

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of this ___ day of _____, _____, by and between the City of Delta, State of Colorado, hereinafter referred to as "City" and _____, hereinafter referred to as "Professional."

WITNESSETH

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. SCOPE OF PROFESSIONAL SERVICES

The Professional agrees to provide services in accordance with the Scope of Professional Services and Fee Schedule attached hereto as Exhibit "A" and incorporated herein by this reference.

2. TIME OF COMMENCEMENT AND COMPLETION OF SERVICES

The services to be performed pursuant to this Agreement shall be initiated upon execution of this Agreement and completed with due diligence thereafter. Time is of the essence in this Agreement. Provided, however, that any payment obligations of the City for fiscal years after the year in which this Agreement is executed is subject to and contingent upon annual budgeting and appropriation by City.

3. PROFESSIONAL RESPONSIBILITY

The Professional shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, plans, reports, specifications, drawings and other services rendered by the Professional, and shall, without additional compensation, promptly remedy and correct any errors, omissions or other deficiencies. The Professional represents that it has the special expertise and background necessary to provide the City with the services listed on Exhibit A, and the City is expressly relying on the technical and professional expertise of the Professional.

4. COMPLETION

In consideration of the services to be performed pursuant to this Agreement, the City agrees to pay the Professional in accordance with the Provisions included in Exhibit "A", including

the not-to-exceed amount, if applicable. Monthly partial payments based upon the Professional's billings are permissible. The amounts of all such partial payments shall be based upon the Professional's progress in completing the work described in the Scope of Services and Fee Schedule attached hereto as Exhibit "A". Final payment shall be made following acceptance of the completed scope of work by the City.

5. CITY REPRESENTATIVE

The City hereby designates _____ as its representative and authorizes him to make all necessary and proper decisions with reference to this Agreement. All requests for contract interpretations, changes, clarifications or instructions shall be directed to the City representative.

6. INDEPENDENT CONTRACTOR STATUS

Professional and any persons employed or retained by Professional for the performance of work hereunder shall be independent contractors and not agents or employees of the City. Any provisions in this Agreement that may appear to give the City the right to direct Professional as to details of doing work or to exercise a measure of control over the work mean that Professional shall follow the direction of the City as to end results of the work only.

A. Professional is providing services independently and, therefore, is not an employee, partner, or joint venturer with City, and neither party has the authority to bind the other in any respect. Professional warrants to City that Professional understands the difference in status between an independent contractor and an employee, and Professional acknowledges and stipulates that Professional is neither eligible nor entitled to statutory or legal benefits or provisions of labor codes or other such similar statutes. The parties further agree that City shall not withhold from Professional unemployment insurance, social security, taxes or any other withholdings. Professional agrees to be responsible for all such payments required by law.

B. Taxes. Professional acknowledges and agrees to report all payments received from City on its federal and state income tax returns and is obligated to pay any and all resulting federal and state income tax obligations. Professional will indemnify City for any such payments required but not paid.

C. No Insurance or Benefits. Professional acknowledges and

agrees that it is not covered by any of City's insurance, including City's workers' compensation coverage, and is not entitled to any benefits otherwise provided to City's employees, including vacation pay, sick leave, retirement benefits, social security, disability benefits, employee health benefits of any kind, and workers' compensation benefits. During the Term of this Agreement, Professional will carry any insurance required by law, including, without limitation, professional liability insurance and general liability insurance.

7. PERSONAL SERVICES

It is understood that the City enters into this Agreement based on the special abilities of the Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Professional shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

8. ACCEPTANCE NOT WAIVER

The City's approval of drawings, designs, plans, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the Professional of responsibility for the technical accuracy of the work. The City's approval or acceptance of, or payment for, any services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

9. DEFAULT

Each and every term and condition 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 thereof.

10. REMEDIES

In the event a party has been declared in default hereof, such defaulting party shall be allowed a period of five (5) days within which to cure said default. In the event the default remains uncorrected, the non-defaulting party may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. In the event the Professional fails or neglects to carry out the work in

accordance with this Agreement, the City may elect to make good such deficiencies and charge the Professional therefore.

11. TERMINATION BY CITY

City may terminate this contract at any time for its convenience. Professional shall be paid pro rata for work completed to the date of termination pursuant to Exhibit "A".

12. INSURANCE

The Professional 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 the Professional pursuant to Section 13. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. The Professional shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 13 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional pursuant to this Section 13. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

A. Workmen's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.

B. Commercial General Liability insurance with a minimum combined single limits of FIVE HUNDRED THOUSAND DOLLARS

(\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND (\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate with respect to each of Professional's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Professional has no owned automobiles, the requirements of this Paragraph (C) shall be met by each employee of the Professional providing services to the City under this Agreement.

D. Professional malpractice insurance in the amount of \$500,000 per claim.

The policy required by Paragraph (B) above shall be endorsed to include the City and its officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the City, its officers or its employees, shall be excess and not contributory insurance to that provided by Professional. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Professional shall be solely responsible for any deductible losses under any policy required above.

The certificate of insurance required by the City shall be completed by the Professional's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior

written notice has been given to the City. The completed certificate of insurance shall be sent to the City.

Failure on the part of the Professional to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Professional to the City upon demand, or the City may offset the cost of the premiums against any monies due to Professional from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

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 agreement, the monetary limitations (presently \$350,000 per person and \$990,000 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.

13. INDEMNIFICATION

The Professional agrees to indemnify and hold harmless the City, its officers, employees and insurers, from and against all liability, claims, and demands, including costs of defense and 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 contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the omission, error, professional error, mistake, or negligence, of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arise out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional.

14. OPEN RECORDS

16. ADDITIONAL PROVISIONS

SPECIAL PROVISIONS UNDER C.R.S. SECTION 8-17.5-101.

Exhibit B must be executed certifying that the contractor complies with Colorado State Law concerning employment of and/or contracting with illegal aliens.

This Agreement is being executed and is to be performed in the State of Colorado and shall be enforced and construed according to the laws of the State of Colorado. Venue for any dispute arising out of this Agreement shall be in the District Court for Delta County, Colorado.

Should this Agreement become the subject of legal action to resolve a claim of default in performance by any party, including the collection of past due amounts, the non-prevailing party shall pay the prevailing party's reasonable attorneys fees, expenses, and court costs. All rights concerning remedies and/or attorneys fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CITY OF DELTA, COLORADO

By _____

ATTEST:

City Clerk

PROFESSIONAL

By _____

Reviewed by the Delta City Attorney this _____ day
of _____, _____.

City Attorney