

**AGREEMENT FOR
NON-CONSTRUCTION GOODS AND/OR SERVICES**
(Continuous)

This Agreement for Non-Construction Goods and/or Services ("**Agreement**") is made between the Project 7 Water Authority, a political subdivision of the State of Colorado (the "**Authority**"), and _____, a _____ ("**Contractor**"). The Authority and Contractor are referred to collectively as the "**Parties**" or individually as a "**Party**".

ARTICLE I
SERVICES AND COMPENSATION

Section 1.1 Services and Compensation:

(a) Services. The Authority retains Contractor, and Contractor agrees to provide the goods and to perform and complete the work, personal services, and/or furnish the necessary equipment, supplies, or materials in accordance with and/or as described in the attached Schedule A, which is incorporated by reference and made a part of this Agreement (collectively, the "Services"). Additional goods or services beyond those set out in Schedule A, if requested, shall be provided only when authorized in writing by the Authority. This Agreement controls over all other documents executed by the Parties and to the extent any provision of this Agreement and Schedule A and/or Schedule B (if applicable) conflict, directly or indirectly, the provisions of this Agreement shall prevail.

(b) Commencement Date. Contractor shall commence performance of the Services (*check and initial below as applicable*):

- ☐ _____ On the Effective Date.
- ☐ _____ On the ____ day of _____, 20____.
- ☐ _____ Within ____ calendar days after notice to proceed from the Authority.
- ☐ _____ Other (*describe in detail*): _____.

(c) Compensation. In consideration of Contractor's satisfactory performance and completion of the Services, the Authority shall pay Contractor the following compensation (*check and initial below as applicable*):

- ☐ _____ As described in Schedule A.
- ☐ _____ A fixed sum of \$_____ per _____.
- ☐ _____ Pursuant to the rate schedule attached hereto as Schedule B.
- ☐ _____ Other (*describe in detail*): _____.

Section 1.2 Payment: The Authority will make payment to Contractor for completed work within sixty (60) days after invoices are submitted by Contractor, which invoices may not be

submitted more frequently than monthly. Invoices shall indicate the basis upon which payment is requested, such as dates of service, or goods, materials, and equipment provided. Late fees, penalties, and interest will not be charged against any disputed amount the Authority does not pay by the date owed; any undisputed amount the Authority does not pay by the date owed will accrue interest (but no late fee or penalty) at the rate of 8% per annum from the date owed through the date paid in full.

Section 1.3 Set-Off: In addition to any other rights the Authority has under this Agreement or in law or equity for indemnity or other reimbursement, recoupment, or payment by Contractor, Contractor agrees that the Authority is entitled to set off any amounts it may owe Contractor under this Agreement against such claims for indemnity or other reimbursement, recoupment, or payment.

Section 1.4 Non-Appropriation: The Authority's financial obligations under this Agreement are subject to annual appropriation by the Authority's Board of Directors. If the Board does not appropriate funds for a subsequent calendar year, this Agreement shall terminate on January 1 of the year for which the non-appropriation occurred, and the Authority shall have no further obligation to the Contractor under this Agreement beyond the financial obligations for which it previously appropriated funds. The Authority shall promptly give notice to Contractor of any such failure to appropriate funds.

ARTICLE II

ADMINISTRATION OF AGREEMENT

Section 2.1 Performance of Services and Warranties:

(a) Goods, Materials, and Equipment. In consideration of the compensation provided for in this Agreement, Contractor agrees to perform the Services in accordance with generally accepted standards and practices of the industry, and warrants that all goods, materials, and equipment used in or provided as part of the Services (as applicable) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or samples specified or furnished.

(b) Title. Contractor warrants that title to all goods, materials, and equipment paid for as part of the Services (as applicable) will pass to the Authority, either by incorporation in the Services or upon Contractor's receipt of payment from the Authority, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances.

(c) Qualifications. Contractor warrants that it is qualified to assume the responsibilities and perform the Services and has all requisite corporate authority and professional licenses required by law. All professional services shall be performed timely in accordance with generally accepted professional practices and the level of competency presently maintained by other professionals providing the same general type of work as the Services.

(d) Survival. This Section 2.1 shall survive any inspection, delivery, acceptance, or payment by the Authority. Payment by the Authority does not constitute a waiver of any kind.

Section 2.2 Compliance with Law/Insurance: By signing this Agreement, Contractor certifies that it will fully comply with all local, state, and federal laws, rules, regulations, ordinances, and orders. Contractor further certifies that it will obtain and maintain all licenses and insurance

policies necessary to perform the Services, and will furnish satisfactory evidence of such insurance and licenses prior to commencing the Services and subsequently upon request by the Authority.

Section 2.3 Independent Contractor: Contractor's status shall at all times be that of an independent contractor. Under no circumstances shall Contractor be considered an Authority employee. Contractor will provide and have complete control over all materials, equipment, and labor Contractor deems necessary to perform the Services. Except as necessary to ensure the Services are performed in accordance with the Authority's requirements and expectations, the Authority will have no control or supervision over the hours Contractor works or the manner in which Contractor performs the Services. The Authority's only concern is with the results of the Contractor's Services. The Authority has the right to reject any work that does not meet the Authority's standards. Contractor will not be paid for any costs Contractor incurs, or time Contractor spends, correcting substandard work.

CONTRACTOR UNDERSTANDS AND AGREES: (A) CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT COMPENSATION INSURANCE BENEFITS UNLESS WORKERS' COMPENSATION OR UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY CONTRACTOR OR SOME ENTITY OTHER THAN THE AUTHORITY; AND (B) CONTRACTOR IS OBLIGATED TO PAY FEDERAL, STATE, AND LOCAL INCOME TAX ON ANY MONEYS PAID PURSUANT TO THIS AGREEMENT. THE AUTHORITY WILL NOT MAKE FEDERAL, STATE, AND LOCAL WITHHOLDINGS AND WILL NOT PROVIDE WORKERS' COMPENSATION OR UNEMPLOYMENT COMPENSATION INSURANCE.

Contractor certifies that _____ (*must be inserted by Contractor*) is Contractor's correct Federal Taxpayer Identification Number. By signing this Agreement, Contractor certifies that it assumes full responsibility for the payment of all contributions, payroll taxes, income taxes, withholdings, and backup withholdings or assessments under federal, state, and local law. The Authority will only provide Contractor with, and will file, an IRS Form 1099 in compliance with federal, state, and local law.

Section 2.4 Subcontractors: Prior to utilizing any subcontractor in performing the Services, Contractor shall notify the Authority in writing of Contractor's intent to utilize such subcontractor and the general scope of work to be performed by such subcontractor. The Authority may, in its sole and exclusive discretion, reject any proposed subcontractor, in which case Contractor shall either perform such scope of work itself, or secure a subcontractor acceptable to the Authority.

Section 2.5 Indemnification: Contractor shall indemnify, defend, and hold harmless the Authority and its directors, officers, employees, volunteers, and agents from and against all claims, demands, liabilities, losses, or damages, including but not limited to reasonable attorneys' fees, arising from or relating to the intentional or negligent performance of the Services or this Agreement by Contractor or Contractor's employees or agents. In connection with this duty to indemnify and defend, the Authority has the right to select its legal counsel notwithstanding Contractor's obligation to pay the fees, costs, and expenses incurred by such legal counsel.

ARTICLE III **RESPONSIBILITIES OF AUTHORITY**

Section 3.1 Access to Property and Documents: The Authority shall provide Contractor with access to its property as reasonably required by Contractor to perform the Services. The Authority

shall provide Contractor with data, information, reports, and other such documentation as is available to the Authority and permitted by law to be disclosed, and reasonably required by Contractor to perform the Services. Contractor shall not disclose the Authority's information to third parties without prior written consent of the Authority, unless otherwise required by law. All documents provided by the Authority to Contractor shall be returned to the Authority. Unless otherwise directed by the Authority, Contractor is authorized by the Authority to retain copies of such documentation at Contractor's expense.

Section 3.2 Confidentiality of Records: This Agreement and any communications, documents, invoices, drawings, papers, or other materials of any kind or nature provided by Contractor to the Authority may be subject to disclosure by the Authority pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* Any information that Contractor deems proprietary or trade secret must be clearly marked as such. The Authority will only protect from disclosure expressly marked propriety or trade secret information to the extent permitted by law.

Section 3.3 Authority's Representative: The Authority hereby designates its Manager as its representative with authority to act for the Authority with respect to the Services provided by Contractor. Such representative has complete authority to transmit instructions, receive information, interpret the Authority's policies, and make decisions with respect to the Services. Notwithstanding the foregoing, no verbal conversation or agreement with any Authority director, officer, employee, volunteer, or agent of the Authority, including its representative, shall affect or modify any provision or obligation of this Agreement.

ARTICLE IV MISCELLANEOUS

Section 4.1 Effective Date: This Agreement shall be effective as of the date the last Party signs this Agreement.

Section 4.2 Term and Termination/Default:

(a) In General. The term of this Agreement ("Term") shall commence on the Effective Date and continue until terminated in accordance with the provisions of this Agreement. Notwithstanding any provision of this Agreement to the contrary, Sections 1.3, 2.1, 2.5, and 3.2 of this Agreement shall survive any termination of this Agreement.

(b) Termination for Convenience. Either Party may terminate this Agreement without cause by giving: (i) three business days' prior written notice of termination to the other Party, if at the time the Parties entered into this Agreement the Services were anticipated to continue for less than 90 calendar days; or (ii) 30 calendar days' prior written notice of termination to the other Party, if at the time the Parties entered into this Agreement the Services were anticipated to continue for 90 calendar days or more.

(c) Termination for Default.

(i) If at the time the Parties entered into this Agreement, the Services were anticipated to continue for less than 90 calendar days and either Party defaults in its performance under this Agreement, the non-defaulting Party, at its option, may immediately terminate this Agreement or may treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, the non-defaulting Party shall have

the right to bring an action for specific performance or damages, or both, to the extent permitted by law.

(ii) If at the time the Parties entered into this Agreement, the Services were anticipated to continue for 90 calendar days or more and either Party defaults in its performance under this Agreement, the non-defaulting Party shall notify the defaulting Party of the default, and the defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within 10 calendar days after the notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 10 calendar days period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, the non-defaulting Party shall have the right to bring an action for specific performance or damages, or both, to the extent permitted by law.

(d) Effect of Termination. In the event of termination pursuant to subsection 4.2(b) or (c) above, (i) Contractor will deliver to the Authority all goods, materials, and equipment paid for as part of the Services; and (ii) the Authority will pay Contractor for the pro rated portion of the Services satisfactorily performed to the date of termination, subject to the Authority's right of set-off pursuant to Section 1.3 above.

Section 4.3 Notice: Any notice required under this Agreement shall be in writing and hand delivered or sent by certified/registered mail, return receipt requested, to the address below, or at another address previously furnished in writing to the other Party pursuant to this provision. A notice sent by certified/registered mail is deemed given when received, or 3 business days after the date sent, if not accepted by the Party to whom it was sent, whichever is earlier.

AUTHORITY

Project 7 Water Authority
Attn: Manager
PO Box 1185
69128 East Highway 50
Montrose, Colorado 81402

CONTRACTOR

Section 4.4 Governmental Immunity: This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Authority and its current or past directors, officers, employees, and volunteers under common law or pursuant to federal or state constitutional, statutory, or common law, including but not limited to, the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

Section 4.5 Additional Provisions: Colorado law governs this Agreement. Exclusive jurisdiction and venue for any dispute arising from or relating to this Agreement shall be in the District Court for Montrose County, Colorado. This Agreement is the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. Course of performance, no matter how long it may continue, shall not constitute an amendment to this Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and permitted assigns. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this

Agreement. Neither Party shall assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld. In any dispute arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in collecting upon any judgment, order, or award. This Agreement may be executed in several counterparts and by facsimile or electronic pdf, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Agreement.

Project 7 Water Authority, a political
subdivision of State of Colorado

[Name of Contractor]

By: _____
signature

By: _____
signature

printed name title

printed name title

Date: _____

Date: _____

SCHEDULE A
SERVICES

SCHEDULE B
RATE SCHEDULE