PURCHASE ORDER AGREEMENT

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 231 Ensign, 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., Colorado Click here to enter text. ("Contractor") (each individually a "Party" and collectively the "Parties").

WHEREAS, the County requires products; and

WHEREAS, Contractor has held itself out to the County as having the ability to provide the required products.

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

**I. PRODUCT DELIVERY**

A. Contractor shall provide all products as set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. Contractor shall perform all labor required to deliver the products completely and promptly as described or reasonably implied from **Exhibit A**.

B. A change in the quantity or quality of product shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit 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**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor delivers the product to the satisfaction of the County, or until terminated as provided herein.

B. The County may terminate this Agreement upon written notice. Contractor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination. If, however, Contractor has breached this Agreement, the County shall have any remedy or right of set-off available at law and equity. Contractor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided.

**III. ORDER PRICE**

A. In consideration for delivery of the products by Contractor, the County shall pay Contractor 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 Contractor, and no additional amounts shall be paid by the County for such fees, costs and expenses. Contractor shall not be paid until the products are delivered to the satisfaction of the County.

B. Notwithstanding the maximum amount specified in this Section, Contractor shall be paid only for products delivered. If Contractor delivers less products than the contracted amount, Contractor shall be paid the lesser amount, not the maximum amount.

**IV. WARRANTY**

1. Contractor expressly warrants that all goods or services furnished under this Agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used.
2. If Contractor knows or has reason to know the particular purpose for which the County intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to the County, its successors, assigns and customers, and users of products sold by the County.
3. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly without expense to the County, when notified of such nonconformity by the County, provided the County elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, the County, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the County in doing so.
4. The County's review, approval or acceptance of, or payment for any products 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.

**V. INSPECTION/TESTING**

Payment for the goods delivered hereunder shall not constitute acceptance thereof. The County shall have the right to inspect such goods and to reject any or all of said goods which are in the County's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Contractor at its expense and, in addition to the County's other rights, the County may charge Contractor all expenses of unpacking, examining, repacking and reshipping such goods. In the event the County receives goods whose defects or nonconformity is not apparent on examination, the County reserves the right to require replacement, as well as payment of damages. Nothing contained in this Agreement shall relieve in any way the Contractor from the obligation of testing, inspection and quality control.

**VI. INDEPENDENT CONTRACTOR**

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

**VII. INTELLECTUAL PROPERTY RIGHTS**

The products specified in **Exhibit A**, together with any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the County.  Consultant warrants that it has all necessary rights to transfer full unencumbered ownership of the products to the County free from any third party claims.

**VIII. INSURANCE**

A. Contractor 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 Contractor pursuant to this Agreement. At a minimum, Contractor 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 dollars ($1,000,000) each occurrence and two million dollars ($2,000,000) 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.

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 Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

D. Contractor 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.

**IX. INDEMNIFICATION**

Contractor 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 Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

**X. LIQUIDATED DAMAGES:**

1. Because time is of the essence and delayed performance constitutes a compensable inconvenience to the County and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day product delivery is delayed after the date of delivery as established in the Exhibit A, as may be amended in accordance with this Agreement, Contractor shall be assessed the following amounts:

Order Price Amount per day

$0-$50,000 $350

$50,000-$100,000 $380

$100,000-$250,000 $440

$250,000-$500,000 $520

$500,000-$1,000,000 $640

$1,000,000-$2,000,000 $820

$2,000,000-$4,000,000 $1,080

$4,000,000-$8,000,000 $1,450

$8,000,000-$12,000,000 $1,820

$12,000,000 or greater $2,250

B. Allowing Contractor to continue and delivery products, or any part thereof, after the date of delivery shall not operate as a waiver on the part of the County of any of its rights under this Agreement. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to deliver the products by established deadlines. Liquidated damages may be deducted from any payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the County.

**XI. 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.

**MORGAN COUNTY, COLORADO**

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

Chair

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

Commissioner

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

Commissioner

ATTEST:

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

Kevin Strauch, County Clerk

**CONTRACTOR**

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

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

) 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**

**PRODUCTS**

Contractor's Duties

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

* Contractor shall
* Contractor shall
* Contractor shall

SAMPLE

Contractor's Deliverables

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