



CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

Project Name

This Contract is made as of the ___ day of _____, 20__, by and between the Town of Kersey, Kersey, Colorado, hereinafter referred to as the TOWN, and Consultant _____ authorized to do business in the State of Colorado, hereinafter referred to as the CONSULTANT, whose address is _____

In consideration of the mutual promises contained herein, the TOWN and the CONSULTANT agree as follows:

ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area defined as _____
More specifically, the scope of services is attached. The services of the CONSULTANT shall be under the direction of the Project Manager who has been designated by Town Manager to act as the TOWN'S representative during the performance of this Contract

ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services upon execution of the Contract and complete all services on or before _____, in conjunction with the attached schedule

ARTICLE 3 - PAYMENTS TO CONSULTANT

A. The TOWN shall pay to the CONSULTANT for services satisfactorily performed, based on sum not to exceed \$_____, which includes all direct charges, indirect charges, and reimbursable expenses stated in the attached document. The CONSULTANT will bill the TOWN on a monthly basis or as otherwise provided for services rendered toward the completion of the Scope of Work. The amounts billed shall represent the sum of billable time (including overhead and profit) for labor hours expended plus any other allowable costs and expenses for services stated in the attached document. The CONSULTANT shall track expenditures and inform the TOWN of any possible cost overrun prior to completing work that would overrun the maximum contract sum. The TOWN may choose to increase the

budget for the work using a mutually acceptable contract amendment or it may choose not to increase the budget and terminate the work accordingly.

B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the Project Manager, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this contract are accurate, complete, and current as of the date of this Contract.

The said rates and costs shall be adjusted to exclude any significant sums should the TOWN determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The TOWN shall exercise its rights under this "Certificate" within one (1) year following final payment.

ARTICLE 5 - TERMINATION

This Contract may be terminated by the CONSULTANT upon 30 days' prior written notice to the TOWN in the event of substantial failure by the TOWN to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated by the TOWN, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the TOWN'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the TOWN the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the TOWN.
- D. Continue and complete all parts of the work that have not been terminated.

The CONSULTANT shall be paid for services actually rendered to the date of termination.

ARTICLE 6 - PERSONNEL

The CONSULTANT represents that it has, or will, secure at its own expense all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the TOWN.

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and if required, authorized or permitted under state and local law to perform such services. Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in the proposal for the work, must be made known to the TOWN'S representative and written approval granted by the TOWN before said changes or substitutions can become effective.

The CONSULTANT declares that all services shall be performed by skilled and competent personnel to the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

ARTICLE 7 - SUBCONSULTANT

The TOWN reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the TOWN.

ARTICLE 8 - FEDERAL AND STATE TAX

The TOWN is exempt from payment of Colorado State Sales and Use Taxes. The TOWN will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to their suppliers for materials used to fulfill contractual obligations with the TOWN, nor is the CONSULTANT authorized to use the TOWN'S tax exemption number in securing such materials.

The CONSULTANT shall be responsible for payment of his/her own FICA and Social Security benefits with respect to this Contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract may be cancelled and the TOWN shall reimburse the CONSULTANT for expenses incurred during the contract period.

ARTICLE 10 - INSURANCE

A. The CONSULTANT shall not commence work under this Agreement until he/she has obtained all insurance required under this paragraph and such insurance has been approved by the TOWN.

B. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Colorado. The CONSULTANT shall furnish Certificates of Insurance to the TOWN prior to the commencement of operations. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without ten (10) days prior written notice to the TOWN. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Contract.

C. The CONSULTANT shall maintain, during the life of this Contract, professional liability insurance (errors and omissions) in the amount of \$2,000,000 per occurrence to protect the CONSULTANT of claims for damages for negligent acts, errors or omissions in the performance of professional services under this Contract, whether such acts, errors or omissions be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.

D. The CONSULTANT shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the amounts of \$2,000,000 combined single limit bodily injury and \$250,000 property damage to protect the CONSULTANT from claims for damages for bodily injury, including wrongful death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations by the CONSULTANT or by any directly or indirectly employed by the CONSULTANT.

E. The CONSULTANT shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees performing work for the TOWN pursuant to this Contract.

F. All insurance, other than Worker's Compensation and Professional Liability, is to be maintained by the CONSULTANT shall specifically include the TOWN as an "Additional Insured".

ARTICLE 11 - INDEMNIFICATION

The CONSULTANT shall indemnify and save harmless and defend the TOWN, its trustees, agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of the CONSULTANT, its

agents, servants, or employees in the performance of services under this Contract.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The TOWN and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the TOWN nor the CONSULTANT shall assign, sublet, convey, or transfer its interest on this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the TOWN which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the TOWN and the CONSULTANT.

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Colorado. Any and all legal action necessary to enforce the Contract will be held in Weld County and the contract will be interpreted according to the laws of Colorado. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.

ARTICLE 14 - COLORADO LAW

The Colorado Law shall prevail as the basis for contractual obligations between the CONSULTANT and the TOWN for any terms and conditions not specifically stated in this Contract.

ARTICLE 15 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Colorado Statutes and ordinances of the Town of Kersey. The CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify the TOWN in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the TOWN as to whether the association, interest or circumstance would, in the opinion of the TOWN, constitute a conflict of interest if

entered into by the CONSULTANT. The TOWN agrees to notify the CONSULTANT of its opinion by certified mail within 30 days of receipt of notification by the CONSULTANT. If, in the opinion of the TOWN, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the TOWN shall so state in the notification and the CONSULTANT shall, at his/her option, enter into said association, of interest with respect to services provided to the TOWN by the CONSULTANT under the terms of this Contract.

ARTICLE 16 - EXCUSABLE DELAYS

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the CONSULTANT'S control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the TOWN'S omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. If failure to perform is caused by the failure of the CONSULTANT'S subcontractor(s) to perform or make progress, and if such failure arises out of causes reasonably beyond the control of the CONSULTANT and its subcontractor(s) and is without the fault or negligence of either of them, the CONSULTANT shall not be deemed to be in default.

Upon the CONSULTANT'S request, the TOWN shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without its fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the TOWN'S rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 17 - ARREARS

The CONSULTANT shall not pledge the TOWN'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 18 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the TOWN for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the TOWN under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the TOWN or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the TOWN'S prior written consent unless required by a lawful order. All drawings, maps, sketches, and other data developed, or purchased, under this Contract or at the TOWN'S expense shall be and remain the TOWN'S property and may be reproduced and reused at the discretion of the TOWN. To the extent permitted by law, the

TOWN shall indemnify and hold CONSULTANT harmless for any claim or liability arising from any use or reuse of the documents for any purpose other than the project and scope of work for which they were prepared.

ARTICLE 19 - INDEPENDENT CONSULTANT RELATIONSHIP

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, as Independent Consultant, and not an employee, agent, or servant of the TOWN. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the TOWN shall be that of an independent CONSULTANT and not as employees or agents of the TOWN.

The CONSULTANT does not have the power or authority to bind the TOWN in any promise, agreement, or representation other than specifically provided for in this agreement.

ARTICLE 20 - CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 21 - ACCESS AND AUDITS

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Contract. The TOWN shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the TOWN'S cost, upon five (5) days written notice.

ARTICLE 22 - NONDISCRIMINATION

The CONSULTANT declares and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or national origin.

ARTICLE 23 - SURVIVAL

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution

and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 24 - ENTIRETY OF CONTRACTUAL AGREEMENT

The TOWN and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 25 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 26 - AUTHORITY TO PRACTICE

The CONSULTANT hereby represents and declares that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 27 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 28 - AMENDMENTS AND MODIFICATION

No amendment and/or modifications of this Contract shall be valid unless in writing and signed by each of the parties.

The TOWN reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the TOWN'S notification of a contemplated change, the CONSULTANT shall (1) if requested by TOWN, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the TOWN of any estimated change in the completion date, and (3) advise the TOWN in writing if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the TOWN so instructs in writing, the CONSULTANT shall suspend work on that portion of the Work affected by a contemplated change, pending the TOWN'S decision to proceed with the change.

If the TOWN elects to make the change, the TOWN shall issue a Contract Amendment or Change Order and the CONSULTANT shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 29 - COMPLIANCE WITH C.R.S. § 8-17.5-101

- A. By signing this Agreement, the CONTRACTOR certifies that at the time of the Certification, it does not knowingly employ or contract with any Illegal alien who will perform work under this Contract.
- B. By signing this Agreement, the CONTRACTOR certifies that it shall not knowingly employ or contract with any illegal aliens to perform work under this contract; nor enter into a contract with any sub-contractor that knowingly employs or contracts with an illegal alien to perform work under this contract.
- C. CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify program or the Colorado Department of Labor and Employment Program.
- D. The CONTRACTOR is prohibited from using the E-Verify program or the Department of Labor and Employment Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- E. By signing this agreement the CONTRACTOR affirmatively acknowledges that if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:
 - (i) notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (i) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

- F. The CONTRACTOR shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment.
- G. The CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this contract, affirm that the CONTRACTOR has examined the legal work status of such employee, retained file copies of the Documents required by 8 U.S.C. § 1324(a) , and not altered or falsified the identification documents for such employees. The CONTRACTOR shall provide a written notarized copy of the affirmation to the TOWN.
- H. If CONTRACTOR violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the TOWN may terminate this Contract. If this Contract is so terminated, CONTRACTOR shall be liable for actual and consequential damages to the TOWN arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.
- I. By signing this Agreement, the CONTRACTOR certifies that it shall in all respects comply with the provisions of C.R.S. § 8-17.5-101, et seq.

ARTICLE 30 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the TOWN shall be mailed to:

Town of Kersey
Barb Brunk
Kersey, CO 80631
Ph: 970-353-1681
Email: bbrunk@kerseygov.com

and if sent to the CONSULTANT shall be mailed to:

Consultant:
Contact:
Address:

Ph:
Email:

IN WITNESS WHEREOF, the Town of Kersey, County of Weld, has made and executed this Contract on behalf of the TOWN and CONSULTANT has hereunto set his/her hand the day and year above written.

Town of Kersey, Colorado

Contractor

Approved as to Substance

Town Manager-Christian Morgan

By_____

Reviewed as to Legal Form

By: _____
Town Attorney-Rick Zier

Title

Certification of Contract
Funds Availability

Town Clerk-Julie Piper