

REQUEST FOR PROPOSALS

Design for Restoration of James Creek between Jamestown and the Left Hand Creek Confluence, Boulder County, Colorado

A CDBG-DR RESILIENCE PLANNING PROJECT

DATE: October 2nd, 2015

ISSUED BY: Lefthand Watershed Oversight Group

PROJECT NUMBER: LWOG-2015-01

PROPOSAL DUE DATE: October 21th, 2015

Design for Restoration of James Creek between Jamestown and the Left Hand Creek Confluence, Boulder County, Colorado

REQUEST FOR PROPOSALS

Contact: **Jessica J. Olson, Watershed Coordinator**
Lefthand Watershed Oversight Group
P.O. Box 1074
Niwot, CO 80544
lefthandwatershed@gmail.com
(o) 303-530-4200
(c) 303-746-7937

Pre-Proposal Meeting: A pre-proposal meeting will be held on October 14th at 1:00 PM to tour the restoration sites and answer any questions. All questions and responses will be documented and posted to all interested parties by October 16th. The purpose of this meeting is to discuss this Request for Proposals (RFP) and to provide assistance to consultants in the interpretation of this RFP or any of its terms and conditions. Interested parties should meet at 1:00 PM City of Boulder's Buckingham Park located at the intersection of Left Hand Canyon Drive and Old Stage Road, north of Boulder and west of Hwy. 36. (<https://bouldercolorado.gov/osmp/buckingham-picnic-area>). Please RSVP to Jessie Olson (contact information above.)

Written inquiry deadline: Written inquiries will be accepted until October 15th, 2015 and will be responded to in writing to all interested parties by email on October 16th, 2015.

Proposals must be received no later than: October 21st, 2015 at or before 4:30 p.m. local time. *Proposals received after this date and time may not be considered for award.* Proposals must be submitted in hard copy (3 copies) to Jessie Olson at the below Post Office box, or at the physical address of Left Hand Water District, 6800 Nimbus Road, Longmont, CO 80503. In addition, an electronic copy of the proposal must be submitted via email to Jessie Olson at lefthandwatershed@gmail.com.

Deliver proposals to:

Jessica J. Olson, Watershed Coordinator
Lefthand Watershed Oversight Group
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Niwot, CO 80544
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1.0 PROPOSALS REQUESTED FOR RESILIENCE PLANNING PROJECT

Lefthand Watershed Oversight Group has been awarded a grant from the Colorado Department of Local Affairs Community Development Block Grant - Disaster Recovery (CDBG-DR) Resilience Planning Program. This grant is intended to support planning and conceptual design to achieve multiple objectives and maximize community-wide benefit by further defining and developing prioritized watershed master plan projects. This grant has been awarded to develop a 30% design, supporting documents, and data for James Creek between Jamestown and the confluence with Left Hand Creek, and to review the restoration work already completed in Jamestown. Referring to the 2015 Left Hand Creek Master Plan (<http://lwog.org/wp-content/uploads/final-left-hand-creek-watershed-master-plan2.pdf>), the specific reaches to be included in this project are 16-1 and 16-2 for planning, and 18 for review.

Lefthand Watershed Oversight Group (LWOG, lwog.org) is a 501(c)(3) nonprofit guided by a Board of Directors representing diverse interests in the Watershed. The mission of LWOG is to assess, protect, and restore the quality of the Left Hand Creek watershed, and to serve as a hub of communication about watershed issues through the fostering of stakeholder collaboration. LWOG is an Equal Opportunity Employer and no otherwise qualified individual shall be subject to discrimination on the basis of race, color, religion, creed, national origin, ancestry, sex, age, sexual orientation (incl. transgender status), physical or mental disability, marriage to a co-worker and retaliation for engaging in protected activity (opposing a discriminatory practice or participating in an employment discrimination proceeding) in any phase of work with this organization.

The work to be performed under any contract issued as a result of this solicitation is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 70u (Section 3) which states that: 1) Employment, training, contracting and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to low and very low-income persons residing within the project area; and 2), Contracts for work in connection with the project be awarded to businesses which are located in, or owned substantially by persons residing in the project area. All CDBG-DR funded projects must, to the greatest extent feasible, comply with Section 3 when contracting for professional services.

Consultant selection will be made on the basis of a balance of adherence to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 70u (Section 3), qualifications and the cost of proposed services that provide best value to the project.

2.0 BACKGROUND AND PURPOSE

2.1 Description of Project Site and 2013 Flood Impacts

As described in the 2015 Left Hand Creek Watershed Master Plan (AMEC, 2015), Reaches 16-1, 16-2, and 18 along James Creek are located amongst the mountain reaches of Left Hand Creek Watershed and represent channel types that generally sit at the bottom of a tight valley, but have periodic pockets of floodplain. These floodplain pockets are important to the system as they present opportunities to dissipate flood energy, capture sediment and debris, and enhance the ecosystem for biota. The response of these reaches to flood is to strip material and destroy the channel in the confined portions, and subsequently deposit that material in the pocket. As a result, many of these pockets have accumulated feet of sediment and debris, acting as sediment source zones for the watershed. The channel through these pockets is perched, meaning that it sits higher than the adjacent floodplain and has great potential to capture, or move into, the deposited material in the pocket. Ecosystem ratings for these reaches were “fair” and “good” (AMEC, 2015).

2.2 Understanding

This project will provide a 30% design for James Creek reaches 16-1 and 16-2, and a technical review of completed restoration work in reach 18. LWOG seeks a qualified consultant(s) to assess and develop design documents that will inform future rehabilitation & resilience efforts. The planning process will build upon relevant prior analyses, utilize or develop modified hydrologic and hydraulic models, and assess the current and desired geomorphic condition to determine the most technically feasible and cost-effective resilient restoration alternative. This work will assess impacts to the stream corridors and develop 30% designs for mitigation of flooding and sedimentation, and the restoration of the stream corridors to a resilient condition.

Study tasks will include hydrologic, hydraulic, and geomorphic analysis, alternatives screening and analysis, development of 30% designs, and detailed cost estimation. 30% design standards as required by CDBG-DR are attached. The primary goal will be an actionable design that LWOG will be able to fundraise for and implement without significant further restoration design funding.

The James Creek restoration project will be implemented in a way that reduces redundancy and promotes coordination and continuity of restoration activities throughout the study areas. Design will be determined based on both site specific and management plan conditions as well as through coordination and input of project landowners and stakeholders. Every effort will be made to develop a design that achieves multiple objectives (e.g. enhanced recreation, educational components, economic development, etc.) while working within site constraints and specified budgets.

This project will also include considerable coordination with Boulder County, and Boulder County’s consultant working in James Creek. They are developing road repair design work adjacent to the project area (including embankments adjacent to the channel). In addition, Boulder County is responsible for developing restoration designs of upstream reaches (17 and 21 as defined in the

Master Plan). The design should be compatible with both the road repairs and the design of the upstream reaches. Boulder County's existing design 15-30% design sets are available upon request.

3.0 PROJECT CONSIDERATIONS

The end result will be completion of a restoration design that successfully incorporates the following considerations.

3.1 Hydrologic, Physical, and Structural Considerations

- Transportation and utility corridor protection;
- Channel stabilization, relocation, and/or reconfiguration;
- Strategies that include multi-objective function;

3.2 Recreation Considerations

- Recreation improvements, including fishing, and/or infrastructure and utility maintenance and access development on existing public properties or private properties that may or may not have a public easement in place for such uses identified here;

3.3 Biological and Environmental Considerations

- Upland and bank erosion mitigation along the stream corridors;
- Strategies that enhance water quality by minimizing inflows of nutrients, metals, chemicals and sediment into the streams;
- Aquatic and terrestrial wildlife habitat improvement/restoration, including but not limited to increased channel complexity, low flow channel improvements, wetland and riparian restoration, reconnecting the river to floodplain, and any enhancement of habitat to potential endangered habitats.

3.4 Flood Mitigation Considerations

- Strategies that reduce the impact of future flooding to nearby and downstream infrastructure;
- Strategies that enhance floodplain capacity, or accomplish floodplain preservation/restoration and flood control; and
- Strategies to stabilize, remove or reduce the impact of debris.

3.5 Resiliency Considerations

Develop strategies that create resilient river corridors. Resilience is defined as having characteristics that lessen or limit catastrophic damage and allow for speedy recovery when disasters do occur. The intent of resilience strategies is NOT to avoid or resist all damage, but to bend where appropriate and recover quickly.

4.0 SCOPE OF WORK

4.1 INTRODUCTION AND BACKGROUND

This project is funded by CDBG-DR funds. CDBG-DR resilience planning grants request 30% design as a deliverable. 30% design is defined as the development of a plan set to a level of sufficient detail to evaluate major design features prior to advancing to the design/build phase or construction drawings. DOLA acknowledges that individual components of a 30% design will vary depending on the reach/site and project goals; however, the CDBG-DR program dictates that 30% designs will provide clear direction for detailed project engineering and specifications to be completed in the future. In order for the projects to be eligible for funding in future CDBG-DR implementation grant cycles, the design work must 1) describe the science-based risk analysis it has employed in its design, and 2) identify resilience performance standards that can be applied to the projects upon completion of construction (See [Federal Register, Vol. 79, No. 106, June 3, 2015](#)). Complete descriptions of the 30% design guidelines as specified by CDBG-DR are available on our website www.lwog.org.

4.2 OBJECTIVES

Provide a 30% design that is based on the results provided by the Hydrology and Hydraulics, Sedimentation/Geomorphic, and Alternatives Analyses and that works to establish mitigation measures to reduce the impact of future flooding, provide for channel stabilization, and the protection and restoration of wetland areas and protection of aquatic and riparian habitat. Assign a detailed cost estimate and priority to each mitigation and restoration activity.

4.3 PROJECT TASKS

TASK 1: Assessment

The following is a list of items that should be included in the site assessment task, at a minimum but not limited to this list.

1A) Project Goals Statement

- Clear definition of project goals and objectives (Consultant will review and comment on the list of project goals provided by the Coalition).

1B) Site Conditions Assessment

- Discussion of context site from a landscape and watershed perspective
- Develop conceptual model that describes and illustrates the past, present and potential future conditions of the site from an eco-geomorphic perspective. Include description of desired trajectory with restoration. Refer to reference site if appropriate.
- Photo documentation (e.g., pre-project, pre-flood, post-flood, historical)
- Basemap development including but not limited to:
 - Political/property boundaries
 - Infrastructure and utility locations
 - Topographic survey (1' contour development from LIDAR and traditional survey methods)
 - Eco-geomorphic units of existing and proposed future conditions
 - Habitat or vegetation map of existing and proposed future condition

- Supporting GIS/CAD layers

1C) Hydrology and Hydraulics

- Watershed hydrology - evaluated for peak, low, and pertinent stage/duration flows as necessitated by the design goals. Data obtained from CWCB, gage data, StreamStats, Boulder County and/or other appropriate sources. Consultant will work with LWOOG and Boulder County to use best available data.
- Hydraulic model development for existing conditions. Water surface elevations, stream velocity, shear stress and stream power shown in relation to stage and discharge through the reach. Hydraulic modeling should be developed on publically available and non-proprietary software that will allow for any follow-up studies or projects to utilize the same files with little or no software acquisition fees.
- Hydraulic model development for proposed alternatives. Water surface elevations, stream velocity, shear stress and stream power shown in relation to stage and discharge through the reach.
- No-rise analysis for work within regulatory floodways or other areas of local applicability.

1D) Geomorphology

- Identification of existing and proposed stream style or type, bedform, planform, and channel evolution stage. Discussion of erosive or depositional processes and analysis of cause(s) of instability
- Channel and floodplain dimensions including low-flow, bankfull, and various flood stages
- Reference reach data (if appropriate) and/or description of desired geomorphic conditions post-restoration
- Identification of vertical and lateral channel controls
- Inclusion of Erosion Hazard Zone if mapped during the Master Plan process

1F) Aquatic, and Terrestrial Species Habitat Requirements

- Species of concern and habitat needs evaluation
- Fish passage requirements (burst speeds, depth, velocity, cover)
- Define seasonally appropriate floodplain, lateral and longitudinal connectivity requirements
- Riparian vegetation target communities, including typical list of species per community.
- Evaluation of existing and potential invasive species
- Consideration of construction windows for sensitive species
- Consult with Colorado Parks and Wildlife

TASK 2: Alternatives Analysis

- Preliminary/Concept plans with appropriate alternatives (2-3) given the site conditions and restoration potential
- Define evaluation criteria and decision-making process
- Evaluation of alternatives and selection of preferred alternative.

TASK 3: 30% Project Design

- Typical channel dimensions including low-flow, bankfull, and various flood stages as well as typical floodplain grading/roughness
- Channel alignment and river corridor/floodplain alignment
- Channel profile
- Identification of project limits
- Location of in-channel and floodplain structures
- Location of fish passage structures and features
- Other elements as identified in the project goals and multiple objectives, as applicable
- Preliminary engineering typical drawings for all structure types- preliminary size calculations, use, and location explained

Task 4: Draft Planting Plan

- Identify existing/on-site species and desired plant communities
- Identify potential revegetation areas, and species list with an estimate of quantities.
- Identify revegetation methods including suggestions if amendments and/or other supporting supplies are needed.
- Identify locations (nurseries, and seed/propagule collection sites) for appropriate source material
- Discussion of any necessary maintenance activities
- Develop preliminary re-vegetation timeline

Task 5: Draft Monitoring and Adaptive Management Strategy

- Identify parameters that will be monitored, methods that will be used (including reference to the protocol), short and long term targets/success criteria, and thresholds that would trigger a management response, and type of management action required (include this information as a table).
- Draft timeline and responsibilities table (including pre-project monitoring responsibility)
- Monitoring map identifying proposed sites
- Discussion of on-going maintenance activities that may be required including weed control.
- Description of how parameters monitored will provide information to support understanding of success/failure of project goals and/or aid in adaptive management and maintenance of the project.

TASK 6: Opinion of Probable Cost

- Itemized with specific cost breakdown (provide range of expected costs - low/high/median)
- Budget narrative

Task 7: Preliminary Permit Work (identification of all permits needed - suggestions/materials/indexing for how to develop the final permit request)

- USACOE 404
- CDPHE stormwater management plan and permit

- All Boulder County permits
- Roadway permits
- Other local and state permits as appropriate
- *Environmental Review including NEPA/SHPO (will be done by DOLA contractor AGEISS)*

TASK 8: Proposed Timeline

- Proposed timeline with key milestones (Include identification of steps to bring project to completion)

4.4 PROJECT DELIVERABLES

- Community Engagement Materials- Draft and final project goals, PDFs of presentations materials, and any other materials developed as part of design charrettes or other community engagement activities. LWOOG is expected to co-host these events and assist in coordination.
- Preliminary Basis of Design Report -- explains and documents hydrology, hydraulics, sediment transport, geomorphic features, and ecology. Includes a site conceptual model that describes and illustrates the past, present, and expected future conditions from an eco-geomorphic perspective. Provides support for the selection, layout, and size of each design component. Typically includes:
 - Site conceptual model describing past, present and potential future conditions from an eco-geomorphic perspective. Include description of desired trajectory with restoration.
 - Hydrology/Hydraulics data: preliminary models, results, and supporting electronic files (models, AutoCAD, and GIS)
 - Geomorphological data: cross-sections, pebble counts, photos
- 30% Plan Set:
 - Existing conditions plan (base map)
 - Proposed conditions plan
 - Channel profile and cross sections
 - Detailed drawings

Additional Supporting Documents including:

- Draft Planting Plan: Planimetric map, spreadsheet estimate of plants and quantities, typical cross section showing expected vegetation trajectory.
- Permit Plan: Summary of permits, contacts, and estimated schedule
- Draft Monitoring and Adaptive Management Plan: monitoring parameters/methods/frequency/responsible party timeline, suggested monitoring locations map, description of maintenance activities.
- Opinion of probable costs
- Next steps

Memo Discussing the Review of Reach 18 design and construction:

- Discuss research, data, and engineering work for James Creek Reach 18 (Town of Jamestown) to ensure coordination of potential design solutions, including a list of recommendations of how future design and construction and/or maintenance could be improved.

5.0 CONDITIONS OF REQUEST FOR PROPOSALS

All proposals must comply with the following conditions:

1. A representative of your company who has contractual authority must sign the proposal. Only one proposal will be accepted from any one company serving as a prime consultant. Sub-consultants to the prime consultant may be included in the proposal of more than one consulting company.
2. All proposals must be complete, comprehensive, and professional, but it is not necessary to include expensive displays or excess materials. All costs incurred in the preparation and presentation of the proposal shall be entirely borne by the prospective consultant and any sub-consultants, and shall not be reimbursable by LWOG.
3. Prospective consultants shall submit three paper copies to the address listed on this RFP as well as an electronic copy of their proposal via email to lefthandwatershed@gmail.com. Electronic proposals should be a single PDF document and be less than 10MB in size.
4. All proposals shall be submitted in full no later than October 21st. Any proposal arriving after the deadline will not be included in the selection process.
5. All questions and inquiries relating to this proposal should be addressed to Jessie Olson using the contact information provided above.
6. A selection committee will review the proposals received and select the consultant it believes is the most qualified to furnish the desired professional services based on the criteria listed in Section 8, below.
7. The selected consultant will be required to execute a contractual agreement with LWOG is substantially the same form as found in Appendix B. If you cannot accept the agreement language as is, please include within your proposal the items you cannot accept and the language you propose for substitution. The contract term will be generally through December 31, 2016.
8. LWOG reserves the right to reject any or all proposals.

6.0 ANTICIPATED SCHEDULE

Pre-proposal meeting (not mandatory): October 14th at 1:00 PM

Deadline for inquiries: October 15th

Inquiry responses provided: October 16th

Last day for submitting proposal: October 21st at 4:30 PM

Proposals reviewed by the selection committee: October 22nd

Interviews: October 26th

Consultant Selection: November 3rd

Execution of Agreement: November 9th

Commence Work: Immediately following execution of agreement.

7.0 PROPOSAL ELEMENTS AND FORMAT

The response to this RFP, for items A-H below, is limited to a maximum of 25 single sided pages, excluding front and back covers and the Cover Letter, using no smaller than 11-point font and no less than 0.5" margins. Each response should be complete yet concise and contain only the elements shown below. Please avoid submittal of extraneous and unnecessary information.

A. Cover Letter

A one page cover letter shall be provided that expresses the consultant's interest to be considered and identifies the consultant's primary contact person. Please provide the name, telephone number, fax number, and email address of the primary contact person. The cover letter shall be signed by a person who has contractual authority with the consulting company, such as a principal, partner, senior manager, or officer of the consulting company.

B. Project Team

Describe the consultant's team for the project. Please also list any proposed sub-consultants (i.e., surveying, ecological, etc.). For the key project team members, which as a minimum should include the consultant's Project Manager and/or Project Engineer(s), please include:

- A brief description of the individual's background and experience (brief resume);
- Each individual's years of relevant experience;
- A description of each individual's relevant experience to Left Hand Creek Watershed; and
- The role each individual will take on the project.

C. Relevant Project Experience

Please provide relevant project experience per the guidelines given below in the general categories of stream restoration master planning, analyzing and designing stream channel modifications, stream stabilization improvements, stream and floodplain restoration, stream hydraulics, floodplain modeling and mapping, stream ecology and biological assessments, fluvial geomorphology of similar stream systems, and managing public involvement processes for watershed projects. Please do not provide more than three relevant projects for each category. Projects can be listed for multiple categories if significant work encompassed that category. Please emphasize local experience within Left Hand or neighboring Watersheds with similar conditions.

D. References

List of clients for which the consulting company performs similar work (include contact information for each client, with a maximum of ten clients listed).

E. Understanding of RFP and Project Approach

Describe your approach for the requested services and your proposed technical process for a timely and comprehensive completion of this project.

F. Proposed Work Schedule

Provide a proposed work schedule with milestone deliverables, and dates, with a completion date according to details listed in “Contract Term” above.

G. Fee Proposal

Provide an itemized fee and schedule proposal using a table format that coincides with the Scope of Work and the Consultant’s approach to the project. Provide a table of billing labor rates for all labor categories anticipated to be used on this project.

H. Workload Capacity

Due to the unique nature of flood recovery work in a natural disaster of this significance, sufficient consultant workload capacity is critical for this contract. The consultant’s ability and commitment to perform this work in the available time frame is essential. Therefore, please list your proposed project team’s current workload capacity and commitments in addition to its anticipated capacity for November, 2015 through November, 2016. Please provide the percentage of time that each project team member would be committed to this project. Please state your team’s commitment to accomplish this project in what’s acknowledged to be a tight time frame.

8.0 SELECTION PROCESS

The consultant selection process is anticipated to follow the previously described schedule. Upon receipt of proposals, the source selection committee will individually review and score each proposal. The scores will be compiled in order to rank the applicants from highest to lowest. The top ranking consulting company(s) will be selected to enter into a professional services agreement with LWO, subject to the approval of the designated selection committee of the Grantee. Interviews will be held with top-scoring consulting companies if necessary.

The proposals will be evaluated using the following general criteria with a maximum of 100 points available:

Project Team – project manager, key team members, and the consulting company’s qualifications; defined responsibilities; key team member’s experience working together (continuity). **35 points**

Relevant Stream Restoration and Science-based Project Experience – previous experience by the project team analyzing and designing stream channel modifications, stream bank stabilization, stream hydraulics, geomorphology, stream restoration, floodplain restoration, floodplain modeling and mapping, ecological and biological assessments, demonstrated understanding of floodplain regulations, previous flood recovery work, understanding of the unique permitting requirements of river related

construction projects, and previous experience working on relevant Colorado Front Range Watersheds.
25 points

Relevant Project Planning and Public Facilitation Experience – Efficiency with small and large projects alike, demonstrated responsiveness to short time frames, complex stream projects, and demonstrated experience with consensus building and facilitating multiple and diverse stakeholders and the public resulting in a cooperative planning processes and the building of strong community coalitions; adherence to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 70u (Section 3). **25 points**

Workload Capacity – Demonstrated workload capacity and commitment made to the objectives of this master planning project. **15 points**

9.0 CONTRACT TERMS

Please see Appendix B: Form Contract for Professional Consulting Services for the sample contract.

9.1 Inquiries

Prospective offerors may make written inquiries by e-mail before the written inquiry deadline concerning this RFP to obtain clarification of requirements. There will be an opportunity to make inquiries during a pre-proposal conference, if requested. No inquiries will be accepted after the deadline.

Inquiries regarding this RFP [LWOG-2015-01] should be referred to: Jessica J. Olson,
Jessica J. Olson, Watershed Coordinator
Lefthand Watershed Oversight Group
P.O. Box 1074
Niwot, CO 80544
lefthandwatershed@gmail.com
(o) 303-530-4200
(c) 303-746-7937

9.2 Insurance

The successful contractor will be required to provide insurance as defined in Appendix A: Form Contract for Professional Consulting Services.

9.3 RFP Cancellation

LWOG reserves the right to cancel this RFP at any time, without penalty.

9.4 Negotiation of Award

In the event only one (1) responsive proposal is received by LWOG, LWOG reserves the right to negotiate the award for the services with the offeror submitting the proposal in lieu of accepting the proposal as is.

9.5 Contract

The consultant will enter into a contract with LWOG for this work. The contract will set forth the agreement and responsibilities as outlined in this RFP, terms of payment, and terms of contract termination, among other items.

9.6 RFP Response/Material Ownership

All material submitted regarding this RFP becomes the property of LWOG, unless otherwise noted in the RFP.

9.7 Incurring Costs

LWOG is not liable for any cost incurred prior to issuance of a fully executed contract and/or a purchase order.

10.0 MATERIALS AVAILABLE FOR REIVEW

The following materials are available on LWOG's website www.LWOG.org:

- Left Hand Watershed Master Plan (AMEC, 2014)
- Completed 15-30% designs of James Canyon as developed by Boulder County
- 30% design guidance developed by DOLA.

APPENDIX A: SAMPLE CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

Design for Restoration of James Creek between Jamestown and the Left Hand Creek Confluence, Boulder County, Colorado

THIS AGREEMENT is made this ____ day of _____, 2015 by and between the [GRANTEE] (the "[GRANTEE]") and _____, (the "Consultants").

RECITALS

WHEREAS, The Grantee desires to obtain consulting services during the period from _____ through _____, in connection with the procurement of the [PROJECT NAME] (the "Project").

WHEREAS, The Consultants provide professional consulting services to the public and are fully qualified to perform the consulting services needed by Grantee in connection with the Project.

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the State of Colorado Department of Local Affairs (DOLA) is authorized by the federal Department of Housing and Urban Development (HUD) to provide State of Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as CDBG-DR funds) to units of local government selected to undertake and carry out certain programs and projects under the State of Colorado Community Development Block Grant Disaster Recovery Program in compliance with all applicable local, state, and federal laws, regulations and policies.

WHEREAS, the Grantee as part of its CDBG-DR grant agreement with the Consultants under contract number CDBG-DR _____, has been awarded CDBG-DR funds for the purposes set forth herein.

WHEREAS, the Scope of Work included in this contract is authorized as part of the Grantee's approved CDBG-DR project.

WHEREAS, it would be beneficial to Grantee to utilize the Consultants as an independent entity to accomplish the Scope of Work as set forth herein and such endeavor would tend to best accomplish the objectives of the local CDBG-DR project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein, and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

COVENANTS AND CONDITIONS

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the Grantee and the Consultants agree as follows:

I. SCOPE OF SERVICES

A. General.

The Consultants shall serve as the Grantee's professional advisors and representatives in connection with the Project and shall consult with and advise the Grantee as it reasonably requires during the term of this Agreement. As a general matter, they shall communicate with the Grantee about the Project only through _____, who has been assigned by the Grantee to the Project as Project Manager.

B. Specific Duties and Responsibilities

In connection with the Project, the Consultants shall undertake the duties and responsibilities and provide the services described in Attachment A, captioned "Scope of Work" which consists of ____ pages and is attached hereto and made a part hereof.

C. Extra Services.

Upon the express, written request of the Grantee, the Consultants shall perform services beyond the scope of the duties and responsibilities described in Attachment A. The Consultants shall charge the Grantee for such extra services, if any, in accordance with the provisions of Subsection IV.B.

D. Documents.

All work notes, reports, documents, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed specifically for the Project are and shall remain the sole and exclusive property of the Grantee. The Consultants, upon request by the Grantee, agree to provide documents or any other materials developed specifically for the Project in an electronically editable format (for example, Word or WordPerfect). The Consultants shall not provide copies of any material prepared under this Agreement to any other party without the prior written consent of the Grantee.

II. COOPERATION BY THE GRANTEE

The Grantee will thoroughly and as expeditiously as reasonably possible consider all reports, sketches, drawings, specifications, proposals, and other documents prepared by the Consultants, and it shall inform the Consultants of all decisions that it has made which would affect the Consultants' work under this Agreement as soon as reasonably feasible. The Grantee will inform the Consultants of any pending change or revision to the Project as soon as reasonably feasible. The Grantee will provide the Consultants with current, updated plans, if any, for the Project as soon as reasonably feasible after they are produced.

III. TIME OF PERFORMANCE

The Consultants' services are anticipated to be provided over the course of _____ months, occurring between _____ and _____. A detailed project schedule is presented in Attachment A. However, it is understood by the parties that the actual schedule may differ from what is anticipated. The Grantee shall advise the Consultants in writing of each change in the schedule as soon as feasible after it becomes aware thereof, and the Consultants shall thereafter adjust the timing of their services so as to comply with the revised schedule. The Consultants shall provide their services at such times as are necessary in order to promote the smooth progress of the Project.

IV. AMOUNT OF PAYMENTS TO CONSULTANTS

A. Aggregate Limits.

Unless services in addition to those specified in Section I are subsequently agreed upon in writing, the total amount paid by the Grantee to the Consultants pursuant to this Agreement shall not exceed the sum of _____ Dollars (\$_____).

B. Specific Charges.

The Consultants' primary employees who will work on the Project and their billing rates are set forth in Appendix B, which consists of ____ page(s) and is attached hereto and made a part hereof. The Grantee will pay the Consultants on the basis of their time and direct expenses incurred in order to provide the services required by this Agreement.

I. The charge for time shall consist of the hourly rates for the Consultants' employees multiplied by the number of hours and parts of hours each such employee works directly on the Project. The time each such employee must spend traveling in order to provide the services required by this Agreement will be charged in the same way as his or her other time spent working on the Project. It is understood by the parties that the rates include a surcharge intended to cover profit and overhead, including, but not limited to, taxes, employee benefits, administrative support staff and supplies, office rent and utilities, and insurance. The Consultants' primary employees who will work on the Project and their billing rates, which include the surcharge, are set forth in Attachment B.

2. Direct expenses incurred by the Consultants in connection with the Project shall be charged to the Grantee on the basis of the expenses actually incurred by the Consultants, without any additional surcharge added by the Consultants. Such direct expenses shall include printing costs and long-distance telephone charges. Any direct or indirect expenses incurred by the Consultants while working on the Project that are in common with work on other projects for other clients shall be prorated among all those clients according to the benefit derived by each client. The Grantee shall not pay for the expense of the Consultants' owned or hired automobiles used in the connection with the Project, which shall be considered a part of the Consultants' hourly rates.

V. RECORDS

The Consultants agree to maintain such records and follow such procedures as may be required under the state's CDBG-DR Program and any such procedures as the Grantee may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultants for a period of five years after final audit of the Grantee of Grantee's CDBG-DR project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Grantee shall request a longer period of record retention.

The Grantee and other authorized representatives of the state and federal government shall have access to any books, documents, papers and records of the consultants which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

The Grantee and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultants involving transactions related to this local program and contract.

VI. TIME OF PAYMENTS TO CONSULTANTS

The Consultants shall bill their charges to the Grantee periodically, but no more frequently than once a month. Each bill shall contain a statement of the time that the primary employees spent on the Project since the previous bill, a brief description of the services provided by each such employee and an itemization of direct expenses for each task.

VII. QUALIFICATIONS ON OBLIGATIONS TO PAY

Notwithstanding any other terms of this Agreement, the Grantee may withhold any payment (whether a progress payment or final payment) to the Consultants if any one or more of the following conditions exists:

- A. The Consultants are in default of any of their obligations under this Agreement.
- B. Any part of such payment is attributable to services which are not performed according to this Agreement. (The Grantee will pay for any part thereof attributable to services performed according to this Agreement).
- C. The Consultants have failed to make payments promptly to any third parties used in the services for which the Grantee has made payment to the Consultants.
- D. The Grantee, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Agreement. In such case, no additional payments will be due to the Consultants until the Consultants, at their sole cost, perform a sufficient portion of the Project or task so that the Grantee determines that the compensation then remaining unpaid is sufficient to complete the Project or task.
- E. No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Consultants of any of their obligations under this Agreement.

VIII. CONSULTANTS' DUTIES

- A. Abilities, Qualifications, Experience, and Best Efforts.

Notwithstanding anything to the contrary contained in this Agreement, the Grantee and the Consultants agree and acknowledge that the Grantee enters into this Agreement relying on the special and unique abilities of the Consultants to accomplish the Project. The Consultants accept the relationship of trust and confidence established between them and the Grantee by this Agreement. The Consultants covenant with the Grantee to use their best efforts. The Consultants shall further the interests of the Grantee according to the Grantee's requirements and procedures, according to the highest professional standards and in compliance with all applicable national, federal, state, municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.

- B. No Conflicts.

The Consultants represent, covenant, and agree that they have and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the Grantee. In case of any conflict between interests of the Grantee and any other entity, the Consultants shall fully and immediately disclose the issue to the Grantee and shall take no action contrary to the Grantee's interests.

C. Limitation on Public Statements and Lobbying Activity.

Consultants are retained to provide information and advice to the Grantee that includes confidential data, work product, and other privileged or confidential information that is protected under pertinent laws and Grantee policies. In order to maintain the fact and appearance of absolute objectivity, loyalty, and professionalism, Consultants shall not, without the prior written consent of the Grantee, do any of the following:

1. Disclose at any time information obtained as a result of this contractual relationship to any third party;
2. Lobby any Grantee agency on any pending matter while they are under contract to the Grantee;
3. Make any public statements or appear at any time to give testimony at any public meeting on the subject matters with regard to which Consultant is or was retained by the Grantee. To the extent that the Grantee provides written consent for the disclosure of information or authorizes the making of public statements, the Grantee may impose such conditions upon such disclosure or communications as it thinks appropriate, and Consultants agree to comply with those conditions. This provision shall not preclude Consultants from providing information to law enforcement officials in connection with any criminal justice investigation.

D. Quality of Services.

The Consultants represent, covenant, and agree that all of the services that they will furnish under this Agreement shall be of at least the standard and quality prevailing among highly competent professionals who perform work of a similar nature to the work described in this Agreement.

E. Accuracy of Work.

The Consultants represent, covenant, and agree that its work will be accurate and free from any material errors. The Consultants additionally represent, covenant, and agree that the planning for the Project will conform to all foreseeable uses thereof. Grantee approval shall not diminish or release the Consultants' duties, since the Grantee is ultimately relying upon the Consultants' skill and knowledge.

F. Duty to Warn.

The Consultants agree to call to the Grantee's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Consultants (by the Grantee or any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, Consultants shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the Grantee. Nothing shall detract from this obligation unless the Consultants advise the Grantee in writing that such data may be unsuitable, improper, or inaccurate and the Grantee nevertheless confirms in writing that it wishes the Consultants to proceed according to the data as originally given.

G. Attendance at Meetings.

The Consultants shall attend such meetings on the work required by this Agreement as the Grantee requires. The Grantee will give reasonable notice of any such requirement so that the Consultants may schedule and attend.

H. Efficiency.

The Consultants represent, covenant, and agree to furnish efficient business administration and superintendence and perform the services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the Grantee.

I. Books and Records.

The Consultants shall keep their books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Consultants shall make them available for the Grantee's inspection at all reasonable times. The Consultants shall retain such books and records for at least three years after completion of the Project.

J. Payment of Bills.

The Consultants shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

IX. SUSPENSION

If the Consultants fail to comply with the terms and conditions of this contract, or whenever the Consultants are unable to substantiate full compliance with provisions of this contract, the Grantee may suspend the contract pending corrective actions or investigation, effective not less than seven (7) days following written notification to the Consultants or its authorized representative. The suspension will remain in full force and effect until the Consultants have taken corrective action to the satisfaction of the Grantee and are able to substantiate their full compliance with the terms and conditions of this contract. No obligations incurred by the Consultants or its authorized representative during the period of suspension will be allowable under the contract except:

A. Reasonable, proper and otherwise allowable costs which the Consultants could not avoid during the period of suspension;

B. If upon investigation, the Consultants are able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed; and

C. In the event all or any portion of the work prepared or partially prepared by the Consultant is suspended, abandoned or otherwise terminated, the Grantee shall pay the Consultants for work performed to the satisfaction of the Grantee, in accordance with the percentage of the work completed.

X. TERMINATION

A. Termination for Breach.

This Agreement may be terminated by either party for a material breach of this Agreement by the other party not caused by any action or omission of the terminating party by giving the other party written notice at least three days in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach. In the event of such termination by either party, the Consultants shall promptly deliver to the Grantee all drawings, computer programs, computer input and output, analysis, plans, photographic images, tests, maps, surveys, and written materials of any kind generated in the performance of services under this Agreement up to and including the date of termination. If this Agreement is so terminated by the Consultants, they will be paid for all services rendered up to the date of termination, except as set forth in Section VI above. If this

Agreement is so terminated by the Grantee, the Consultants will be paid for all services rendered to the date of termination, except those services which, in the Grantee's judgment, constituted the grounds, in whole or in part, of the notice of termination, and except as set forth in Section VI, above. Upon such payment, all obligations of the Grantee to the Consultants under this Agreement shall cease.

B. **Termination for Convenience.**

In addition to the foregoing, this Agreement may be terminated by the Grantee for its convenience and without cause of any nature by giving the Consultants written notice at least seven days in advance of the termination date. In the event of such termination, the Consultants will be paid for all services rendered to the date of termination, except as set forth in Section VI, above, and upon such payment, all obligations of the Grantee to the Consultants under this Agreement shall cease. Furthermore, in the event of such termination, the Consultants shall promptly deliver to the Grantee all drawings, computer programs, computer input and output, plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of their services under this Agreement up to and including the date of termination.

XI. LAWS TO BE OBSERVED

A. **Compliance with Laws:** This contract is funded in whole or in part with CDBG-DR funds through the Grantee's Community Development Block Grant – Disaster Recovery contract [CDBG-DR P15-088] as administered by the Division of Local Government, Department of Local Affairs. Contractors are responsible for complying with those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe. The Consultants shall comply with all applicable laws, ordinances and codes of the state and local government and the Consultants shall save the Grantee harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

B. **Title VI of the Civil Rights Act of 1964:** Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

C. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, creed, religion, sex or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

D. **Age Discrimination Act of 1975, as Amended:** No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance. (42 U.S.C. 610 et. seq.)

E. **Section 504 of the Rehabilitation Act of 1973, as Amended:** No otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)

F. **Public Law 101-336, Americans with Disabilities Act of 1990:** Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

G. Section 3 of the Housing and Community Development Act of 1968 Compliance in the Provision of Training, Employment, and Business Opportunities:

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD and CTED issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.

3. The Consultants will send to each labor organization or representative of workers with which they have a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of their commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract, unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD and CTED issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant, or recipient, its consultants and subcontractors, its successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

XII. PERMITS AND LICENSES

The Consultants shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of their services under this Agreement.

XIII. PATENTED DEVICES, MATERIALS AND PROCESSES

The Consultants shall hold and save harmless the Grantee from any and all claims for infringement, by reason of the use of any patented design, device, material, process, or trademark or copyright and shall indemnify the Grantee for any costs, expenses, and damages, including court costs and attorney fees, which it might be obligated to pay by reason of infringement at any time during the prosecution or after completion of their services under this Agreement.

XIV. NO MULTIPLE FISCAL YEAR OBLIGATION

Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the Grantee's obligations under this Agreement are subject to annual appropriation by the Board of Directors of the Grantee. Any failure of the Grantee Board of Directors annually to appropriate adequate monies to finance the Grantee's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Consultants of any failure to appropriate such adequate monies.

XV. INDEPENDENT CONTRACTOR

The relationship between the Consultants and the Grantee is that of an independent contractor. The Consultants shall supply all personnel, equipment, materials and supplies at their own expense, except as specifically set forth herein. The Consultants shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the Grantee. No employee or officer of the Grantee shall supervise the Consultants. The Consultants are not entitled to workers' compensation benefits and are obligated to directly pay federal and state income tax on money earned under this Agreement.

XVI. PERSONNEL

The Consultants represent that they have, or will secure at their own expense, all personnel required in order to perform under this contract. Such personnel shall not be employees of, or have any contractual relationship to, the Grantee.

All services required hereunder will be performed by the Consultants or under their supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval of the Grantee. Any work or services subcontracted hereunder shall be specified in written contract or agreement and shall be subject to each provision of this contract.

XVII. INTEREST of Consultant and Employees

The Consultants covenant that they presently have no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of their services hereunder. The Consultants further covenant that in the performance of this contract, no person having such interest shall be employed.

XVIII. AUDITS and inspections

The Grantee, the State Auditor, and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG-DR project and this contract, by whatever legal and reasonable means are deemed expedient by the Grantee, the State Auditor and HUD.

XIX. INDEMNIFICATION

The Consultant shall comply with the requirements of all applicable laws, rules, and regulations in connection with the services of Consultant, and shall exonerate, indemnify, and hold harmless the Grantee, its officers, agents, and all employees from and against them, and local taxes or contributions imposed or required under the Social

Security, Workers' Compensation, and Income Tax Laws. Further, Consultant shall exonerate, indemnify, and hold harmless the Grantee with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Contract by Consultant. This shall not be construed as a limitation of the Consultant's liability under this agreement or as otherwise provided by law.

XX. INSURANCE

A. The Consultants agree to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

1. Workers' Compensation and Employers' Liability
State of Colorado: Statutory
Applicable Federal: Statutory
Employer's Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee

Waiver of Subrogation

2. Commercial General Liability
Bodily Injury & Property Damage General Aggregate Limit \$1,000,000
Personal & Advertising Injury Limit \$1,000,000
Each Occurrence Limit \$1,000,000

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

3. Professional Liability (errors and omissions)
Each Claim/Loss: \$1,000,000
Aggregate: \$1,000,000

Grantee may require that this coverage remain in place for one year after the project is complete.

4. Commercial Automobile Liability Limits
Bodily Injury & Property Damage Combined Single Limit \$1,000,000
Medical Payments per person \$ 5,000
Uninsured/Underinsured Motorist \$ 100,000

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

B. Coverage.

Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the Grantee or its insurers. All policies of insurance under this Agreement shall be provided by a reputable insurance company or companies qualified to conduct business in Colorado. The Grantee reserves the

right, but shall not have the duty, to reject any insurer which it finds to be unsatisfactory and insist that the Consultants substitute another insurer that is reasonably satisfactory to the Grantee. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Agreement and for the additional periods set forth herein and shall protect the Consultants, its agents, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of the Consultants, their agents, employees, and representatives in the performance of the services covered herein.

C. Additional Insureds.

All Insurance policies (except Workers Compensation and Professional Liability) shall include Grantee and its elected officials and employees as additional insureds as their interests may appear. The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.

D. Automobile Coverage.

Automobile insurance shall, without limitation, cover all automobiles used in performing any services under this Agreement.

E. Claims-Made Policies.

If coverage is to be provided on Claims Made forms, Consultants must refer policy to the Grantee Attorney's Office for approval and additional requirements. In the case of any claims-made insurance policies, the Consultants shall procure necessary retroactive dates, coverage and extended reporting periods to cover a period at least two years beyond the expiration date of this Agreement. This obligation shall survive the termination or expiration of this Agreement.

F. The Consultants shall not cancel, materially change, or fail to renew required insurance coverages. The Consultants shall notify the Project Manager of any material reduction or exhaustion of aggregate limits. Should the Consultants fail to immediately procure other insurance, as specified, to substitute for any policy canceled before final payment to the Consultants, the Grantee may procure such insurance and deduct its cost from any sum due to the Consultants under this Agreement.

G. Certificates.

Certificates showing that the Consultants are carrying the above-described insurance, and the status of the additional insureds, shall be furnished to the Grantee prior to the execution of this Agreement by the Grantee. Certificates of insurance on all policies shall give the Grantee written notice of not less than fifteen (15) days prior to cancellation or change in coverage. The Consultants shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

H. Non-Waiver.

The parties understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (now \$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., C.R.S., as from time to time amended, or otherwise available to the parties, their officers, or their employees.

XXI. PROHIBITIONS ON PUBLIC CONTRACTS FOR SERVICES

The Consultants certify that it shall comply with the provisions of section 8-17.5-101 *et seq.*, C.R.S. The Consultants shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Consultants that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Consultants represent, warrant, and agree (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this contract through participation in either the E-Verify or the Department Program; (ii) that the Consultants are prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed; and (iii) if the Consultants obtain actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Consultants shall be required to:

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Consultants has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultants 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.

The Consultants further agree that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Consultants fail to comply with any requirement of this provision or section 8-17.5-101 *et seq.*, C.R.S. the Grantee may terminate this contract for breach and the Consultants shall be liable for actual and consequential damages to the Grantee.

XXII. INTEGRATION

This document constitutes the entire agreement between the Grantee and the Consultants and incorporates all prior verbal and written communications between the parties concerning the subject matter included herein.

XXIII. CAPTIONS

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

XXIV. NO ASSIGNMENT

Neither party shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other.

XXV. AMENDMENT IN WRITING

No amendment or modification shall be made to this Agreement unless it is in writing and signed by both parties.

XXVI. GOVERNING LAW AND VENUE

This Agreement is governed by the laws of the State of Colorado. Any suit between the parties arising under this Agreement shall be brought only in a court of competent jurisdiction for the Twentieth Judicial Grantee of the State of Colorado.

XXVII. NO THIRD PARTY BENEFICIARIES

The parties intend no third party beneficiaries under this Agreement. Any person other than the Grantee or the Consultants receiving services or benefits under this Agreement is an incidental beneficiary only.

XXVIII. FINANCIAL OBLIGATIONS OF THE GRANTEE

All financial obligations of the Grantee under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the Grantee’s credit, or a payment guarantee by the Grantee to the Consultants.

XXIX. NO WAIVER

No waiver of any breach or default under this Agreement shall be a waiver of any other or later breach of default.

XXX. ADDRESSES FOR NOTICES AND COMMUNICATIONS

For the Grantee:

Name, Title
Firm Name
Street
City, State ZIP
Phone: _____ e-mail: _____

For Consultants:

Name, Title
Firm Name
Street
City, State ZIP
Phone: _____ e-mail: _____

XXXI. AUTHORITY

Consultants warrant that the individual executing this Agreement is properly authorized to bind the Consultants to this Agreement.

XXXII. INTEREST OF MEMBERS OF THE GRANTEE

No member of the governing body of the Grantee and no other officer, employee, or agent of the Grantee who exercises any functions or responsibilities in connection with the planning and carrying out of the project, shall have any interest, direct or indirect, in this Contract; and the Consultants shall take appropriate steps to assure compliance.

APPROVED AS TO FORM:

Grantee Attorney's Office

Attachment A: Scope of Work

[This section is only completed as LWOG develops their contract with the preferred consultant. Information here will include the scope, timing, and cost as agreed to by the Grantee and the consultant chosen for this project.]

Attachment B: Consultant primary employees and billing rates

[This section will be based on the proposal from the preferred consultant. It will only be completed as the Grantee begins to develop the contract with the preferred consultant.]

Attachment C: Grantee Authorizing Resolution

[This will be an approved motion or other action as allowed by LWOG's adopted policies and procedures.]