

SAMPLE CONTRACT – MAY NOT REFLECT ALL TERMS OR CONDITIONS OF FINAL CONTRACT

**PROFESSIONAL SERVICES AGREEMENT
ON-CALL SERVICES**

THIS AGREEMENT, made and entered into this ____ day of _____, 2023 by and between MONTROSE COUNTY, COLORADO ("County") acting by and through the Board of County Commissioners, and _____ ("Contractor"), provides as follows:

Whereas, County desires to obtain the services of Contractor for the purpose of providing Professional Engineering and/or Surveying Services; and

Whereas, Contractor desires to provide the Professional Services pursuant to this Agreement;

NOW, THEREFORE, in consideration of the covenants, promises and agreements contained herein, County and Contractor agree as follows:

1. **Scope of Services.** County retains Contractor to provide Professional Services and Contractor agrees to provide Professional Services in accordance with the **On-Call Professional Engineering and/or Surveying Services Proposal**, and all attachments thereto, all of which are attached hereto and incorporated herein as Exhibit A ("Scope of Services") and the terms and conditions in this Agreement. If any provision of the Scope of Services conflicts with this Agreement, the terms of this Agreement shall control. Each project assigned to the Contractor shall be defined by a project specific scope of services and estimated cost, subject to review and approval by the County Engineer. If the assignment is approved, a Purchase Order will be issued and the project specific scope of services shall be incorporated into the scope of services of this agreement and shall be subject to all requirements herein. Contractor shall not proceed with any work until a Purchase Order has been issued.
2. **Fees.** Contractor shall be paid for services performed according to the ____ Fee Schedule and sub-contractor fees provided in the **On-Call Professional Engineering and/or Surveying Services Proposal**. The total amount for any task order shall not exceed \$50,000.00 (fifty thousand dollars and no cents). No change order resulting in an increase to this amount shall be valid or effective unless in writing and approved by the Board of County Commissioners.
2. **Independent Contractor.** The parties agree that Contractor shall be an independent contractor and shall not be an employee of County. Contractor, as an independent contractor, is not entitled to workers' compensation benefits and unemployment insurance benefits, and Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this agreement.
3. **Time of Performance.** The services of Contractor to be performed hereunder shall commence upon each approved assignment and issuance of a County purchase order. Each Task Call undertaken will be completed in expeditious manner.
4. **Term of Contract.** This Agreement shall commence on the date this Agreement is executed and be effective through December 31, 2024 unless terminated by either party in compliance with the terms of this Agreement. This Agreement may be extended for up to two (2) additional years at the sole discretion of the County and is subject to annual review and approval of the Montrose County Board of County Commissioners.

5. **Method of Payment.** County agrees to pay Contractor for services rendered pursuant to this Agreement the rates as set forth in the Scope of Services. Payment shall be made under normal county payables processing upon billing by Contractor. The parties agree and acknowledge that this Agreement does not constitute a multiple-fiscal year debt or financial obligation of County pursuant to Section 20(4)(b) of Article X of the Constitution of Colorado, based upon County's ability to terminate this Agreement as set forth herein. Contractor acknowledges that County has made no pledge of available funds in fiscal year 2022 and makes no promise to continue to budget and appropriate funds beyond fiscal year 2022, to cover the obligations of this Agreement. If no projects are assigned in a given year, then there will be no financial liability incurred by County.

6. **Right to Monitor Performance.** County reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in the opinion of County and in accordance with all applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with County relating to such monitoring and evaluation.

7. **Ownership of Documents.** All documents, pleadings, drawings, guidelines, electronic media, electronic data, books, manuals, field notes, and reports, regardless of form (collectively "Documents"), prepared, developed or created by Contractor or its sub-Contractors, pursuant to this Agreement, shall be the property of County. Contractor, and its sub-Contractors, hereby assign, without limitation, all right, title and interest in and to the Documents to County, including all copyrights to the Documents. County shall have the right to take such actions relating to the Documents as it deems appropriate, in its sole discretion, including, but not limited to the following: 1) reproduce the Documents, or any portion thereof; 2) prepare derivative works; 3) distribute copies to the public; and 4) present or display the Documents to the public. Such documents are not intended or represented to be suitable for reuse by County or others on any other project. Any reuse on other projects will be at County's sole risk. Contractor shall have the right to utilize such documents in the course of its marketing, professional presentations, and for other business purposes.

8. **Insurance Requirements.** Contractor shall procure and maintain, at his own expense, throughout the initial and subsequent term of this contract the following:

(a) **Comprehensive General Liability.** The Contractor shall procure and maintain Comprehensive General Liability, including completed operations, contractual liability and Automobile Liability Insurance affording coverage for all claims for bodily injury including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under this contract, whether such operations be by the Contractor or by subcontractors or anyone directly or indirectly employed by the Contractor or by a subcontractor. Such insurance shall provide limits of liability of not less than One Million Dollars (\$1,000,000) single limit, Two Million Dollars (\$2,000,000) aggregate. The Contractor shall furnish current certificates of insurance, which shall include a provision that the insurance will not be cancelled without ten (10) days prior notice to the County. All such insurance shall be written on a Comprehensive Form of Policy. All such shall name as additional insured Montrose County, the Contractor and any and all subcontractors.

(b) **Workman's Compensation Insurance.** The Contractor shall procure and maintain Workman's Compensation Insurance, in compliance with state law, at its own expense during the life of this contract, including occupational disease provisions for all of Contractor's employees. The Contractor shall also require each subcontractor to furnish Workman's Compensation Insurance, including occupational disease provisions for all of the latter's employees; otherwise, it accepts full liability and responsibility for subcontractor's employees. In cases where any class of employee is engaged in hazardous work under this Contract, and is not protected under the Workman's Compensation statute, the Contractor

shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.

(c) Professional Liability Insurance. Contractor shall procure and keep in force during the term of this Agreement errors and omissions professional liability insurance insuring Contractor against any professional liability with minimum limits of One Million Dollars (\$1,000,000) per claim, One Million Dollars (\$1,000,000) in aggregate. The limits of said insurance shall not, however, be a limit to the liability of Contractor hereunder.

(d) Terms of Insurance. Insurance required shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than "A" as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as Contractor may deem to be reasonable for the Services. No such policies shall be cancelable except after thirty (30) days prior written notice to County. Contractor shall not do nor permit to be done anything that shall invalidate the insurance policies referred to in this section and Contractor shall immediately advise County in writing if a reduction in coverage or other modification of the insurance coverage occurs.

The policy described in (a) above shall be for the mutual and joint benefit and protection of Contractor and County. Such policies shall contain a provision that County, although named as an additional insured, shall nevertheless be entitled to recovery under such policy for any loss occasioned to it, its servants, agents, citizens, and employees by reason of negligence of Contractor. Such policy shall be written as a primary policy not contributing to and not in excess of coverage which County may carry.

(e) Other Insurance. Contractor shall procure and keep in force during the term of this Agreement workers' compensation and such other insurance as may be required by any law, ordinance or governmental regulation.

(f) Copies of Certificates. Prior to commencement of work, Contractor shall furnish to County certificates of insurance policies evidencing the required coverage. If a policy ends during the term of this agreement, the Contractor shall forward new certificates of insurance showing continuity of coverage.

(g) Sub-Contractor Insurance. Contractor agrees to insert the substance of these insurance requirements in all contracts with sub-Contractors. Furthermore, County will hold Contractor responsible in the event any sub-Contractor fails to have adequate insurance.

(h) Variations. County reserves the right to approve variations in the above requirements upon request of Contractor if, in County's opinion, such variations do not substantially affect County's interests.

9. Indemnification. Contractor covenants and agrees to indemnify, defend (subject to the limit of obligation defined below), save, and hold harmless the County, the Board and its agents and employees from and against any and all claims, damages, losses, injuries and expenses, including attorney's fees, litigation, judgments, damages, claims and demands of any kind whatsoever but only to the extent caused by the negligent acts, errors and omissions of the Contractor or any sub Contractor for which it is legally responsible, or any of their respective employees and agents, on a comparative fault basis in accordance with C.R.S. 13-21-111.5(6) in connection with, Contractor's services pursuant to this Agreement. Defense obligation under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of the Contractor's actual liability obligation hereunder.

10. County Responsibilities. In addition to such responsibilities as may be set forth in this Agreement, County shall have the following specific responsibilities:

Provide Contractor with access to all pertinent County records, documents, books, manuals, regulations, ordinances, resolutions or other resources requested by Contractor that are relevant to the task.

Provide Contractor with access to County staff and officials for consultation purposes, as may be necessary to provide the Services.

11. Amendments. This Agreement may not be modified or amended, and no waiver of any terms, conditions, rights or remedies hereunder, shall be binding upon any party hereto without the prior written consent of both parties hereto. Written consent on behalf of the County is only valid if executed by the Board of County Commissioners. A waiver of any term or provision shall not be construed to be a waiver of any other term or provision. Specifically, but not by way of limitation, the sub-Contractors, the individual staff members of the Contractor, and their respective responsibilities, all as set forth in the Scope of Services, shall not be changed without the prior written consent of County. Any written amendments to this Agreement shall become part of this Agreement.

12. Termination. This Agreement may be terminated by either party, with or without cause, upon ten (10) days prior written notice to the other party. In the event of termination by County, other than for reason of default by Contractor under this Agreement, County shall be liable to pay Contractor all compensation earned up to the date of termination in accordance with the Scope of Services. Notwithstanding the above, Contractor shall not be relieved of liability to County for damages sustained by County by virtue of any default by Contractor under this Agreement.

13. Assignment. Neither party may assign this Agreement without the express written consent of both parties. The independent Contractor has no authority to enter into contracts or agreements on behalf of the County. This agreement does not create a partnership between the parties.

14. Notices. All notices, consents and communications required under this Agreement shall be in writing and shall be deemed effective when hand delivered, when sent by certified mail, return receipt requested, or when sent by electronic communication (facsimile), or when sent by electronic mail, and correctly addressed as follows:

If to County: Keith Laube, P.E., Public Works Director
Montrose County
63160 LaSalle Road
Montrose, CO 81401
Telephone: 970-252-7001
Email: klaube@montrosecounty.net

If to Contractor: *Name of Company*
Name of individual
Address
Telephone:
Email:

Mailed notices will be deemed given three business days after the date of deposit in a regular depository of the United States Postal Service, and e-mail notices will be deemed given upon transmission, if during business hours, or the next business day. Either party can change its address for notice by notice to the other in accordance with this paragraph.

15. **Benefit.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their successors and assigns.

16. **Governing Law.** This Agreement shall be governed and construed in all respects and the rights of the parties hereto shall be determined in accordance with the laws of the State of Colorado. Any suits or claims arising out of this Agreement shall be filed in Montrose County, Colorado.

17. **Compliance with Laws.** In performing the services hereunder, Contractor shall ensure that its employees and sub-Contractors comply with all applicable laws and regulations.

18. **Severability.** If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions never had been inserted in this Agreement.

19. **This Is Not An Exclusive Contract.** County may, at its sole discretion, contract with other entities for work similar to that to be performed by the Contractor hereunder. Contractor may contract to perform similar work for others, and is not expected to work exclusively for County. IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract effective on the date first above written.

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF MONTROSE, COLORADO**

By: _____
Sue Hansen, Chair

Attest: _____
Deputy Clerk and Recorder

CONTRACTOR:

By: _____

Printed name

Title: _____