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. Public Contracts for Services. – Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement through participation in the E-Verify Program or the department program established pursuant to C.R.S. § 8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor certifies, warrants, and agrees (i) it 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; (ii) it will not use E-Verify Program or department program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed; (iii) it will notify a subcontractor and SECWCD within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement and to terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice; and (iv) it will comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the department program established pursuant to C.R.S. § 8-17.5-102(5)(c), then within twenty days after hiring an employee who is newly hired for employment to perform work under the Agreement, Contractor will affirm that the Contractor has examined the legal work status of such employee, has retained file copies of the documents required by 8 U.S.C. § 1324a, and has not altered or falsified the identification documents for such employees. The Contractor shall provide a written, notarized copy of this affirmation to SECWCD.
25. Appropriation and Funding. SECWCD’s payment obligation, whether direct or contingent, is subject to funds that are appropriated annually. SECWCD does not by this Agreement pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation to SECWCD.
26. Nondiscrimination in Employment. – In connection with the performance of work under this agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

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Entered into this _____ day of _____ 20__.

Southeastern Colorado Water Conservancy District/Activity Enterprise

By: _____
Date

Organization _____

By: _____
Date

EXHIBIT A
ARKANSAS VALLEY CONDUIT – BR-2 & CROWLEY REACH
SCOPE OF SERVICES
PRELIMINARY RIGHT-OF-WAY & RAILROAD MAPPING
6/22/2022 REVISION 0

SCOPE OF SERVICES:

Farnsworth Group, Inc. and their preferred subconsultants (FG) shall perform following services in support of Southeastern Colorado Water Conservancy District (client) and the United States of America, Bureau of Reclamation (BoR) design of a portion of the Arkansas Valley Conduit (AVC) Water Pipeline including:

- Remainder of BR-2: from end of previous work near State Highway 96 (SH 96) near mile post 75 west of Boone, CO to just east of the crossing of SH 96 the railroad near mile post 77.5 in Pueblo County, approximately 2.5 miles long.
- Crowley Reach: from end of above to just west of Olney Springs near mile post 92, and additional locations outlined below for the Regulating Tank Site location and pipeline, approximately just under 16 miles long.
 - Including several parcels in Crowley County within Sections 2, 3, 10 & 11 all north of the Highway.

Please refer to summary quantities that are budgeted in the Assumptions Section at the bottom of this Scope of Work.

Task 1: GIS (pre-surveying) Services to be provided:

To assist in early development of alignment and risk analysis, FG will provide the following services to create a comprehensive right-of-way and property base map in AutoDesk Civil3D. These services will be provided with intent to build toward a final survey product. Survey accuracies and procedures will be followed; however, no services that would require completion of a land survey plat per Colorado Revised Statutes nor replacement or setting of land corners are part of this task.

- 1) Project management and coordination** – FG will provide GIS and Survey consulting support, attend up to 4 teleconference project meetings and generally be available (up to the level of effort estimated on attached cost worksheet) for phone calls and emails throughout task duration.
- 2) Project coordinates and control basis** – FG will establish project coordinates using GPS Real-Time Kinematic methods and locations based on NGS horizontal control monuments, the online positioning user system (OPUS), and BoR provided control from previously completed Aerial Mapping by others. Up to 4 GPS base points will be found or set in public rights-of-way but away from proposed features to increase survivability. Points will be found or set CDOT type 2 monuments for increased stability. FG will ensure that coordinate system matches previous mapping and design drawing basis currently in use by BoR. A ground modification will be used

for the property calculations to match ground-based traditional survey measurements, but a scaled file on State Plane unmodified grid will be provided to BoR for their usage.

- 3) **Permitting** - FG will obtain necessary access permits to complete the tasks below and complete all forms including any needed attachments such as methods of handling traffic (MHT) diagrams. These are expected to include:
 - a. CDOT special use permit
 - b. BNSF Railroad access permit, obtained through Jones Lang LaSalle
 - c. KCVN, LLC Railroad access permit – note, this is a new owner of the V&S Railroad and has just achieved operation of the railroad, it is unknown what their permitting and flagger requirements will be, typical railway company coordination is estimated
 - d. County and municipal permits are not expected and not included at this time
- 4) **Research** – FG will supplement the previous research performed under prior BoR contracts to obtain the following information within 1/4 sections that are crossed by the pipeline alignment:
 - a. any newly available plans, deeds, and maps of CDOT rights-of-way
 - b. track maps, surveys, and land acquisition tables of railroad rights-of-way from various sources, including rail operators and owners, railroad museums, and national archives
 - c. land survey plats and newly recorded subdivision plats from Pueblo & Crowley County
 - d. monument records from State of Colorado
- 5) **Notification of entry** – as per 2016 Colorado Revised Statutes, Title 18 - Criminal Code, Article 4 - Offenses Against Property, Part 5 - Trespass, Tampering, and Criminal Mischief. Entry to survey property - exception to criminal trespass, FG will notify all landowners that have a GIS land position / aliquot section corner on their property that cannot be accessed from public right-of-way that entry will be required to complete survey. This notice will include all items required by title 18 and sent via certified mail.
 - a. Please note that due to lack of county roads north and south of SH96, this is a significantly more difficult task for Crowley Reach than was needed for the previous Boone Reach.
- 6) **GIS land positions** – FG will search for a limited number of GIS land positions at, or near, aliquot section corner monuments which control major right-of-way potentially affected and parallel to the pipeline alignment. These corners will be located without the full survey and research necessary to confirm the validity of corners.
- 7) **Aliquot Section Lines** – FG will use the found GIS land positions to compile a limited number of preliminary section lines. Any lines which cannot be defined from the found positions will be estimated based on best available information, potentially including previous surveys, other GIS

land position monuments, occupational evidence, or resections methods as defined by the Manual of Surveying Instructions.

- 8) Railroad Locations** – FG will locate evidence of the original railroad rights-of-way, which are the basis of parallel CDOT rights-of-way along State Highway 96. This task includes estimate for a railroad flagman during survey. While one railroad ROW owner is expected for permit coordination, this task will include calculation of both the former Missouri Pacific Railroad and Atchison, Topeka and Santa Fe Railroad rights-of-way up to the junction near SH 96 mile post 82.4. These locations are likely to include:
- a. Long tangent bearings of current rails
 - b. Bridge structures
 - c. Drainage structures
 - d. At-grade crossings
 - e. Appurtenances as needed to help determine mile posts and engineers stationing
 - f. Spot location of railroad right-of-way corners
- 9) Railroad Right-of-Way Lines** – FG will use the locations above to compile the preliminary right-of-way lines of the original railroad right-of-way as granted or acquired. This includes the following tasks:
- a. Determining if current main line has shifted laterally based on order structure locations
 - b. Shift centerline tangents to estimated original position
 - c. Calculate curve positions based on tangency to the long tangents and original simple curve geometry. Generally, this will pre-date the introduction of spiral curves.
 - d. Offset of centerline to original and current railroad widths
- 10) CDOT Right-of-Way Lines** – FG will use the railroad boundary and GIS positions on estimated aliquot section lines to draft right-of-way parcels using coordinate geometry of the deed and right-of-way plan dimensions.

Deliverable products - All the above will be compiled into a single comprehensive preliminary property and right-of-way computer aided drafting file, AutoDesk Civil3D format, on project coordinates. This file will be provided to client at initial substantial completion and updated on a weekly basis thereafter if a significant preliminary deliverable can be prepared before completion of all sections. The goal of above scope of services is a preliminary base right-of-way file showing right-of-way lines within 30' of the proposed alignment to an estimated accuracy of sub-meter of what a true and correct survey of these lines would determine.

Schedule:

The following schedules are estimated based on current workload, but are subject to delays in permitting, COVID infections and subsequent isolations, and changes in staffing:

- BR-2: a preliminary deliverable is believed to be achievable in approximately 6 weeks or less, including all but the railroad crossing and SH96 right-of-way east of the rail crossing at east end. The railroad crossing could be added in 2 to 4 weeks thereafter depending on permit.
- Crowley Reach: preliminary completion, including likely up to 80% of the lines to be drafted, is estimated to take up to 16 weeks with primary field work starting at receipt of either railroad permit. Substantial completion is expected 2 to 6 weeks thereafter.

Client will be informed of any delays outside of the control of FG, such as delays in obtaining permits and new schedule estimated weekly, if such delays occur.

Assumptions:

- **Health and Safety Plan** – It is assumed all field work can be performed under Farnsworth Group’s standard health and safety plan without revision or addition
- **Peer Review** – in general, all deliverable products will be reviewed by a Colorado Licensed Surveyor that was not responsible for creation of the deliverable products. No project specific quality assurance and quality control plan will be created.
- **Traffic Control** – It is assumed that right-of-way lines can be surveyed with vehicles parked far enough from traveled highway lanes. As such, minimal traffic control is expected for this project and cost to provide that small amount is included in the tasks estimates. If CDOT will not allow access to right-of-way lines without traffic control, an estimate for this additional traffic control will be provided.
- **Cross streets** – Survey of right-of-way lines of cross streets will be limited to their intersection point with the south right-of-way lines of US Highway 50 and State Highway 96 and the bearing of the intersecting line calculated, if known. Any additional depiction will be based on the GIS lines previously calculated for BoR past contracts.
- **Easements** – Research and drafting of existing easements are not included in the above scope of services. If desired, an estimate can be provided.
- **Schedule** – Cost estimate is based on the proposed schedule and use of FG local staff for the majority of field services. If a more accelerated schedule is desired, FG staff from other offices may be used in combination with increased fee due to hotel and travel expenses.
- **Quantities** – the following quantities are the basis of attached estimated fee:
 - Permits..... 3
 - Entry notices:
 - Unique landowners..... 85

- Research:
 - Township/ranges crossed 4
 - Sections..... 27
 - 1/4 sections..... 58
- GIS land positions / aliquot corners..... up to 100

EXHIBIT B
ARKANSAS VALLEY CONDUIT – BR-2 & CROWLEY REACH
FEE ESTIMATE
PRELIMINARY RIGHT-OF-WAY & RAILROAD MAPPING
6/22/2022 REVISION 0

PROPOSED FEES

Farnsworth Group, Inc. proposes to provide the services described in Attachment A, based on assumptions in said attachment on a time and materials basis not to exceed the line-item totals shown below, including reimbursable expenses, to be billed in accordance with our 2022 standard rates (attached).

Primary Tasks:	Total
BR-2 Extension: GIS (pre-survey) service including Railroad Survey	\$ 44,700
<hr/>	
Suggested 10% contingency for revisions, additional services, or unexpected conditions	\$4,500
Grand Total with Contingency	\$49,200.00

This estimated fee is valid until December 31st, 2022.

If there are any additional services that require an increase in the total estimated fee above, an estimate will be provided and work on these services will commence only upon written acceptance from Client.