

CITY OF OURAY

Professional Service Agreement

THIS AGREEMENT is entered into effective _____ [date], by and between:

The City of Ouray, a Colorado municipal corporation (the City); and,

_____ (the Contractor).

NOW THEREFORE, in consideration of the mutual representations, promises and conditions contained herein, the parties agree as follows.

1. SCOPE OF CONTRACTOR SERVICES. The Contractor agrees to provide services in accordance with the Scope of Contractor Services attached and incorporated as Exhibit A.
2. TERM OF AGREEMENT. The term of this agreement shall begin on the effective date above and continue to the completion of the services described in Exhibit A, or if the services are not completed, this agreement will expire on _____ [date], at which time the City and the Contractor will either negotiate a new agreement to complete the services, extend this agreement or their relationship under this agreement will terminate.
3. FEES FOR SERVICES. In consideration of the services to be performed pursuant to this agreement the City will pay the Contractor according to the Fee Schedule attached and incorporated as Exhibit B.
4. PAYMENT FOR SERVICES. The Contractor shall submit a detailed invoice monthly to the City describing the professional services rendered. The invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the month, the hours worked by employee, and the hourly rate charged for that work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefore is unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefore.

5. CITY REPRESENTATIVE. The City designates the City Administrator as its representative and authorizes him to make all necessary and proper decisions with reference to this agreement. All requests for contract interpretations, changes, clarifications or instructions shall be directed to the City representative.
6. INDEPENDENT CONTRACTOR. The services to be performed by the Contractor are those of an independent contractor and not as an employee of the City. Nothing in this agreement shall constitute or be construed as a creation of a partnership or joint venture between the City and the Contractor, or their successors or assigns. No agent or employee of the Contractor shall be or shall be deemed to be the employee or agent of the City. The City is interested only in the results obtained under this agreement; the manner and means of conducting the work are under the sole control of the Contractor. None of the benefits provided by the City to its employees, including, but not limited to, worker compensation insurance and unemployment compensation insurance, are available from the City to the employees of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, and subcontractors during the performance of this agreement. The Contractor will pay all federal and state income tax on any moneys paid pursuant to this agreement.
7. INSURANCE. The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance as called for in this agreement. Insurance shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained during the term of this agreement. Each 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 the Contractor. The Contractor shall provide the City with certificates of insurance, or other acceptable evidence, showing the required coverages. The City reserves the right to request and receive a certified copy of any policy.
 - a. The Contractor shall procure and maintain the minimum insurance coverages listed below.
 - i. Workers' compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of the Contractor engaged in the performance of work under this agreement.

ii. Professional liability errors and omissions or general liability coverage, as appropriate, with minimum limit of One Million Dollars (\$1,000,000.00).

iii. _____

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b. 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, duration, or types.

c. 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 contract, or at its discretion the 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 the Contractor upon demand, or the City may offset the cost of the premiums against any monies due to the Contractor.

d. The Contractor shall be responsible for any deductible under any policy required above.

8. GOVERNMENTAL IMMUNITY. The Contractor understands and acknowledges that the City relies on and does not waive or intend to waive by any portion of this agreement any provision of the Colorado Governmental Immunity Act, COLO. REV. STAT. § 24-10-101, *et seq.*

9. INDEMNIFICATION. 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, 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, representative, or agent of the Contractor or of any subcontractor, or any other person for which Contractor is responsible. The obligation of this paragraph shall not be construed to extend to

any injury, loss, or damage which is caused solely by the act, omission, or other fault of the City, its officers, or its employees.

10. EMPLOYMENT OF ILLEGAL ALIENS. Pursuant to COLO. REV. STAT. § 8-17.5-101, et seq, the Contractor certifies the following:

- a. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- 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 Contract.
- c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either (a) the E-Verify Program, (the electronic employment verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration, or its successor program) or (b) the Department Program (the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)©).
- d. The Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract 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, 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.
- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment in the course of an investigation that the Department undertakes pursuant to C.R.S. § 8-17.5-102(5).

- g. If the Contractor violates these illegal alien provisions, the City may terminate this Contract for a breach of contract. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. The City will notify the Office of the Secretary of State if the Contractor violates these provisions and the City terminates this Contract for that reason.
 - h. The Contractor shall notify the City of participation in the Department Program and shall within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Contract affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC § 1324a, and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the City.
- 11. ASSIGNMENT. The Contractor shall neither assign any responsibilities nor delegate any duties arising under this agreement without the prior written consent of the City.
- 12. PAYMENTS BY CITY. Any and all payments of money by the City pursuant to this agreement shall be subject to the annual appropriations of money.
- 13. LEGAL COMPLIANCE. The Contractor shall comply with all laws, ordinances, rules and regulations relating to the performance of this agreement, use of public places and safety of persons and property.
- 14. FURTHER ASSURANCES. Each party agrees to take such actions and sign such documents, certificates and instruments reasonably requested by the other party in order to complete the transactions contemplated by this agreement and to enable the requesting party to enjoy the full benefits conferred upon such party by this agreement.
- 15. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this agreement.

16. BINDING EFFECT. This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors.
17. SEVERABILITY. If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.
18. GOVERNING LAW. This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this agreement and venue shall be in Ouray County, Colorado.
19. WAIVER. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.
20. COUNTERPARTS. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
21. FACSIMILE SIGNATURES. For the convenience of the parties, signatures to this agreement may be provided through facsimile transmission. The signature of a party to this agreement supplied by facsimile transmission shall be as binding as an original.
22. PRONOUNS. Wherever in this agreement, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

IN WITNESS WHEREOF, the City and the Contractor have signed this agreement effective the day and year first written above.

CITY OF OURAY:

CONTRACTOR

EXHIBIT A

Scope of Contractor Services

EXHIBIT B

Fee Schedule