

**AN AGREEMENT BY AND BETWEEN THE CITY OF STEAMBOAT SPRINGS, A MUNICIPAL CORPORATION, AND _____ FOR _____
IN STEAMBOAT SPRINGS, COLORADO**

SECTION 1 - PARTIES

The parties to this Agreement are the City of Steamboat Springs, A Municipal Corporation, hereinafter referred to as the "City", and _____, hereinafter referred to as the "Contractor".

SECTION 2 - RECITALS AND PURPOSE

- 2.1 The City desires to engage the Contractor for the purpose of _____.
- 2.2 The Contractor represents that it has the special expertise and background necessary to provide the City with the services.

SECTION 3 - SCOPE OF SERVICES

The Contractor agrees to provide the City with the specific professional services as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 4 - COMPENSATION

- 4.1 The City shall pay the Contractor for services under this agreement a total not to exceed the amounts set forth in Exhibit "B" attached hereto and incorporated herein by this reference. Such amounts shall be inclusive of all costs of whatsoever nature associated with the Contractor's efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No hourly charges shall exceed the hourly rates identified in Exhibit "B". The scope of services and payment therefore shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.
- 4.2 The Contractor shall submit monthly a detailed invoice to the City describing the professional services rendered. The invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the month, the hours worked by employee, and the hourly rate charged for that work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefore are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefore. Payment shall be made for work performed in proportion to the percentage of the task completed.

SECTION 5 - PROJECT REPRESENTATION

- 5.1 The City designates _____ as the responsible City staff member to provide direction to the Contractor during the conduct of the project. The

Contractor shall comply with the directions given by _____.

5.2 The Contractor designates _____ as the Project Manager. The City may rely upon the guidance, opinions, and recommendations provided by the Contractor and its representatives. Should any of the representatives be replaced, particularly _____, and such replacement require the City or the Contractor to undertake additional reevaluations, coordination, orientations, etc., the Contractor shall be fully responsible for all such additional costs and services.

SECTION 6 - TERM

The Contractor's services under this Agreement shall commence on _____ 2003 and shall be completed by no later than _____, 2003.

SECTION 7 - NON-APPROPRIATION

Each party hereto agrees that the revenues and expenditures hereunder shall constitute current expenditures and revenues payable and receivable in the fiscal years for which funds are appropriated for the payment thereof. The obligations of the City under this agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation or any obligation payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or payable from any funds other than funds appropriated for the payment of current expenditures. No provision of this agreement shall be construed to pledge credit or to create a lien on any class or source of the City's monies.

SECTION 8 - INSURANCE

8.1 The Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by the Contractor to maintain such continuous coverage.

8.1.1 Worker's Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.

8.1.2 General Liability insurance 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 include the City of Steamboat Springs, its officers and its employees, as additional insured, with primary coverage as respects the City of Steamboat Springs, its officers and its employees, and shall contain a severability of interests provision.

8.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) per person in any one occurrence and SIX HUNDRED THOUSAND DOLLARS

(\$600,000.00) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000.00) per occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall include the City of Steamboat Springs, its officers and its employees, as additional insured, with primary coverage as respects the City of Steamboat Springs, its officers and its employees, and shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Contractor providing services to the City under this contract.

- 8.1.4 Professional Liability coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
- 8.2 A certificate of insurance shall be completed by the Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City's Internal Services Director prior to commencement of any services under the contract.
- 8.3 The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity act, 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

SECTION 9 - INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the work to be performed under this contract, if such injury, loss, or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the Contractor or any officer or employee of the Contractor. The obligations of this Section 9 shall not extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

SECTION 10 - QUALITY OF WORK

Contractor's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of professional services of a similar nature in the Denver metropolitan area.

SECTION 11 - INDEPENDENT CONTRACTOR

Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent Contractors and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the City as to end results of the work only. **As an independent contractor, Contractor is not entitled to**

workers' compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any monies earned or paid pursuant to this contract.

SECTION 12 - ASSIGNMENT

Contractor shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

SECTION 13 - DEFAULT

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

SECTION 14 - TERMINATION

14.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by an action or omission of the other party by giving the other party written notice at least fifteen (15) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Contractor will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth in Exhibit "B", and upon such payment, all obligations of the City to the Contractor under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

SECTION 15 - INSPECTION

The City and its duly authorized representative shall have access to any books, documents, papers, and records of the Contractor that are related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

SECTION 16 - CONSTRUCTION OF CONTRACT DOCUMENTS

In the event there is a conflict between a provision of this Agreement and a provision of any of the Contract documents, the provisions of this Agreement shall prevail.

SECTION 17 - ENFORCEMENT

In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

SECTION 18 – RIGHTS IN DATA, REPORTS, DOCUMENTS AND COMPUTER SOFTWARE

Any software, research, reports, studies, estimates, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Agreement shall be the exclusive property of the City and all such materials shall be delivered to the City by the Contractor upon completion, termination, or cancellation of this Agreement. Contractor may, at its own expense, keep copies of all its writing for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Agreement without prior written consent of the City; provided, however, that Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use written works.

SECTION 19 - COMPLIANCE WITH LAWS

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

SECTION 20 - INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

SECTION 21 - EQUAL OPPORTUNITY EMPLOYER

- 21.1 Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.
- 21.2 Contractor shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

SECTION 22 - SEVERABILITY

Any provision of this Contract which is determined to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and remaining provisions shall remain in full force and effect.

SECTION 23 - UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS

Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Contract or (b) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

SECTION 24 - VERIFICATION REGARDING ILLEGAL ALIENS

Contractor has verified or attempted to verify through participation in the basic pilot program of the state of Colorado that Contractor does not employ any illegal aliens or Contractor verifies that Contractor has not been accepted into the basic pilot program prior to entering into this Contract. Contractor further verifies that if Contractor has not been accepted in to the basic pilot program of the state of Colorado, Contractor will apply to participate in the basic pilot program of the state of Colorado every three months until Contractor is accepted or this Contract is completed, whichever is earlier. [CRS 8-17.5-102(2)(b)(I).]

SECTION 25 - LIMITATION REGARDING BASIC PILOT PROGRAM

Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while performing this Contract. CRS 8-17.5-102(2)(b)(II). See attached certification sheet.

SECTION 26 - DUTY TO TERMINATE A SUBCONTRACT; EXCEPTIONS

If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien:

- (a) notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- (b) terminate the subcontract with the subcontractor if, within three days of receiving notice that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien. CRS 8-17.5-102(2)(b)(III)(A) & (B).]

SECTION 27 - DUTY TO COMPLY WITH STATE INVESTIGATION

Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5). CRS 8-17.5-102(2)(b)(IV).]

SECTION 28 - DAMAGES FOR BREACH OF CONTRACT

In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Contractor's breach of any paragraph numbered twenty-three (23) through twenty-seven (27) inclusive, Contractor shall be liable for actual and consequential damages to the City.

SECTION 29 – LAWFULLY PRESENT IN THE UNITED STATES

All Contractors eighteen years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits. [CRS 24-76.5-101] Contractor shall sign the attached affidavit affirming lawful presence in the United States and shall provide proof in the one of the forms indicated on the attached affidavit. [CRS 24-76.5-103]

For an individual who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, referred to in this section as the "SAVE program", operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section. [CRS 24-76.5-103 (7)]

Dated this _____ day of _____, 2009.

CITY OF STEAMBOAT SPRINGS,
A Municipal Corporation

Jon B. Roberts
City Manager

ATTEST:

Julie Franklin
City Clerk

CONTRACTOR

Name
Title

ATTEST:

Name
Title

