

INDEPENDENT CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of this _____ day of _____ 20## by and between the **CITY OF MONTROSE**, State of Colorado, a Colorado home rule municipal corporation, whose address is 400 East Main Street, P.O. Box 790, Montrose, Colorado 81402-0790, hereinafter referred to as "City" and **Name, Type., a Colorado Type, whose address is Address City, State Zip,** 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 **scope** as set forth in Exhibit A attached hereto and incorporated by reference herein.

II. COMMENCEMENT AND COMPLETION OF SERVICES/CONTRACT TERM

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 **Date** 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 an amount not to exceed **Amount** on a time and materials basis as outlined in Exhibit A and in accordance with the fee schedule included as Exhibit B – Exhibits A and B are attached hereto and incorporated by reference herein. 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 them 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, the following 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 cause each Subcontractor of the Contractor to procure and maintain or insure the activity of the Contractor's Subcontractors in Contractor's own policy, the minimum insurance coverages listed below (which must include coverage for the negligence of Contractor's Subcontractors). All coverages shall be endorsed to include the City and the City's officers and employees as additional insureds. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder through the term of this contract. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Contractor shall submit to City each of its Subcontract Agreements for verification of insurance requirements.
- C. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of services 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.
- D. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The coverage shall be provided on an "occurrence" basis as opposed to a "claims-made" basis. 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 ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) 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.
- F. 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 Commercial 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 Liability (errors and omissions) Insurance with a minimum limit of coverage of ONE MILLION DOLLARS (\$1,000,000) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all

services under this contract.

- H. Prior to the commencement of services, certificates of insurance (for Contractor and Contractor's Subcontractors) 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 subject to review and approval by the City. Each certificate shall name the project or services as indicated in this Agreement, in form acceptable to the City. Every policy of insurance shall provide that the City will receive no less than thirty (30) days prior to any cancellation, termination, or material change in such policy. In addition, the Contractor shall immediately provide to the City upon Contractor's receipt any notice of cancellation, terminations, or material change received by Contractor concerning the required insurances. If the words "endeavor to" appear in the portion of the certificate addressing the cancellation, those words shall be stricken from the certificate by the agents completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. The City may, at its election, withhold payment for services until the requested insurance policies are received and found to be in accordance with this Agreement.
- 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.

XII. INDEMNIFICATION

- A. 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 any injury, loss, or damage, which arise out of or are connected with the performance of the services under this contract, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the 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, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. 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 City.
- B. This indemnification shall survive the termination of this Agreement.
- C. Contractor shall include the following in its agreement(s) with its Subcontractor(s): "Subcontractor will, at its expense, defend and indemnify City and/or Contractor from and against any and all loss, cost, expense, damage, claim, demand, or liability, including reasonable attorney and professional fees and costs arising out of or resulting from or occurring in connection with Subcontractor's negligence or any other torts, or breach of the Subcontract Agreement, or failure to perform fully or adequately on assigned,

assumed, or delegated Work under the Agreement between City and Contractor.”

XIII. INTEGRATION & SEVERABILITY

- A. This Agreement, including all attachments and exhibits hereto, constitutes the entire, final agreement between the Parties. It is the complete and exclusive expression of the Parties’ agreement on the matters contained in this Agreement. The City and Contractor recognize and affirm that any comments, promises, agreements, or understandings by them or any of their staff members, representatives, elected officials, vendors, or contractors that preceded this Agreement have become irrelevant to the enforcement of this Agreement. All prior and contemporaneous negotiations, representations, 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. The City and Contractor recognize and affirm that the City Council approves contracts and sets policy through a properly-noticed public meeting by official vote and may only amend this Agreement through a properly-noticed public meeting by official vote. Contractor agrees and affirms that it lacks any authority to create binding obligations for City or otherwise to amend, revise, or create contractual obligations for City. Accordingly, Contractor recognizes and affirms that the comments of the City’s staff, employees, vendors, contractors, agents, or individual elected officials have no impact on the provisions or enforceability of the Agreement.
- B. This Agreement may be amended only by a written instrument signed by both City and Contractor.
- C. 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. The provisions of this Agreement shall be deemed to be severable, and if any term, phrase or portion of the Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the Parties.

XIV. MISCELLANEOUS PROVISIONS

- A. FURTHER ASSURANCES: 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. TABOR: The Parties agree that the City's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.
- C. ADA COMPLIANCE: Any work product or document given to the City in an electronic format must be produced, designed, and created in accordance with Web Content Accessibility Guidelines ("WCAG") 2.1 AA. This includes technology accessibility standards for people using adaptive technology who are low vision, blind, hearing impaired or deaf, and people with cognitive disabilities, seizures or other physical challenges that create limitations. Contractor assumes all liability for any monetary damages assessed by any entity for noncompliance with WCAG 2.1 AA after July 1, 2024.
- D. GOVERNING LAW AND DISPUTE RESOLUTION:
 - i. This Agreement shall be governed by the Laws of Colorado. The Parties also agree that the Colorado Governmental Immunity Act (C.R.S. 24-10-101 et seq.) applies to this Agreement.
 - ii. The Parties agree that all disputes related to this Agreement shall be resolved in the courts located in the City and County of Montrose, Colorado unless the Parties mutually agree upon some other form of dispute resolution.
 - iii. The Parties agree that all actions brought under this Agreement shall be brought in the courts located in the City and County of Montrose, Colorado.
- E. WITHHOLD PAYMENT PROVISION: Notwithstanding any other remedial action by City, Contractor shall remain liable to City for any damages sustained by City by virtue of any breach under this Agreement by Contractor or any Subcontractor. City may withhold any payment to Contractor for the purpose of mitigating City's damages, until such time as the exact amount of damages due to City from Contractor is determined. City may withhold any amount that may be due Contractor as City deems necessary to protect City against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. City's decision to withhold payment to investigate suspected non-performance or breach by Contractor or any Subcontractor, and such withholding of payment to investigate in good faith, does not constitute a default or breach under this Agreement. Contractor shall be liable for excess costs incurred by City in procuring from third parties replacement work as cover.
- F. SPECIAL TERMS AND CONDITIONS: None.

Independent Contractor and Professional Services Contract

Consultant

Project Name

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EXECUTED AND EFFECTIVE the date above first written.

CITY OF MONTROSE

CONTRACTOR

William E. Bell, City Manager

Name, Title
Company

STATE OF COLORADO)
) SS.

COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by **William E. Bell**, City Manager for the City of Montrose.

Witness my hand and official seal.
My commission expires: _____.

(SEAL)

Notary

STATE OF COLORADO)
) SS.

COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by **Name, Title, Company.**

Witness my hand and official seal.
My commission expires: _____.

(SEAL)

Notary

Independent Contractor and Professional Services Contract

Consultant

Project Name

EXHIBIT A

Scope of Services

Independent Contractor and Professional Services Contract

Consultant

Project Name

EXHIBIT B

Fee Schedule

Independent Contractor and Professional Services Contract

Consultant

Project Name

EXHIBIT C

Contractor's Insurance Certificate