

SERVICES CONTRACT

This contract (“Contract”) is entered into by and between the **City of Loveland, Colorado** (“City”) and **Click here to enter text.** (“Contractor”).

Whereas, the parties desire to contract with one another to complete the following project:
Click here to enter text..

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Services. The Contractor shall perform the services set forth in Exhibit A, attached hereto and incorporated herein by reference (“Services”). The Contractor represents that it has the authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Contract and all applicable laws. The City reserves the right to remove any of the Services from Exhibit A upon written notice to Contractor.

2. Conflicting Terms. In the event of any conflict between this Contract and Exhibit A, the provisions of this Contract shall prevail.

3. Price. The City shall pay the Contractor a sum not to exceed **\$Click here to enter text..** The City shall make payment within thirty (30) days of receipt and approval of monthly invoices, which shall identify the specific Services performed for which payment is requested.

4. Term. This Contract shall be effective from **Click here to enter a date.** through **Click here to enter a date..** This Contract may be extended or renewed by written agreement of the parties.

5. Appropriation. To the extent this Contract constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Contract in any fiscal year in which no such appropriation is made and a termination in such a fiscal year shall not be considered default.

6. Independent Contractor. The parties agree that the Contractor is an independent contractor and is not an employee of the City. **The Contractor is not entitled to workers’ compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Contract.**

7. Insurance Requirements.

a. Policies. The Contractor and its subcontractors, if any, shall procure and keep in force during the duration of this Contract the following insurance policies, and shall provide the City with a certificate of insurance evidencing the same upon execution of this Contract:

(i) Comprehensive general liability insurance insuring the Contractor and naming the City as an additional insured with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. 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), independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

(ii) Comprehensive automobile liability insurance insuring the Contractor and naming the City as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by the Contractor which are used in connection with this Contract, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least One Million Dollars (\$1,000,000.00).

(iii) Professional liability insurance insuring the Contractor against any professional liability with a limit of at least One Million Dollars (\$1,000,000.00) per claim and annual aggregate. *(Note: this policy shall only be required if the Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant, or other professional.)*

(iv) Workers' compensation insurance and all other insurance required by any applicable law. *(Note: if under Colorado law the Contractor is not required to carry workers' compensation insurance, the Contractor shall execute a Certificate of Exemption and Waiver, attached hereto as Exhibit B and incorporated herein by reference.)*

b. Requirements. Required insurance policies shall be with companies qualified to do business in Colorado with a general policyholder's financial rating acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. The Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Contractor changes to "occurrence," the Contractor shall carry a six (6) month tail. Comprehensive general and automobile policies shall be for the mutual and joint benefit and protection of the Contractor and the City. Such policies shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of the Contractor, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.

8. Data Security. Pursuant to the Colorado Protections for Consumer Data Privacy Act, C.R.S. §24-73-101, *et seq.*, Contractor will destroy all paper and electronic documents

containing personal identifying information within six (6) months of termination of this agreement, unless otherwise required under the law. If other laws are applicable, such information will be securely destroyed to protect personal identifying information. Contractor shall implement and maintain security procedures that are consistent with generally accepted industry standards to protect personal identifying information that are designed to protect the information from unauthorized access, use, modification, disclosure, or destruction. If Contractor discovers or is informed of a security breach, Contractor will give the City notice in the most expedient time and without unreasonable delay, no later than fifteen (15) calendar days after it is determined a security breach occurred. Contractor shall cooperate with the City in the event of a security breach that compromises computerized data, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the City information relevant to the security breach. Contractors shall be liable for any damages caused by such security breach.

9. Indemnification. The Contractor agrees to indemnify and hold harmless the City, its officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with the Services, 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 the Contractor is responsible. The Contractor shall investigate, handle, respond to, and defend against any such liability, claims, and demands, and shall bear all other costs and expenses related thereto, including court costs and attorneys' fees. If the Contractor is providing architectural, engineering, design, or surveying services, the obligation to indemnify and pay costs, expenses, and attorneys' fees, is limited to the amount represented by the degree or percentage of negligence or fault attributable to the Contractor, or the Contractor's agents, representatives, employees, servants, subcontractors, or suppliers as determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Contractor and the City. The Contractor shall notify the City and provide a copy of any and all written claims or demands within two (2) business days of receipt. The Contractor's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City. This paragraph shall survive the termination or expiration of this Contract.

10. Governmental Immunity Act. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

11. Colorado Open Record Act. The parties understand that all the material provided or produced under this Contract, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act, section 24-72-201 *et seq.* of the Colorado Revised Statutes. If the Contractor objects to the disclosure of any information in its statement of work, Exhibit A, or other document provided to the City under this Contract, the Contractor must mark it clearly as confidential. The City is required to make a determination under the Colorado Open Records Act, and may only withhold documents that are confidential under the law. If the City releases records in compliance with the Colorado Open Records Act, the Contractor waives any

claims for liability or damages. Contractor further agrees to defend, indemnify, save and hold harmless the City, its officers, agents and employees from any claim, damages, expense, loss, or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Paragraph, including but not limited to prompt reimbursement to the City of all reasonable attorneys' fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

12. Prohibited Terms. Any term included in Exhibit A, or any other exhibit, that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits the Contractor's liability for damages caused by the Contractor; determines choice of law, conflicts of law, or venue and forum-selection, or defense or control of litigation or settlement; requires the City to pay attorneys' fees or costs; requires the City to name the Contractor as an additional insured; requires the City to agree to confidentiality; or that conflicts with this provision in any way shall be void *ab initio*. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of the City.

13. Online Agreement Disclaimer and Additional Terms. Notwithstanding anything to the contrary herein, the City shall not be subject to any provision included in any terms, conditions, or agreements appearing on the Contractor's website or any provision incorporated into any click-through or online agreements related to the work. Any terms the Contractor wishes to include must be directly included in Exhibit A or another exhibit to this Contract, not referenced as a website, separate set of terms, included as a clicked-through agreement, or any similar set of additional terms not attached hereto.

14. Compliance with Applicable Laws. The Contractor shall comply with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City. The Contractor shall solely be responsible for payment of all applicable taxes and for obtaining and keeping in force all applicable permits and approvals.

15. Termination.

a. Without Cause. Either party may terminate this Contract without cause upon thirty (30) days prior written notice to the other. The City shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to the Contractor for anticipated profits.

b. For Default. Each and every term and condition hereof shall be deemed to be a material element of this Contract. In the event either party fails to perform according to the terms of this Contract, such party may be declared in default. If the defaulting party does not cure said breach within ten (10) days of written notice thereof, the non-defaulting party may terminate this Contract immediately upon written notice of termination to the other. In the event of such termination by the City, the City shall be liable to pay the Contractor for Services performed as of the effective date of termination, but shall not be liable to

Contractor for anticipated profits; provided, however, that the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any default under this Contract, and the City may withhold payment to the Contractor for the purposes of setoff until such time as the exact amount of damages is determined.

16. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three (3) days after being sent by certified mail, return receipt requested:

To the City:

Click here to enter text.

City of Loveland

Click here to enter text.

Loveland, CO 80537

Email: **Click here to enter text.**

To the Contractor:

Click here to enter text.

Click here to enter text.

Click here to enter text.

Click here to enter text.

Email: **Click here to enter text.**

17. Special Provisions. **Click here to enter text..**

18. Time of the Essence. Time is of the essence in performance of the Services and is a significant and material term of this Contract.

19. Venue and Choice of Law. This Contract shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

20. Miscellaneous. This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract. The Contractor shall not assign this Contract without the City's prior written consent.

(Remainder of page left intentionally blank.)

21. Legal Authority. The person signing and executing this Contract on behalf of the Contractor hereby warrants and guarantees that they have been fully authorized by the Contractor to execute this Agreement on the Contractor's behalf and to validly and legally bind the Contractor to all the terms, performances, and provisions set forth herein.

22. Signatures. This Contract may be executed in two or more counterparts, including by facsimile or electronic mail, each of which shall be deemed an original and all of which shall constitute one and the same Contract. By affixing an image of one's own signature to this Contract in an electronic format, the person is signing the Contract as if it were an original, wet ink signature.

Contractor

Signature: _____

Printed Name: _____

Title: _____

City of Loveland, Colorado

Signature: _____

Printed Name: _____

Title: _____

ATTEST:

City Clerk

Date

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A – SERVICES

Click here to enter text.

EXHIBIT B – CERTIFICATE OF EXEMPTION AND WAIVER

DIRECTIONS:

- ✓ If the Contractor is NOT required under Colorado law to carry workers' compensation insurance and DOES NOT carry it, this exhibit MUST be completed and attached to the Contract.
- ✓ If the Contractor IS required under Colorado law to carry workers' compensation insurance and DOES carry it, this exhibit IS NOT REQUIRED and may be discarded.

The Contractor certifies to the City that it is not required to carry workers' compensation insurance under the Colorado Workers' Compensation Act. The Contractor acknowledges that it will be engaging in activities that may expose it to risk of bodily injury. The Contractor affirms that it is physically capable of performing the activities and that all necessary precautions to prevent injury to the Contractor and others will be taken. The Contractor shall not hold the City liable for any injuries that may arise during or resulting from the work performed under the Contract, and the Contractor shall defend, indemnify, and hold harmless the City from all such claims.

Contractor

By: _____

Title: _____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____.
(Insert name of individual signing on behalf of the Contractor)

Notary's official signature

Commission expiration date

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