

CITY OF LITTLETON
AGREEMENT FOR PROFESSIONAL SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between {---Company Name---} whose business address is {---Address Line 1---} {---Address Line 2---}, {---City---}, {---State/Province---} {---Postal Code---} (“Contractor”) and the **CITY OF LITTLETON, COLORADO** (“City”), a Home Rule municipality of the State of Colorado. City and Contractor are referred to as a “Party” or collectively as the “Parties.”

RECITALS AND REPRESENTATIONS

WHEREAS, City needs certain services to be performed as described in this Agreement; and

WHEREAS, Contractor represents that it has the skill, ability, and expertise to perform the services described in this Agreement; and

WHEREAS, Contractor represents that it can perform the services described in this Agreement within the deadlines provided in this Agreement; and

WHEREAS, Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, Parties mutually agree as follows:

1.0 SERVICES AND PERFORMANCE

As directed by City, Contractor shall provide the services described in **Exhibit A, Scope of Services** (the “Services”). Exhibit A is incorporated herein in its entirety. City may request a change in the Services. Any changes that are mutually agreed upon between City and Contractor shall be made in writing and upon execution by both Parties shall become an amendment to this Agreement.

2.0 INDEPENDENT CONTRACTOR

Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with City other than as a contracting party and independent contractor. City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for Contractor or Contractor’s employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to:

local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

3.0 STANDARD OF PERFORMANCE

In performing the Services, Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to City that Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

- 3.1 Contractor shall become fully acquainted with the available information related to the Services. Contractor is obligated to affirmatively request from City such information that Contractor, based on Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.
- 3.2 Contractor shall promptly inform City concerning ambiguities and uncertainties related to Contractor's performance that are not addressed by the Agreement.
- 3.3 Contractor shall provide all of the Services required in the Agreement in a timely and professional manner.
- 3.4 Contractor shall promptly comply with any written request for City or any of its duly authorized representatives to reasonably access, review and audit any books, documents, papers, and records of Contractor that are pertinent to Contractor's performance under this Agreement for the purpose of City performing any review of the Services.
- 3.5 Contractor shall comply with all applicable federal, state, and local laws, ordinances, regulations, and resolutions.
- 3.6 Contractor shall be responsible at Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.
- 3.7 Prior to designating an outside professional to perform sub-consultant or subcontractor work, Contractor shall submit the name of such sub-consultant or subcontractor, a resume demonstrating their experience in

work of like character and magnitude of the services being contemplated, and rates to City and receive prior approval in writing from City.

4.0 COMPENSATION

- 4.1 **Maximum Contract Amount.** The maximum contract amount to be paid by City to Contractor pursuant to this Agreement shall in no event exceed the sum of \${--Contract Amount---}.
- 4.2 Following execution of this Agreement, City shall compensate Contractor in accordance with Exhibit A. Any increases or modification of compensation shall be subject to the approval of City. Any changes that are mutually agreed upon between City and Contractor shall be made in writing and upon execution by both Parties shall become an amendment to this Agreement.
- 4.3 Contractor shall submit to City a detailed invoice of the services performed, and if City is satisfied with Contractor's performance, City shall pay the invoice within forty-five (45) days.
- 4.4 Unless otherwise directed or accepted by City, all invoices shall contain sufficient information to account for all Contractor time (or other appropriate measure(s) of work effort) and all authorized reimbursable expenses for Services during the stated period of the invoice. City may dispute any Contractor time, reimbursable expense, and/or compensation requested by Contractor described in any invoice and may request additional information from Contractor substantiating all compensation sought by Contractor before accepting the invoice. When additional information is requested by City, City shall advise Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. If City disputes an item or invoice and additional information is requested, City shall pay Contractor within thirty (30) days of acceptance of the item or invoice by City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement.
- 4.5 **Taxes.** The City of Littleton is not subject to taxation. The Contractor shall not invoice the City for any state, federal or local taxes whatsoever. Upon written notification by the City, the Contractor shall reimburse the City in a timely manner for any taxes erroneously paid by the City.

5.0 TERM AND TERMINATION

- 5.1 **Term.** Performance of Services shall commence upon execution of Agreement and shall be completed by {---Expiration Date---}, unless terminated earlier pursuant to this Agreement. Contractor acknowledges and agrees that this Agreement's execution may be contingent upon approval by City Council, in

compliance with all applicable provisions of City Charter and City Code. City shall not incur any liability whatsoever if this Agreement is not approved by City Council.

- 5.2 **Unilateral Termination.** This Agreement may be terminated by either Party for any or no reason upon written notice delivered to the other at least ninety (90) days prior to termination. In the event of the exercise of the right of unilateral termination as provided by this subsection, Contractor shall continue to provide Services under this Agreement until the ninety (90) day notice period has passed, unless otherwise provided in any notice of termination delivered by City; and all finished or unfinished documents, data, studies and reports prepared by Contractor pursuant to this Agreement shall be delivered to City and shall become the property of City.
- 5.3 **Termination for Non-Performance.** Should a Party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party if the performing Party first provides written notice to the non-performing Party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purposes of this subsection, "reasonable time" shall be not less than five (5) business days. Provided that notice of non-performance is provided in accordance with this subsection, nothing in this subsection shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.
- 5.4 **Mutual Termination.** City and Contractor may agree in writing to mutually terminate this Agreement.
- 5.5 **City Unilateral Suspension of Services.** City may suspend Contractor's performance of the Services at City's discretion and for any reason by delivery of written notice of suspension to Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, Contractor shall immediately cease performance of Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.
- 5.6 **Reinstatement of Services Following City's Unilateral Suspension.** City may at its discretion direct Contractor to continue performance of the Services following suspension. If such direction by City is made within thirty (30) days of the date of suspension, Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, Contractor may elect to: (1) provide written notice to City that the suspension is considered a unilateral termination of this Agreement; (2) recommence

performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by City, to provide written notice to City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

- 5.7 **Delivery of Notice of Termination.** Any notice of termination permitted by this Section shall be addressed to the person signing this Agreement on behalf of Contractor or to City at the address shown in subsection 11.13, or such other address as either Party may notify the other of.

6. INSURANCE

- 6.1 **Required Insurance.** Contractor shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified ("Required Insurance").

City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of Agreement or of any of City's rights or remedies under this Agreement.

A. Workers' Compensation and Employers' Liability insurance with minimum limits as required by state law. The policy shall cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work.

B. Commercial General Liability insurance with minimum combined single limit for each occurrence of one million dollars (\$1,000,000.00) and of two million dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of Contractor. 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. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. The policy shall name City of Littleton as additional insured.

C. Professional Liability (Errors and Omissions) insurance with a minimum limit of one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) aggregate. Such policy of insurance shall be obtained and

maintained for one (1) year following completion of all Services under this Agreement.

The Required Insurance shall be procured and maintained with insurers with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Contractor.

6.2 **Additional Requirements for Insurance.** In addition to specific requirements imposed on insurance by this Section and its subsections, insurance shall conform to the following:

A. All policies of insurance shall be primary insurance, and any insurance carried by City, its officers, or its employees shall be excess and not contributory insurance to that provided by Contractor; provided, however, that City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services provided by Contractor. Contractor shall not be an insured party for any City-obtained insurance policy or coverage.

B. Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage.

D. Contractor shall provide City with notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

6.3 **Failure to Obtain or Maintain Insurance.** Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of Contractor arising from performance or non-performance of this Agreement. Failure on the part of Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which 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 City shall be repaid by Contractor to City immediately upon demand, or at City's sole discretion, City may offset the cost of the premiums against any monies due to Contractor from City pursuant to this Agreement.

6.4 **Insurance Certificates.** Prior to commencement of any Services under this Agreement, Contractor shall submit to City certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other

information sufficient to demonstrate conformance with this Section and its subsections shall be indicated on each certificate of insurance. City may request, under necessary circumstances, a copy of Contractor's insurance policies; such policies shall be made available for review but may be redacted to protect any confidential or proprietary information. Contractor shall provide access to said policies within three (3) business days of such request. City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

- 6.5 **Sub-consultants or Subcontractors.** Contractor shall confirm and document that all sub-consultants and subcontractors (including independent contractors, suppliers, or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

7.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by Contractor pursuant to this Agreement shall become property of City upon delivery and shall not be made subject to any copyright unless authorized by City. Other materials, methodology and proprietary work used or provided by Contractor to City not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by Contractor and Contractor reserves all rights granted to it by any copyright. City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, Colorado Revised Statutes ("C.R.S.") § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. Contractor waives any right to prevent its name from being used in connection with the Services.

8.0 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND OTHER LAWS CONCERNING ACCESSIBILITY

Contractor covenants that all designs, plans and drawings produced or utilized under this Agreement will address and comply with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons including the following: the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Architectural Barriers Act, Pub. L. 90-480 (1968), and the Uniform Federal Accessibility standards ("UFAS").

If the above standards are inconsistent, Contractor must assure that its designs, plans, and drawings comply with the standard providing the greatest accessibility. If Contractor fails to comply with the foregoing standards, City may, without limiting any of its remedies set forth in Section 10 or otherwise available at law, in equity or by statute, require Contractor to perform

again, at no expense to City, all Services required to be reperformed as a direct or indirect result of such failure.

9.0 CONFLICT OF INTEREST

Contractor shall refrain from providing any services to other persons, firms, or entities that would create a conflict of interest for Contractor with regard to providing the Services pursuant to this Agreement. Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. § 24-18-109, as amended, or any City-adopted Code of Conduct or ethical principles.

10.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, City may exercise the following remedial actions if Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by Contractor. The remedial actions include:

- A. Suspend Contractor's performance pending necessary corrective actions as specified by City; and/or
- B. Withhold payment to Contractor until the necessary Services or corrections in performance are satisfactorily completed; and/or
- C. Deny payment for Services which have not been satisfactorily performed, and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to City; and/or
- D. Recover actual and/or consequential damages; and/or
- E. Terminate this Agreement.

The foregoing remedies are cumulative and City, at its sole discretion, may exercise any or all of the remedies individually or simultaneously.

11.0 MISCELLANEOUS PROVISIONS

- 11.1 **No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. City'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 City except in writing signed and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

- 11.2 **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to City, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 11.3 **Non-Discrimination.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ethnicity, citizenship, immigration status, sex, gender, age, sexual orientation, gender identity or gender expression, marital status, protective hairstyle, genetic information, pregnancy, disability, or any other status protected by applicable law. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to their race, color, religion, national origin, ethnicity, citizenship, immigrations status, sex, gender, age, sexual orientation, gender identity or gender expression, marital status, protective hairstyle, genetic information, pregnancy, disability, or any other status protected by applicable law. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 11.4 **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assignees; provided that this Section shall not authorize assignment.
- 11.5 **No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, subconsultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 11.6 **Article X, Section 20/TABOR.** The Parties understand and acknowledge that City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period

ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

- 11.7 **Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the laws of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, **the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.** The 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.
- 11.8 **Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require 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.
- 11.9 **Assignment and Release.** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of City. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned. No assignment shall release Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 11.10 **Headings.** The captions in this Agreement are for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 11.11 **Integration and Amendment.** This Agreement represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both City and Contractor.
- 11.12 **Severability.** Invalidity of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

- 11.13 **Notices.** Any notice required or permitted by this Agreement shall be in writing and addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed given upon delivery if personally delivered, or forty-eight (48) business hours after deposited in the United States Mail properly addressed to the intended recipient, postage prepaid, registered or certified mail, with return receipt requested.

<u>If to City:</u>	<u>If to Contractor:</u>
City Manager City of Littleton 2255 W. Berry Avenue Littleton, Colorado 80120	{---Company Name---} {---Address Line 1---} {---Address Line 2---} {---City---}, {---State/Province---} {---Postal Code---}
With copy to: City Attorney City of Littleton 2255 W. Berry Avenue Littleton, Colorado 80120	

12.0 INDEMNIFICATION AND HOLD HARMLESS

Contractor expressly agrees to, and shall, indemnify and hold harmless City and any of its elected and appointed officials, officers, agents, or employees from any and all claims, damages, liability, or court awards, including costs and reasonable attorney fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of its employees, agents, partners, subcontractors, consultants, or others working on behalf of Contractor in performance of the Services under this Agreement. Nothing in this Section shall constitute an agreement by Contractor to indemnify or hold City harmless for any omission or action by City or any of its elected and appointed officials, officers, agents, or employees. By demanding this right to indemnification, City in no way waives or limits its rights under the Colorado Governmental Immunity Act, C.R.S. § 24-20-101, *et. Seq.*

13.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City and Contractor and bind their respective entities.

14.0 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS

Contractor consents to the use of electronic signatures by City. The Agreement and any other documents requiring a signature hereunder may be signed electronically by City in the manner specified by City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

APPROVED AS TO FORM

CITY OF LITTLETON, COLORADO

By: _____

By: _____

Date: _____

Date: _____

CONTRACTOR

By: _____

{---Vendor Signer---}

{---Title of Vendors Signer---}

Date: _____