LARIMER COUNTY, COLORADO

**Professional Services Agreement**

**(P24-\_\_\_\_\_\_\_\_\_\_\_\_\_)**

**THIS AGREEMENT** is made by and between the Board of County Commissioners of Larimer County, Colorado, located at 200 W. Oak, Fort Collins, Colorado 80521 ("County"), and    , located at    , (“Contractor”). County and Contractor agree to the following terms and conditions:

1. TERM
   1. Initial Term. The initial term of this Agreement shall be from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ through and including \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Initial Term”), unless sooner terminated as provided for in this Agreement.
   2. Extension Terms. County may, at its sole option, extend the term of this Agreement beyond the Initial Term for up to \_\_\_ additional one-year terms under the same terms provided for herein (each such period being an “Extension Term”). County shall notify Contractor of its election for an Extension Term(s) as provided for in §6.
   3. Early Termination for Convenience of County. County may, at its sole option, terminate this Agreement at any time for its convenience and without cause. Upon receipt of such notice, Contractor shall be subject to this subsection and §5(a)(i).
      1. County shall provide Contractor written notice of such termination in accordance with §6, and such notice shall specify the effective date of the termination.
      2. If County terminates for convenience, Contractor will be paid for Work completed and unpaid prior to the effective date of termination as follows:
         1. Lump Sum Contracts: The percentage of the total lump sum fee that represents the ratio of Work completed to the total amount of Work;
         2. Cost Plus Fixed Fee Contracts: Incurred cost of actual Work performed plus a percentage of the fixed fee that represents the ratio of Work completed to the total amount of Work;
         3. Specific Rate of Compensation Contract: Incurred cost of actual Work performed;
         4. Per Unit of Work Contract: The cost of each completed unit of Work and/or a percentage of each partially completed unit of Work.
      3. In no event shall County be liable for costs incurred by Contractor after the specified termination date, including but not limited to anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or post-termination overhead or unabsorbed overhead.
2. STATEMENT OF WORK
   1. Contractor shall perform all the services, including delivery of any goods and services relating to such goods, as described in Exhibit A attached hereto (the “Work”) and in accordance with the provisions of this Agreement.
3. PAYMENT
   1. All charges, prices, fees, and discounts related to the Work are set forth in the price schedule attached hereto as Exhibit B (the “Price Schedule”).
   2. The total maximum cost to County under this Agreement is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In no event shall County be liable to pay any money more than this total maximum cost unless County agrees otherwise in writing.
   3. Contractor shall initiate payment requests by invoice to County in the amounts, form and manner stated on Exhibit B.
   4. Within \_\_\_ days of its receipt of a complete and proper invoice, County shall pay the invoice so long as the amount invoiced correctly represents Work completed by Contractor in compliance with the terms of this Agreement. Payment of any invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement. Prior to payment, County reserves the right to require such additional documentation that it reasonably deems necessary to support invoices and payments to Contractor. In such event, payment deadlines shall be tolled and non-payment pending receipt and review of such additional documentation shall not constitute a breach by County.
   5. Contractor agrees that all invoices shall be exclusive of all excise, sale, use and other taxes for which County is exempt. Upon request, County shall provide Contractor a tax-exempt certificate or other similar form demonstrating its tax-exempt status.
   6. Larimer County is a Colorado public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore. Termination of this agreement due to future non-appropriation shall not be considered a breach or default by County.
4. BREACH
   1. The failure of either party to perform any of its obligations in accordance with this Agreement, in whole or in part, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.
   2. In the event of a breach, the non-breaching party shall give written notice of the breach to the other party in accordance with §6. If the notified party does not cure the breach within 30 days after the effective date of the notice pursuant to §6, the non-breaching party may exercise any of the remedies as described in §5 for that party. Notwithstanding any provision of this Agreement to the contrary, County may immediately terminate this Agreement for convenience and without cause as provided in §1(c) without prior written notice and without a cure period.
5. REMEDIES FOR BREACH
   1. County Remedies. If Contractor is in breach under any provision of this Agreement and fails to cure such breach following notice and 30 days to cure as provided in §4 above, County may terminate this Agreement or any portion of this Agreement, or in its sole discretion choose one or more of the following remedies: Withhold payment to Contractor until Contractor cures its breach; or suspend Contractor’s performance, pending corrective action by Contractor, with respect to all or any portion of the Work, which may include immediate removal from the Work of any Contractor’s employees, agents or subcontractors whom County deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable with respect to the Work.
      1. If County terminates this Agreement, Contractor shall take all actions necessary to carry-out the termination on the date specified in the termination notice and to minimize the liability of Contractor and County to third parties. All such actions shall be subject to prior approval of County and shall include, without limitation, the following:
         1. Halting performance of all services and other work under the Agreement on the date(s) and in the manner specified by County;
         2. Not placing any further orders or subcontracts for materials, services, equipment, or other items;
         3. Terminating all existing orders and subcontracts in a manner that minimizes liability to the greatest extent feasible under the circumstances;
         4. At County’s direction, assigning to County any or all of Contractor’s right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
         5. Subject to County’s approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts;
         6. Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County;
         7. Taking such action as may be necessary, or as County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which County has or may acquire an interest.
      2. Contractor shall be liable to County for any damages sustained by County in connection with any breach by Contractor, and County may withhold payment to Contractor for purposes of mitigating damages and losses sustained by County in connection with any breach by Contractor.
   2. Contractor Remedies. If County is in breach under any provision of this Agreement and fails to cure such breach following notice and 30 days to cure as provided in §4 above, Contractor may terminate this Agreement and shall have all remedies available by law and equity.
   3. No Binding Arbitration. Larimer County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement, whether expressly stated or by incorporation, shall be null and void. Any provision rendered null and void by this provision shall not invalidate the remainder of this Agreement.
6. NOTICE & REPRESENTATIVES
   1. All notices required or permitted under this Agreement shall be in writing and delivered in person, by certified or registered mail, or via email with read-receipt requested to the following designated party representatives (“Contract Administrator”):
      1. If to County:
      2. If to Contractor:
   2. County’s Contract Administrator does not have the authority to alter or modify the terms of this Agreement.
   3. Notices delivered in person or by certified or registered mail are effective upon delivery. Notices sent via email are effective upon receipt as evidenced by read receipt.
7. LIABILITY
   1. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of the monetary limits, notice requirements, immunities, rights, benefits, defenses, limitations and protections available to County under any applicable law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et. seq.*, as currently written or hereafter amended or implemented.
   2. General Liability & Intellectual Property Indemnification.
      1. Contractor shall be responsible for and hold harmless County, its employees, officials, and agents for any losses and liabilities incurred by County, its employees, officials, and/or agents, that are attributable to the negligence or fault of Contractor, its employees, agents, subcontractors, or assignees in connection with this Agreement; and
      2. Contractor shall indemnify and hold harmless County, its employees, officials, and agents for any losses and liabilities incurred by County, its employees, officials, and/or agents, in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.
   3. Duty to Defend. Contractor shall defend the County, its employees, officials, and agents, by attorneys and other professionals reasonably approved by them against any claims, suits, actions or proceedings related to the losses, liabilities, and indemnity set forth in §7(b)(i) and (ii) above. In no event shall any matter be settled without prior approval by the County.
   4. Insurance. Contractor shall obtain, and maintain continuously for the term of this Agreement, at its expense, the insurance types and amounts set forth in Exhibit C attached hereto. Contractor is not relieved of any liability or other obligations due to its failure to obtain or maintain insurance in sufficient amounts, durations, or types.
   5. No Pledge of Credit or Aid to Corporations. Pursuant to Colorado Constitution Article XI, §1 and 2, and Article X, §20, County shall not indemnify or hold harmless Contractor or any party related to or operating under this Agreement. No provision of this Agreement shall limit or set the amount of damages available to County to any amount other than the actual direct and indirect damages to County, regardless of the theory or basis for such damages. Any provision included or incorporated in this Agreement by reference which purports to negate this provision in whole or in part, or which conflicts with its terms, shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of this Agreement.
8. GENERAL PROVISIONS
   1. Independent Contractor. Contractor is an independent contractor and under no circumstance will Contractor or any agent or employee of Contractor be deemed an employee of County. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through County, and Contractor is solely responsible to provide such benefits at its sole cost.
   2. No Assignment. All rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent by the other party, and any such transfer or assignment shall subject the transferee/assignee to all provisions of this Agreement.
   3. Standard and Manner of Performance. Contractor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Contractor’s industry, trade, or profession.
   4. Not Exclusive. Contractor is not guaranteed any work except as expressly stated herein, and this Agreement does not create an exclusive contract for the Work.
   5. Choice of Law, Jurisdiction and Venue. Colorado law shall be applied in the interpretation, execution and enforcement of this Agreement. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and venue shall be in Larimer County, Colorado.
   6. Contractor’s Records. Contractor shall maintain a file of all documents, records, communications, notes, accounting records and other materials relating to the Work, including documents, records, communications, notes, and other materials related to the Work performed by subcontractors or agents (collectively the “Contractor’s Records”), for a minimum of three (3) years from the date of final payment to Contractor under this Agreement. During performance of the Work and for the required record retention period, Contractor shall permit duly authorized agents and employees of County to enter Contractor’s offices to inspect, review, copy, examine, and/or audit Contractor’s Records at all reasonable times with a minimum of two (2) business days’ notice from County.
   7. Debarment*.* Contractor certifies by signing this Agreement that neither Contractor, the organization, nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal government and do not appear on the System for Award Management (SAM) exclusions list maintained by the General Services Administration (GSA).
   8. Authority. Each party represents and warrants that the execution and delivery of this Agreement and the performance of such party’s obligations have been duly authorized.
   9. No Third-Party Beneficiaries. This Agreement is for the sole benefit of County and Contractor and nothing herein shall be construed as giving any benefits, rights, remedies, or claims to any other person or entity. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to County and Contractor. Any services or benefits which third parties receive as a result of this Agreement are incidental.
   10. Public Records. County is subject to the Colorado’s Open Records Act (“CORA”) and Contractor acknowledges that this Agreement is disclosable to the public pursuant to CORA. Additionally, Contractor understands that other records and information related to this Agreement may be subject to public disclosure pursuant to CORA, and County will release any such records per the requirements of CORA. County shall not be responsible for any damages or claims related to its disclosure of records or information it determines must be disclosed pursuant to CORA or any other applicable law.
   11. Laws and Regulations. Contractor shall strictly comply with all applicable federal, state, and local laws, rules, and regulations in effect or hereafter established, including, without limitation, Title II of the Americans with Disabilities Act of 1990, as amended, as well as laws applicable to discrimination and unfair employment practices.
   12. Ownership of Work Product. The tangible and intangible products of the Work performed under this Agreement, including but not limited to documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, pictures, negatives, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work (“Work Product”), are intended to be works made for hire and shall be solely owned by County. Contractor assigns to County all right, title, and interest to all Work Product, and agrees to cooperate and execute any documents in furtherance of County securing and/or protecting its intellectual property rights related to the Work Product. Work Product does not include any material developed by Contractor prior to the effective date of this Agreement that is used, without modification, in performance of the Work.
   13. Counterparts and Signatures. This Agreement may be executed in several identical counterparts, all of which taken together shall constitute one single agreement between the parties. Facsimile signatures and signatures transmitted via portable document format (PDF) shall be considered as original signatures.
   14. Use of Federal Money. Federal monies are being used to fund all or a portion of the Work, and therefore all contract provisions set forth in Exhibit D, attached hereto, are fully incorporated into this Agreement.
   15. Signature Authority: This Contract shall not be valid unless it has been approved and signed by someone authorized by Larimer County Administrative Policy and Procedure 100.2N. This Contract may be executed in two or more counterparts, each of which shall be deemed an original. The parties approve the use of electronic signatures, which shall be governed by the Uniform Electronic Transactions Act, C.R.S. §24-71.3-101 et seq. If this Contract is electronically signed it (a) is considered a "writing" or "in writing," (b) is deemed for all purposes as physically "signed," (c) is deemed an "original" when printed or copied from electronic files or records established and maintained in the normal course of business, and (d) satisfies any legal formalities requiring that agreements be in writing. Neither party will contest the admissibility of copies (or printed versions) of this Agreement under either the business records exception to the hearsay rule, the best evidence rule or otherwise on the basis that the Agreement was originated, signed or maintained in electronic form. Other than an original hand-written signature or an electronic signature of the same formality used to originally execute this Agreement, no other communication between the parties (such as email, voice mail or fax without a signature) will be construed as a signature to this Agreement (or any amendments to it or waiver of it).
   16. Data Breach: During the course of Contractor's performance of the Contract, the Contractor may be required to store or control the transmission of electronic data provided by the County (“County Data”). The Contractor represents and warrants that:
       1. It will take all reasonable precautions to maintain all County Data in a secure environment to prevent unauthorized access, use, or disclosure, including industry-accepted firewalls, up-to-date anti-virus software, and controlled access to the physical location of the hardware containing County Data;
       2. Its collection, access, use, storage, disposal and disclosure of County Data shall comply with all applicable data protection laws, as well as all other applicable regulations and directives;
       3. It will notify the County of any actual or suspected data security incident as soon as practicable, but no later than 24 hours after it becomes aware of it, including but not limited to breaches of Contractor’s computer, information, email, financial or other systems;
       4. The Contractor will provide the County sufficient information for the County to satisfy its legal and regulatory notice obligations, and upon notice, County shall have the authority to direct Contractor to provide notice to any potentially impacted individual or entity, at Contractor’s expense, and Contractor shall be liable for any resulting damages to County; and
       5. It will promptly return or destroy any County Data upon request from the County Representative.
       6. Contractor’s indemnification obligations identified elsewhere in this Contract shall apply to any breach of the provisions of this Paragraph.
   17. Warranty: The Contractor warrants and represents that it shall perform services in a timely, competent, and professional manner, and that all products and/or services furnished hereunder: (1) will conform in all respects to the terms of the contract documents, including any drawings, specifications or standards incorporated herein; (2) are in good working order and condition; (3) are free from defects in design, materials, and workmanship; and (4) are merchantable and fit for their particular purpose. All provisions and remedies of the Colorado Uniform Commercial Code, C.R.S. Title 4, relating to implied and express warranties are incorporated herein, in addition to any warranties contained in the contract documents.
   18. Right of Removal: The County retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor’s employees, agents, or subcontractors from the work whom the County, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the County to be contrary to the public interest or the County’s best interest.
   19. Digital Accessibility: Contractor acknowledges that, pursuant to the Americans with Disabilities Act (“ADA”), as amended (42 U.S.C. Sec. 1201 et seq.), programs, services and other activities provided by a public entity to the public, whether directly or through a vendor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation at all times and at no additional cost to County, including but not limited to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 701 et. seq.; and the Colorado Anti-Discrimination Act, C.R.S. 24-34-401 et. seq., as amended; and the Colorado Accessibility Standards for Individuals with a Disability, C.R.S. 24-85-101 et. seq., C.R.S. § 24-34-802 and C.R.S. § 24-85-103. Such compliance may include, but not be limited to supporting assistive software or devices such as large print interfaces, text-to-speech output, voice activated input, refreshable braille displays, and alternative keyboard or pointer interfaces, in a manner that, at minimum, is consistent with 8 CCR 1501-11, and version 2.1 Level AA of the Web Content Accessibility Guidelines (https://www.w3.org/TR/WCAG21/#background-on-wcag-2) or its successor standard as updated and adopted by any regulatory entity of competent jurisdiction. Contractor shall ensure that product maintenance and upgrades are implemented in a manner that does not compromise product accessibility at any time. The only exception to the WCAG 2.1 Level AA compliance requirement is if making such modifications would fundamentally alter the nature of the service, program, or activity or present an undue financial, technical, or administrative burden.
   20. Invoices: Unless a shorter time period is stated in another provision of the Contract, all invoices from the Contractor to County requesting payment for services/goods provided must be received by County sixty (60) days following the month in which such services/goods were provided or conducted. Failure to ensure that the County receives such invoices within this period of time shall result in all payment obligations associated with such services/goods identified in the delinquent invoice(s), even if reinserted or reclaimed in another invoice, being waived and County shall have no obligation to pay for such services/goods.
9. ADDITIONAL PROVISIONS

**BOARD OF COUNTY COMMISSIONERS**

**OF LARIMER COUNTY**

By:

Chair DATE

Attest: Deputy Clerk

**CONTRACTOR**

By:

Signature DATE

Printed Name:

**EXHIBIT A**

**Scope of Work**

***The scope of work should include at a minimum:***

* ***Description of the goods to be delivered, services to be performed, and any other obligations of the parties. The description needs enough detail for a 3rd party without prior knowledge of the project to easily understand and determine what each party is obligated to do and if they have successfully done it.***
* ***Description of the performance standards the contract is required to meet, if any***
* ***Timetable for when performance and/or goods are due, including any milestone deadlines***
* ***Description of operational requirements of the Contractor’s work, such as location (if location is material), personnel requirements, testing and acceptance criteria if applicable, and other general requirements of Contractor***
* ***Description of any contingencies on the Contractor’s performance***

***The County’s Proposal/Solicitation and the Contractor’s Response should NOT serve as the Scope of Work by reference. The Proposal and Response likely will include a significant amount of excess information, so incorporating the entire Proposal and Response creates duplication and inconsistencies. The best practice is to pull from the Proposal and Response the specific obligations and requirements that form the Scope of Work.***

**EXHIBIT B**

**Price Schedule and Payment Terms**

**EXHIBIT C**

**Insurance Requirements**

**EXHIBIT D**

Additional Contract Provisions Due to use of Federal Funds

**[If applicable]**