

INDEPENDENT CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of this [redacted] day of [redacted] 2017, by and between the CITY OF MONTROSE, State of Colorado, a Colorado home rule municipal corporation, whose address is 433 S. First Street, P.O. Box 790, Montrose, Colorado 81402-0790, hereinafter referred to as "City" and CONTRACTOR, a limited liability corporation whose address is [redacted] hereinafter referred to as "Contractor"; the aforementioned entities may sometimes be collectively referred to as the "Parties".

WHEREAS, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

I. SCOPE OF CONTRACTED SERVICES

The Contractor agrees to perform professional services as set forth in Exhibit 'A' attached hereto and incorporated by reference herein for the engineering design of the [redacted] Project.

II. COMMENCEMENT AND COMPLETION OF SERVICES

The services to be performed pursuant to this Agreement shall begin on the execution date of this Agreement, and be pursued with due diligence until completion of the project outlined in Exhibit 'A' or until otherwise terminated as set forth herein.

III. CONTRACTOR RESPONSIBILITY

The Contractor shall be responsible for the level of quality, timely completion and coordination of all services rendered by the Contractor, and shall, without additional compensation, promptly remedy and correct any errors, omissions or other deficiencies. In the process of executing all services rendered under this Agreement, the Contractor must use due care not to cause any damage to public or private property.

A. Contractor shall be required to comply with all applicable Federal, State and Local safety and health laws, regulations, and ordinances. The City does not assume responsibility for monitoring, directing, or ensuring Contractor's compliance with said laws, regulations, and ordinances; such responsibility shall inure to the Contractor, and shall be a duty of the Contractor under this Agreement.

IV. COMPENSATION

For performance of the services provided under this Agreement, the City will pay the Contractor as set forth in the Fee Schedule attached hereto as Exhibit 'B'. The Contractor shall invoice the City for services performed on a monthly basis. The invoice shall be accompanied with support documentation regarding services performed. Upon approval by the City Representative, such invoice shall be paid in full within 30 days of receipt.

V. CITY REPRESENTATIVE

The City designates its **City Engineer** as its representative and authorizes him to make all necessary and proper decisions regarding this Agreement. All requests for contract interpretations, changes, clarifications or instructions shall be directed to the City Attorney.

VI. INDEPENDENT CONTRACTOR

The services to be performed by the Contractor are those of an independent contractor and not an employee of the City. As an independent contractor, Contractor is not entitled to worker's compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement. Further, an IRS Form 1099 or equivalent shall be furnished to the Contractor by the City as proof of earnings for tax purposes.

VII. CONTRACTOR SERVICES

It is understood that the City enters into this Agreement based on the special abilities of the Contractor and that this Agreement shall be considered an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

VIII. ACCEPTANCE NOT WAIVER

The City's approval of work, services rendered, and reports furnished hereunder shall not in any way relieve the Contractor of responsibility for the level of quality of the work. The City's approval or acceptance of, or payment for, any services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

IX. DEFAULT

Each and every term and condition 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 this Agreement, such Party may be declared in default thereof.

X. TERMINATION

City may terminate this Agreement at any time for its convenience. Contractor shall be paid for work properly completed to the date of termination, as determined by the City. Contractor may terminate this Agreement at any time without prejudice to any other right or remedy, upon giving the City 30 days written notice. In the event of Contractor's termination of this Agreement, Contractor shall have no further obligation to the City. Upon completion of work or termination of this Agreement, Contractor shall deliver unto the City any final reports relating to this Agreement and a final invoice for payment.

XI. INSURANCE

- A. The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance. 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.
- B. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- C. Worker's Compensation insurance to cover obligations imposed by the Worker's Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) disease - policy limit, and five hundred thousand dollars (\$500,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this Paragraph.
- D. Commercial 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 be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.
- E. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than five hundred thousand dollars (\$500,000) each occurrence and five hundred thousand dollars (\$500,000) aggregate with respect to each of Contractor's owned, hired and 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 set forth herein shall be met by each employee of the Contractor providing services to the City under this Agreement.
- F. The Comprehensive Automobile Liability insurance required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or

property damage arising from completed operations. The Contractor shall be responsible for any deductible losses under any policy required above.

- G. Professional/Contractor Liability insurance with minimum limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.
- H. Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of services under this Agreement. Each certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City. Any statement on the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken by the insurance agent completing the certificates. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- I. 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 City may immediately terminate this Agreement, or at its discretion City 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 City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- J. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, (C.R.S. § 24-10-101 et seq., as from time to time amended, or otherwise available to the City.

XII. INDEMNIFICATION

As to claims that allege to arise from Contractor's professional services, and to the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, its officers and its employees, from and against all liability, claims and demands, on account of injury, loss, or damage, which arise out of or are in any manner connected with the services hereunder, to the extent such injury, loss, or damage, or any portion thereof, is caused by the negligent act, error, or omission of the Contractor or any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor, or any other person for which Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for, and defend against any such liability, claims and demands, and bear all other costs and expenses related thereto, including court costs and attorney fees. The obligation of this Paragraph XII shall not be construed to extend to any injury, loss, or damage which is caused by the negligent act, error, or omission of the City, its officers, or its

employees.

XIII. INTEGRATION & SEVERABILITY

- A. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.
- B. If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement.

XIV. THE FOLLOWING PROVISIONS ARE REQUIRED BY HB 06-1343, AS AMENDED BY HB 07-1073 and SB 08-139:

- A. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- B. 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 Agreement. Contractor shall, within twenty (20) days of hiring a new employee during the term of this Agreement, cause a written, notarized copy of its affirmation of said employee's status to be sent to the Owner.
- C. Contractor hereby affirms that it has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the e-verify program, ("e-verify program" means the employment verification program authorized in 8 U.S.C. 1324a, as amended, that is administered by the United States Department of Homeland Security, or the "department program"). If the Contractor is not accepted into the e-verify program, prior to entering into this Agreement, the Contractor shall apply to participate in the e-verify program every three (3) months until the Contractor is accepted or this Agreement has been completed, whichever is earlier. Contractor is prohibited from using the e-verify program procedures to undertake preemployment screening of job applicants while this Agreement is being performed. This subparagraph "C" shall not be effective if the e-verify program is discontinued.
- D. If the Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (a) notify the Subcontractor and the City within three (3) 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 (3) days of receiving the notice required pursuant to section (a) of this subparagraph, if 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 (3) days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

- E. Contractor shall comply with any reasonable request by the applicable State agency or department made in the course of an investigation that said agency or department is undertaking pursuant to its lawful authority. If Contractor violates a provision of this Section XIV, City may terminate this Agreement for material breach. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to City. City is required by State law to notify the Office of the Secretary of State if Contractor violates a provision of this Section XIV, and City terminates this Agreement for that reason.

XV. MISCELLANEOUS PROVISIONS

- A. Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance or enforcement of this Agreement.
- B. Special Terms and Conditions: None

Independent Contractor and
Professional Services Contract
Project Name

EXHIBIT “A”
Scope of Services and
Statement of Qualifications

Independent Contractor and
Professional Services Contract
Project Name

EXHIBIT "B"
Fee Schedule