

AGREEMENT FOR SERVICES

Project Number or Name:

THIS AGREEMENT is entered into as of the ____ day of _____, _____ by and between the Board of County Commissioners of the County of El Paso, State of Colorado (hereinafter referred to as the "County") and _____ (hereinafter referred to as the "Contractor").

WHEREAS, the County desires to engage the Contractor to provide the services described in Exhibit A, _____ (the "Project").

NOW, THEREFORE, the parties mutually agree as follows:

1. Scope of Services. The Consultant shall furnish all labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project, which are described or reasonably implied from Section 1 of Exhibit A, which is attached hereto and incorporated herein by this reference.

2. Incorporated Documents. The following documents are incorporated herein by reference and made a part of this Agreement: Invitation for Bid/Request for Proposal #XX-XXX.

In the event of any conflicts between this Agreement and any referenced or attached documents, this Agreement shall control.

3. Time of Performance. The services of the Contractor are to commence and be completed (or end) by the dates set forth in Section 2 of Exhibit A, unless this Agreement is sooner terminated pursuant to paragraph 5.A. below. All time limits are of the essence in this Agreement.

4. Method of Payment. The County will compensate the Contractor for services rendered in accordance with Section 3 of Exhibit A, subject to the availability of appropriated funds within the annual budget. The Contractor is responsible for paying all applicable income, Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act, or other taxes owed on compensation paid under this Agreement. The Contractor shall submit requests for payment in a form acceptable to the County and in conformance with the County's policies. The Contractor shall provide such backup information for its payment requests as may be reasonably requested by the County. The County shall have forty-five (45) days from receipt of any payment request to make payment to the Contractor.

5. General Terms and Conditions.

A. Termination of Agreement. The County or the Contractor shall have the right to terminate this Agreement, with or without cause, by giving written notice to the other party of such termination and specifying the effective date thereof, which notice shall be given at least the number of days set forth in Section 4 of Exhibit A prior to the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor pursuant to this Agreement shall become the property of the County. Unless expressly stated otherwise in the notice, Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination, and the Contractor shall proceed to cancel all existing orders and contracts that are chargeable to the County under this Agreement. The Contractor shall be entitled to receive compensation in accordance with this Agreement for any satisfactory services completed pursuant to the terms of this Agreement prior to the date of receipt of the notice of termination, or such other stop-work date as may be specified in the notice. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by virtue of any breach of this Agreement by the Contractor.

Pandemics. The Contractor shall abide by any local, state, and federal health orders in effect or instituted during the term of this Agreement. The Contractor is expected to implement any such changes effective immediately. Failure to abide by such requirements may result in termination of the Agreement.

B. Changes. The County or Contractor may, from time to time, request changes in the scope of services or compensation of the Contractor. Such changes that are mutually agreed upon between the County and Contractor shall be in

writing, and upon execution shall become part of this Agreement. To be effective, all changes must be signed by the Contractor and by the Board of County Commissioners, or by a person authorized by resolution to sign on behalf of the Board.

C. Assignability or Subcontracting. Any assignment, transfer or subcontracting of this Agreement is prohibited, unless written consent is obtained from the County.

D. Audit. The County and any of its duly authorized representatives shall have reasonable access to any books, documents, papers, and records of the Contractor which are pertinent to the Contractor's performance under this Agreement for the purpose of making an audit, examination, or excerpts. The Contractor shall provide any documentation necessary to prepare all reporting required of or by the County, and shall keep all books, documents, papers, and records which are pertinent to the Contractor's performance for a minimum period of three years, or such longer time as may be set forth in any Special Conditions or addendums to this Agreement.

E. Equal Employment Opportunity. While performing this Agreement, the Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of disability, race, creed, color, gender, sexual orientation, religion, age, national origin, or ancestry.

F. Ownership of Documents. All drawings, specifications, guidelines, and other documents prepared or received by the Contractor in connection with this Agreement shall be the property of the County.

G. Assignment of Copyrights. The Contractor assigns to the County the copyrights to all works prepared, developed, or created pursuant to this Agreement, including the rights to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public by sale, rental, lease, or lending; 4) perform the works publicly; and 5) to display the work publicly. The Contractor waives its rights to claim authorship of the works, to prevent its name from being used in connection with the works, and to prevent distortion of the works.

H. Governing Law/Forum/Interpretation. This Agreement has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of Colorado. Venue for any civil action relating to this Agreement shall be in El Paso County. Both parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the Fourth Judicial District, El Paso County.

I. Compliance with Laws/Licenses and Permits. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. The Contractor shall be responsible for obtaining all licenses and permits necessary to perform the scope of services, at the Contractor's expense, unless specifically stated otherwise in this Agreement.

J. No Waiver of Rights. The County's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the County except in writing signed by the Board of County Commissioners or person authorized to sign by resolution of the Board, and any waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver, unless specifically so stated.

K. Non-appropriation. Pursuant to Article X, Section 20 of the Colorado Constitution and C.R.S. § 29-1-110, as amended, the financial obligations of the County as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This Agreement is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated. The County shall give the Contractor written notice of such non-appropriation. Financial obligations of the County payable after the current Fiscal Year are contingent upon funds for that

purpose being appropriated, budgeted, and otherwise made available, pursuant to the Constitution for annual funding appropriation.

L. Conflict of Interest/Ethics. The Contractor shall refrain from providing services to other persons, firms or entities that would create a conflict of interest for Contractor with regard to providing services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any County official or employee that would place the official or employee in a position of violating the public trust in violation of Colorado Constitution Article XXIX, C.R.S. § 24-18-109, as amended.

The Contractor shall disclose any personal or private interest related to property or business within the County. Upon disclosure of any such personal or private interest, the County shall determine if the interest constitutes a conflict of interest. If the County determines that a conflict of interest exists, the County may treat such conflict of interest as a default and terminate this Agreement.

M. Remedies. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the County may exercise the following remedial actions if the Contractor substantially fails to satisfy the duties and obligations in this Agreement. Substantial failure to satisfy the duties and obligations shall mean significant insufficient, incorrect, or improper performance, activities, or inactions by the Contractor. These remedial actions are as follows:

(1) Suspend Contractor's performance pending necessary corrective action as specified by the County without the Contractor's entitlement to an increase in price/cost or a time extension; and/or

(2) Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

(3) Deny payment for those services which have not been satisfactorily performed, or which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the County.

The foregoing remedial actions are cumulative and the County, in its sole discretion, may exercise any or all of them individually or simultaneously. The County shall provide written notice to Contractor of its exercise of any of the foregoing remedial actions.

N. Force Majeure. Neither the Contractor nor the County shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

O. Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating thereto shall be strictly reserved to the County and the named Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person.

P. Survival of Terms and Conditions. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of the Agreement that anticipate continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

Q. Worker Without Authorization. As required by C.R.S. § 8-17.5-102, the Contractor certifies and agrees as follows:

(1) The Contractor shall not knowingly employ or contract with a worker without authorization (a non-legal resident of the United States) to perform work under this Agreement.

(2) The 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 a worker without authorization to perform work under this Agreement.

(3) The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the employment verification (“e-verify”) program administered by the United States Department of Homeland Security and the Social Security Administration, or the employment verification program operated by the Colorado Department of Labor and Employment (“Department”).

(4) The Contractor shall not use the e-verify or Department programs to undertake preemployment screening of job applicants while this Agreement is being performed.

(5) If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, then the Contractor shall: (a) notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (b) terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with a worker without authorization; except that Contractor shall not terminate the subcontract if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

(6) The Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department is undertaking pursuant to the authority established by C.R.S. § 8-17.5-101(5).

(7) If the Contractor violates any of the provisions of this section 5.Q, the County may immediately terminate this Agreement effective upon the receipt by Contractor of written notice of termination from the County, and the Contractor shall be liable for actual and consequential damages to the County.

(8) Compliance with this subsection Q is not required if the Contractor is a governmental entity.

R. Abilities, Qualifications, Experience, and Best Efforts. Notwithstanding anything to the contrary contained in this Agreement, the County and Contractor agree and acknowledge that the County enters into this Agreement relying on the special and unique abilities of Contractor to perform the services and accomplish the tasks described. Contractor accepts the relationship of trust and confidence established between Contractor and the County by this Agreement. Contractor covenants with the County to use its best efforts. Contractor shall further the interests of the County according to the County’s requirements and procedures, and according to the highest standards and quality prevailing among those who perform work of a similar nature.

S. Accuracy of Work. The Contractor represents, covenants, and agrees that its work will be accurate and free from any material errors.

T. Personally Identifiable Information (PII). If the Contractor or any of its Subcontractors will or may receive PII under this Agreement, Contractor shall provide for the security of such PII, in a manner and form acceptable to the County, including, without limitation, non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall be a “Third-Party Service Provider” as defined in C.R.S. § 24-73-101(1) (i) and shall maintain security procedures and practices consistent with C.R.S. § 24-73-102 and C.R.S. § 24-73-103. In the event Contractor incurs a data breach whereby it is reasonably believed that any of County’s PII either could have been, or was compromised, then Contractor shall immediately notify the County in writing and shall abide by C.R.S. § 24-73-101 *et seq.*

6. Insurance. In part to assure the County that the Contractor is always capable of fulfilling the specified indemnification obligations, the Contractor must purchase and maintain insurance of the kind and in the minimum amounts specified below, unless indicated otherwise in Section 7 of Exhibit A.

A. The Contractor agrees to procure and maintain, at its own expense, for all services covered by this Agreement, the following policies of insurance:

(1) Workers' Compensation Insurance: The Contractor will maintain workers' compensation insurance covering the contractor for the performance of all services under this Agreement in accordance with applicable state laws, and employer's liability insurance. Coverage shall include a waiver of subrogation in favor of El Paso County

Minimum Limits:

- Workers' Compensation – statutory limits
- Employer's Liability:
 - \$1,000,000 bodily injury for each accident
 - \$1,000,000 each employee for disease
 - \$1,000,000 disease aggregate

The requirements of this provision shall apply to the Contractor and to all subcontractors.

(2) Commercial General Liability: The Contractor will maintain commercial general liability insurance covering all operations by or on behalf of the Contractor on an occurrence basis against claims for bodily injury, property damage (including loss of use) and personal injury. Such insurance will have these minimum limits and coverages:

Minimum Limits:

- \$1,000,000 each occurrence
- \$2,000,000 general aggregate with dedicated limits per project site
- \$2,000,000 products and completed operations aggregate

Coverages:

- Products and completed operations coverage maintained for at least 2 years after completion of the project for construction contractors
- Contractual Liability
- Independent Contractors
- Defense in addition to the limits of liability
- Waiver of Subrogation
- Severability of Interests Provision

Additional Insured Endorsement (for on-going and completed operations) issued to El Paso County, Colorado its officers, its agents, and its employees acting in the scope of their employment.

The requirements of this provision shall apply to the Contractor and to all subcontractors.

(3) Automobile Liability: The Contractor will maintain business auto liability coverage covering liability arising out of any auto (including owned, hired, and non-owned autos) used in connection Minimum Limits:

Minimum Limit:

- \$1,000,000 Combined Single Limit Each Accident

Coverages:

- Specific Waiver of Subrogation
- MCS 90 for vehicles carrying hazardous materials
- Mobile (for on-going and completed operations) issued to El Paso County, Colorado its officers, its agents, and its employees acting in the scope of their employment

The requirements of this provision shall apply to the Contractor and to all subcontractors.

(4) If indicated in Section 5 of Exhibit A, Errors and Omissions or Professional Liability Insurance with a minimum coverage amount as specified in Section 5 of Exhibit A, and for two years beyond the completion of all services under this Agreement.

B. The above-mentioned coverages shall be procured and maintained with insurers with an A- or better rating, as determined by Best's Key Rating Guide. All coverages shall be continuously maintained during the term of this Agreement or as noted above to cover all liability, claims, demands, and other obligations assumed by the Contractor.

C. Additional Insured status required above shall be primary and non-contributory with any insurance or self-insurance carried by the County. The Contractor shall be solely responsible for any deductible losses under any policy required above.

D. The policies shall provide that the County will receive notice no less than 30 days prior to cancellation, termination, or non-renewal of the policies.

E. 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.

F. 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 County may immediately terminate this Agreement.

G. The County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

7. Insurance Certificates.

A. The Contractor shall, prior to commencing services, deliver to the County Certificates of Insurance as evidence that policies providing any and all required coverages and limits are in full force and effect.

B. These certificates will serve as an indication to the County that the Contractor has acquired all necessary insurance; however, the County may require that certified copies of the insurance policies be submitted and may withhold payment for services until the applicable insurance policies are received and found to be in accordance with the Agreement.

C. Insurance limits must be indicated on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by the County prior to commencement of services under the Agreement. **The certificates shall identify this Agreement and shall state the project number where applicable.**

8. Indemnification. The Contractor shall indemnify and hold harmless the County and its elected and appointed officials, officers, employees, and agents from and against any and all losses, damages, liabilities, claims, suits, actions, or awards, including costs, expenses and attorney's fees, incurred or occasioned as a result of any negligent acts or omissions of the Contractor, or its principals, employees, agents, or subcontractors arising out of or in any way connected with the performance of services under this Agreement. The Contractor's obligation to indemnify pursuant to this paragraph, and to provide any extended insurance coverage where applicable, shall survive the completion of the scope of services, and shall survive the termination of this Agreement.

9. Government Immunity. Liability for claims for injuries to persons or property arising from the negligence of the County, its departments, boards, commissions committees, bureaus, offices, employees, and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§ 24-30-1501, *et seq.*, C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

10. Prohibited Terms. Any term included in this Agreement that requires the County to indemnify or hold Contractor harmless; requires the County to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void *ab initio*. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

11. **Independent Contractor.** The Contractor is an independent contractor. AN INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. Notwithstanding any provision appearing in this Agreement, all personnel assigned by the Contractor to perform work under the terms of this Agreement shall be and remain at all times employees of the Contractor or employees of their respective employers for all purposes.

12. **Notices.** Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses set forth in Section 6 of Exhibit A.

13. **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the County and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the County and the Contractor. If any portion of this Agreement is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the parties that the remaining portions of this Agreement shall be of full force and effect.

[Remainder of page intentionally left blank. Signatures on following page.]

CONTRACTOR:

By: _____
(signature)

Title: _____

Signed this ____ day of _____, _____

State of _____)
County of _____)

Subscribed and sworn to before me this ____ day of _____, _____

by _____.

My commission expires _____.

Notary Public

S E A L

ATTEST: Clerk to the Board

Date: _____

EL PASO COUNTY

By: _____
Chair, Board of County Commissioners
(Or representative authorized by resolution)

EXHIBIT A to Agreement between the County and _____.
Project Number or Name: _____.

1. **Scope of Services.** The Contractor hereby agrees to and accepts responsibility to perform the following services:

In the event of any conflicts between this Agreement and any attached solicitation documents, this Agreement shall control.

2. **Time of Performance.** The services of the Contractor shall commence (choose one):

- As of the date of this Agreement.
- As specified in a Notice to Proceed to be provided by the Town.
- As of the following date: _____, _____.

The services of the Contractor shall be completed, or shall end, by _____, _____, at which time the County shall have the option to renew the Agreement for four additional one-year terms under the same terms and conditions of the original Agreement by issuance of an Extension Letter. Continuation of the Agreement beyond the initial period is a County prerogative and not a right of the Contractor and will be exercised only when such continuation is clearly in the best interest of the County.

3. **Compensation.** The County agrees to compensate the Contractor for the performance of services detailed in Section 1 above, Scope of Services, as follows (choose one):

- Lump sum due upon completion: \$ _____.
- Hourly rate: \$ _____/hour or as outlined in the attached document.
- Other: _____.

It is expressly understood and agreed that the total compensation to be paid to the Contractor under this Agreement shall not exceed \$ _____.

4. **Notices of Termination.** Notices of termination shall be given at least thirty (30) days before the effective date of termination.

5. **Professional Liability; Protective Liability and Property Damage.** Check boxes for Architects and Engineers only.

Professional Liability Insurance is required. The required minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Contractor shall maintain such coverage for at least two (2) years from the termination of this Agreement.

Protective Liability and Property Damage Insurance covering the liability of the County, including any employee, officer, or agent of the County, with respect to all operations under the Agreement by the Contractor or his subcontractors, shall be procured and maintained during the life of the Agreement. The limits of the County's Protective Liability Policy, to be provided by the Contractor, as described in Section 7, shall be increased to the same limits for the Contractor's Commercial General Liability Insurance.

Waiver of Workers' Compensation Insurance Requirements. Check box for Sole Proprietors only.

A Waiver of Workers' Compensation Insurance is required only when a Consultant is a sole proprietor and has no employees. This form must be requested from the Contracts & Procurement Division.

6. Addresses for Notices. The addresses for Notices are as follows:

To the County: El Paso County Contracts & Procurement Division
15 East Vermijo Avenue
Colorado Springs, Colorado 80903

and (send to both)

To the Contractor:

7. Special Conditions.

- No special conditions
- Special Conditions are as follows:

SAMPLE