AGREEMENT FOR PROFESSIONAL SERVICES

Federal Funds

THIS AGREEMENT is made and entered into this Choose an item. day of Choose an item., 20Choose an item. (the "Effective Date"), by and between Morgan County, Colorado, a Colorado county acting by and through its Board of County Commissioners with a principal place of business at 218 West Kiowa, Fort Morgan, Colorado 80701 (the "County"), and Click here to enter text., an independent contractor with a principal place of business at Click here to enter text., Click here to enter text. Click here to enter text. ("Consultant") (each individually a "Party" and collectively the "Parties").

WHEREAS, the County requires professional services; and

WHEREAS, Consultant has held itself out to the County as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

A. Consultant shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. The City intends to pay Consultant, in part, with federal funds, and, as such, Consultant shall fully cooperate and comply with the federally mandated obligations described or reasonably implied from the Federal Compliance Requirements set forth in the attached **Exhibit B**.

C. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the County is authorized to modify any term of this Agreement, either directly or implied by a course of action.

**II.** **TERM AND TERMINATION**

1. This Agreement shall commence on the Effective Date, and shall continue until terminated as provided herein.
2. This Agreement shall terminate when all the work described in the Scope of Services is completed to the County’s satisfaction, or upon the County providing Consultant with seven (7) days advance written notice, whichever occurs first. If the Agreement is terminated by the County’s issuance of written notice, the County shall pay Consultant for all work authorized and completed prior to the date of termination. If, however, Consultant has breached this Agreement, the County shall have any remedy or right of set-off available at law and equity.
3. Consultant may terminate this Agreement upon thirty (30) days advance written notice if the County breaches a material term of this Agreement. Such notice shall identify the breach and the County shall have thirty (30) days to cure the breach. If the County fails to cure the breach within thirty (30) days, the Consultant may terminate this Agreement by written notice with such termination effective on the date of said written notice. If the County has not breached a material term of this Agreement, Consultant may terminate this Agreement upon sixty (60) days advance written notice.

**III. COMPENSATION**

A. In consideration for the completion of the Scope of Services by Consultant, the County shall pay Consultant an amount not to exceed Click here to enter text. Dollars ($Click here to enter text.). This maximum amount shall include all fees, costs and expenses incurred by Consultant, and no additional amounts shall be paid by the County for such fees, costs and expenses. Consultant shall not be paid until the Scope of Services is completed to the satisfaction of the County.

B. Notwithstanding the maximum amount specified in this Section, Consultant shall be paid only for work performed. If Consultant completes the Scope of Services for less than the maximum amount, Consultant shall be paid the lesser amount, not the maximum amount.

**IV. PROFESSIONAL RESPONSIBILITY**

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The County's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

D. Because the County has hired Consultant for its professional expertise, Consultant agrees not to employ subcontractors to perform any work under the Scope of Services.

**V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Consultant shall be exclusively owned by the County. Consultant expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Consultant hereby transfers, sells, and assigns to the County all of its right, title, and interest in such work. The County may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Consultant.

**VI. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Consultant to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is a County employee for any purposes.

**VII. INSURANCE**

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. At a minimum, Consultant shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the County.

1. Worker's Compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars ($500,000) each accident, one million dollars ($1,000,000) disease – policy limit, and one million dollars ($1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the requirements of this Section.

2. Commercial General Liability insurance with minimum combined single limits of one million thousand dollars ($1,000,000) each occurrence and one million dollars ($1,000,000) general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the County and the County's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of one million dollars ($1,000,000) each claim and one million dollars ($1,000,000) general aggregate.

C. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the County. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the County, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under any policy.

D. Consultant shall provide to the County a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

**VIII. INDEMNIFICATION**

Consultant agrees to indemnify and hold harmless the County and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any subcontractor of Consultant, or any officer, employee, representative, or agent of Consultant, or which arise out of a worker's compensation claim of any employee of Consultant or of any employee of any subcontractor of Consultant.

**IX. WORKERS WITHOUT AUTHORIZATION**

A. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that Consultant will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Consultant shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

C. Verification.

1. If Consultant has employees, Consultant has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Consultant shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization who is performing work under this Agreement, Consultant shall: notify the subcontractor and the County within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with a worker without authorization who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under this Agreement; except that Consultant shall not terminate the subcontract if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization who is performing work under this Agreement.

D. Duty to Comply with Investigations. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Consultant is complying with the terms of this Agreement.

E. Affidavits. If Consultant does not have employees, Consultant shall sign the "No Employee Affidavit" attached hereto. If Consultant wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Consultant shall sign the "Department Program Affidavit" attached hereto.

**X. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Morgan County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the County shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The County and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the County and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the County under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the County's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the County not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

[*Remainder of page intentionally left blank. Signatures on following page.*]

**MORGAN COUNTY, COLORADO**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chair

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commissioner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commissioner

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan L. Bailey, County Clerk

**CONSULTANT**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

My commission expires:

(S E A L) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

**EXHIBIT A**

**SCOPE OF SERVICES**

Consultant's Duties

During the term of this Agreement, Consultant shall perform the following duties, as directed by the County:

* Consultant shall

SAMPLE

* Consultant shall
* Consultant shall

Consultant's Deliverables

In performance of the duties described above, Consultant shall deliver the following items to the County, during the timeframes established by the County:

**EXHIBIT B**

**FEDERAL PLANNING CONTRACT COMPLIANCE REQUIREMENTS**

The following federal planning contract compliance requirements supplement or amend the Agreement's provisions.

1. **Clean Air Act and Clean Water Act compliance**. Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-767](https://www.law.cornell.edu/uscode/text/42/7401-767)1q) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-138](https://www.law.cornell.edu/uscode/text/33/1251-138)7). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

2. **Debarment / Suspension compliance**. By execution of this Agreement, Consultant represents that it is not a party listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part [1986](https://www.law.cornell.edu/cfr/text/3/1986) Comp., p. 189) and 12689 (3 CFR Part [1989](https://www.law.cornell.edu/cfr/text/3/1989) Comp., p. 235). Consultant further represents it is not otherwise excluded or declared ineligible for award of federal funds under any other statutory or regulatory authority.

3. **Byrd Anti-Lobbying Amendment compliance**. If this Agreement includes compensation of $100,000 or more, Consultant shall file the certification required for compliance with the Byrd Anti-Lobbying Amendment, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Consultant shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

4. **Right to inventions made under the Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and involves Consultant's performance of experimental, developmental, or research work, the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations apply.

**NO EMPLOYEE AFFIDAVIT**

***[To be completed only if Consultant has no employees]***

**1. Check and complete one:**

I, Click here to enter text., am a sole proprietor doing business asClick here to enter text.. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with Morgan County (the "County"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, Click here to enter text., am the sole owner/member/shareholder of Click here to enter text., a Click here to enter text. [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the County, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

I am a United States citizen or legal permanent resident.

*The County must verify this statement by reviewing one of the following items:*

* *A valid Colorado driver's license or a Colorado identification card;*
* *A United States military card or a military dependent's identification card;*
* *A United States Coast Guard Merchant Mariner card;*
* *A Native American tribal document;*
* *In the case of a resident of another state, the driver’s license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
* *Any other documents or combination of documents listed in the County’s “Acceptable Documents for Lawful Presence Verification” chart that proves Contractor’s citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE”) program, and provide such verification to the County.*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

**DEPARTMENT PROGRAM AFFIDAVIT**

***[To be completed only if Consultant participates in the***

***Department of Labor Lawful Presence Verification Program]***

I, Click here to enter text., as a public contractor under contract with Morgan County (the "County"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the County within twenty (20) days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

STATE OF COLORADO )

) ss.

COUNTY OF )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

My commission expires:

(S E A L) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public