

EXAMPLE- Actual Contract May Change

AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN EAGLE COUNTY, COLORADO
AND

THIS AGREEMENT (“Agreement”) is effective as of _____ by and between _____ a _____ (hereinafter “Consultant” or “Contractor”) and Eagle County, Colorado, a body corporate and politic (hereinafter “County”).

RECITALS

WHEREAS, *the Open Space and Natural Resources department seeks professional assistance to create a comprehensive Open Space Plan (the “Project”) encompassing Open Space properties and landscapes throughout Eagle County (the “Property”); and*

WHEREAS, Consultant is authorized to do business in the State of Colorado and has the time, skill, expertise, and experience necessary to provide the Services as defined below in paragraph 1 hereof; and

WHEREAS, this Agreement shall govern the relationship between Consultant and County in connection with the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the following promises Consultant and County agree as follows:

1. **Services.** Consultant agrees to diligently provide all services, labor, personnel and materials necessary to perform and complete the services described in **Exhibit A** (“Services”) which is attached hereto and incorporated herein by reference. The Services shall be performed in accordance with the provisions and conditions of this Agreement.

a. Consultant agrees to furnish the Services no later than _____ and in accordance with the schedule established in **Exhibit A**. If no completion date is specified in **Exhibit A**, then Consultant agrees to furnish the Services in a timely and expeditious manner consistent with the applicable standard of care. By signing below Consultant represents that it has the expertise and personnel necessary to properly and timely perform the Services.

b. In the event of any conflict or inconsistency between the terms and conditions set forth in **Exhibit A** and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail.

c. Consultant agrees that it will not enter into any consulting or other arrangements with third parties that will conflict in any manner with the Services.

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2. County's Representative. The Open Space and Natural Resources Department's designee shall be Consultant's contact with respect to this Agreement and performance of the Services.

3. Term of the Agreement. This Agreement shall commence upon the date first written above, and subject to the provisions of paragraph 12 hereof, shall continue in full force and effect through the _____ of _____, 20_____.

4. Extension or Modification. This Agreement may not be amended or supplemented, nor may any obligations hereunder be waived, except by agreement signed by both parties. No additional services or work performed by Consultant shall be the basis for additional compensation unless and until Consultant has obtained written authorization and acknowledgement by County for such additional services in accordance with County's internal policies. Accordingly, no course of conduct or dealings between the parties, nor verbal change orders, express or implied acceptance of alterations or additions to the Services, and no claim that County has been unjustly enriched by any additional services, whether or not there is in fact any such unjust enrichment, shall be the basis of any increase in the compensation payable hereunder. In the event that written authorization and acknowledgment by County for such additional services is not timely executed and issued in strict accordance with this Agreement, Consultant's rights with respect to such additional services shall be deemed waived and such failure shall result in non-payment for such additional services or work performed.

5. Compensation. County shall compensate Consultant for the performance of the Services in a sum computed and payable as set forth in **Exhibit A**. The performance of the Services under this Agreement **shall not exceed \$_____**. Consultant shall not be entitled to bill at overtime and/or double time rates for work done outside of normal business hours unless specifically authorized in writing by County.

a. Payment will be made for Services satisfactorily performed within thirty (30) days of receipt of a proper and accurate invoice from Consultant. All invoices shall include detail regarding the hours spent, tasks performed, who performed each task and such other detail as County may request.

b. Any out-of-pocket expenses to be incurred by Consultant and reimbursed by County shall be identified on **Exhibit A**. Out-of-pocket expenses will be reimbursed without any additional mark-up thereon and are included in the not to exceed contract amount set forth above. Out-of-pocket expenses shall not include any payment of salaries, bonuses or other compensation to personnel of Consultant. Consultant shall not be reimbursed for expenses that are not set forth on **Exhibit A** unless specifically approved in writing by County.

c. If, at any time during the term or after termination or expiration of this Agreement, County reasonably determines that any payment made by County to Consultant was improper because the Services for which payment was made were not performed as set forth in this Agreement, then upon written notice of such determination and request for reimbursement from County, Consultant shall forthwith return such payment(s) to County. Upon termination or expiration of this Agreement, unexpended funds advanced by County, if any, shall forthwith be returned to County.

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d. County will not withhold any taxes from monies paid to the Consultant hereunder and Consultant agrees to be solely responsible for the accurate reporting and payment of any taxes related to payments made pursuant to the terms of this Agreement.

e. Notwithstanding anything to the contrary contained in this Agreement, County shall have no obligations under this Agreement after, nor shall any payments be made to Consultant in respect of any period after December 31 of any year, without an appropriation therefor by County in accordance with a budget adopted by the Board of County Commissioners in compliance with Article 25, title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. 29-1-101 et. seq.) and the TABOR Amendment (Colorado Constitution, Article X, Sec. 20).

6. Sub-consultants. Consultant acknowledges that County has entered into this Agreement in reliance upon the particular reputation and expertise of Consultant. Consultant shall not enter into any sub-consultant agreements for the performance of any of the Services or additional services without County's prior written consent, which may be withheld in County's sole discretion. County shall have the right in its reasonable discretion to approve all personnel assigned to the subject Project during the performance of this Agreement and no personnel to whom County has an objection, in its reasonable discretion, shall be assigned to the Project. Consultant shall require each sub-consultant, as approved by County and to the extent of the Services to be performed by the sub-consultant, to be bound to Consultant by the terms of this Agreement, and to assume toward Consultant all the obligations and responsibilities which Consultant, by this Agreement, assumes toward County. County shall have the right (but not the obligation) to enforce the provisions of this Agreement against any sub-consultant hired by Consultant and Consultant shall cooperate in such process. The Consultant shall be responsible for the acts and omissions of its agents, employees and sub-consultants or sub-contractors.

7. Insurance. Consultant agrees to provide and maintain at Consultant's sole cost and expense, the following insurance coverage with limits of liability not less than those stated below:

a. Types of Insurance.

i. Workers' Compensation insurance as required by law.

ii. Auto coverage with limits of liability not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance, including coverage for owned, hired, and non-owned vehicles.

iii. Commercial General Liability coverage to include premises and operations, personal/advertising injury, products/completed operations, broad form property damage with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate limits.

iv. Professional liability insurance with prior acts coverage for all Services required hereunder, in a form and with an insurer or insurers satisfactory to County, with limits of liability of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. In the event the professional liability insurance is on a claims-made basis, Consultant warrants that any retroactive date under the policy shall

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precede the effective date of this Agreement. Continuous coverage will be maintained during any applicable statute of limitations for the Services and Project.

b. Other Requirements.

i. The automobile and commercial general liability coverage shall be endorsed to include Eagle County, its associated or affiliated entities, its successors and assigns, elected officials, employees, agents and volunteers as additional insureds.

ii. Consultant's certificates of insurance shall include sub-consultants as additional insureds under its policies or Consultant shall furnish to County separate certificates and endorsements for each sub-consultant. All coverage(s) for sub-consultants shall be subject to the same minimum requirements identified above. Consultant and sub-consultants, if any, shall maintain the foregoing coverage in effect until the Services are completed. In addition, all such policies shall be kept in force by Consultant and its sub-consultants until the applicable statute of limitations for the Project and the Services has expired.

iii. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Colorado and with an "A.M. Best" rating of not less than A-VII.

iv. Consultant's insurance coverage shall be primary and non-contributory with respect to all other available sources. Consultant's policy shall contain a waiver of subrogation against Eagle County.

v. All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to County in the event of cancellation of coverage.

vi. All insurers must be licensed or approved to do business within the State of Colorado and all policies must be written on a per occurrence basis unless otherwise provided herein.

vii. Consultant's certificate of insurance evidencing all required coverage(s) is attached hereto as **Exhibit B**. Upon request, Consultant shall provide a copy of the actual insurance policy and/or required endorsements required under this Agreement within five (5) business days of a written request from County, and hereby authorizes Consultant's broker, without further notice or authorization by Consultant, to immediately comply with any written request of County for a complete copy of the policy.

viii. Consultant shall advise County in the event the general aggregate or other aggregate limits are reduced below the required per occurrence limit. Consultant, at its own expense, will reinstate the aggregate limits to comply with the minimum limits and shall furnish County a new certificate of insurance showing such coverage.

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ix. If Consultant fails to secure and maintain the insurance required by this Agreement and provide satisfactory evidence thereof to County, County shall be entitled to immediately terminate this Agreement.

x. The insurance provisions of this Agreement shall survive expiration or termination hereof.

xi. The parties hereto understand and agree that the County is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or rights, immunities and protections provided by the Colorado Governmental Immunity Act, as from time to time amended, or otherwise available to County, its affiliated entities, successors or assigns, its elected officials, employees, agents and volunteers.

xii. Consultant is not entitled to workers' compensation benefits except as provided by the Consultant, nor to unemployment insurance benefits unless unemployment compensation coverage is provided by Consultant or some other entity. The Consultant is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

8. Indemnification. The Consultant shall indemnify and hold harmless County, and any of its officers, agents and employees against any losses, claims, damages or liabilities for which County may become subject to insofar as any such losses, claims, damages or liabilities arise out of, directly or indirectly, this Agreement, or are based upon any performance or nonperformance by Consultant or any of its sub-consultants hereunder; and Consultant shall reimburse County for reasonable attorney fees and costs, legal and other expenses incurred by County in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnification shall not apply to claims by third parties against the County to the extent that County is liable to such third party for such claims without regard to the involvement of the Consultant. This paragraph shall survive expiration or termination hereof.

9. Ownership of Documents. All documents prepared by Consultant in connection with the Services shall become property of County. Consultant shall execute written assignments to County of all rights (including common law, statutory, and other rights, including copyrights) to the same as County shall from time to time request. For purposes of this paragraph, the term "documents" shall mean and include all reports, plans, studies, tape or other electronic recordings, drawings, sketches, estimates, data sheets, maps and work sheets produced, or prepared by or for Consultant (including any employee or subconsultant in connection with the performance of the Services and additional services under this Agreement).

10. Notice. Any notice required by this Agreement shall be deemed properly delivered when (i) personally delivered, or (ii) when mailed in the United States mail, first class postage prepaid, or (iii) when delivered by FedEx or other comparable courier service, charges prepaid, to the parties at their respective addresses listed below, or (iv) when transmitted via e-mail with confirmation of receipt. Either party may change its address for purposes of this paragraph by giving five (5) days prior written notice of such change to the other party.

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COUNTY:

Eagle County, Colorado
Attention: Peter Suneson
500 Broadway
Post Office Box 850
Eagle, CO 81631
Telephone: 970-328-8637
E-Mail: peter.suneson@eaglecounty.us

With a copy to:

Eagle County Attorney
500 Broadway
Post Office Box 850
Eagle, Co 81631
Telephone: 970-328-8685
E-Mail: atty@eaglecounty.us

CONSULTANT:

Insert company name, contact name, address, phone and e-mail

11. Coordination. Consultant acknowledges that the development and processing of the Services for the Project may require close coordination between various consultants and contractors. Consultant shall coordinate the Services required hereunder with the other consultants and contractors that are identified by County to Consultant from time to time, and Consultant shall immediately notify such other consultants or contractors, in writing, of any changes or revisions to Consultant's work product that might affect the work of others providing services for the Project and concurrently provide County with a copy of such notification. Consultant shall not knowingly cause other consultants or contractors extra work without obtaining prior written approval from County. If such prior approval is not obtained, Consultant shall be subject to any offset for the costs of such extra work.

12. Termination. County may terminate this Agreement, in whole or in part, at any time and for any reason, with or without cause, and without penalty therefor with seven (7) calendar days' prior written notice to the Consultant. Upon termination of this Agreement, Consultant shall immediately provide County with all documents as defined in paragraph 9 hereof, in such format as County shall direct and shall return all County owned materials and documents. County shall pay Consultant for Services satisfactorily performed to the date of termination.

13. Venue, Jurisdiction and Applicable Law. Any and all claims, disputes or controversies related to this Agreement, or breach thereof, shall be litigated in the District Court for Eagle County, Colorado, which shall be the sole and exclusive forum for such litigation. This Agreement shall be construed and interpreted under and shall be governed by the laws of the State of Colorado.

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14. Execution by Counterparts; Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the parties to this Agreement: (i) Electronic or facsimile delivery of a fully executed copy of the signature page; (ii) the image of the signature of an authorized signer inserted onto PDF format documents. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. 24-71.3-101 to 121.

15. Other Contract Requirements.

a. Consultant shall be responsible for the completeness and accuracy of the Services, including all supporting data or other documents prepared or compiled in performance of the Services, and shall correct, at its sole expense, all significant errors and omissions therein. The fact that the County has accepted or approved the Services shall not relieve Consultant of any of its responsibilities. Consultant shall perform the Services in a skillful, professional and competent manner and in accordance with the standard of care, skill and diligence applicable to Consultants performing similar services. Consultant represents and warrants that it has the expertise and personnel necessary to properly perform the Services and covenants that its professional personnel are duly licensed to perform the Services within Colorado. This paragraph shall survive termination of this Agreement.

b. Consultant agrees to work in an expeditious manner, within the sound exercise of its judgment and professional standards, in the performance of this Agreement. Time is of the essence with respect to this Agreement.

c. This Agreement constitutes an agreement for performance of the Services by Consultant as an independent contractor and not as an employee of County. Nothing contained in this Agreement shall be deemed to create a relationship of employer-employee, master-servant, partnership, joint venture or any other relationship between County and Consultant except that of independent contractor. Consultant shall have no authority to bind County.

d. Consultant represents and warrants that at all times in the performance of the Services, Consultant shall comply with any and all applicable laws, codes, rules and regulations.

e. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements or understanding between the parties with respect thereto.

f. Consultant shall not assign any portion of this Agreement without the prior written consent of the County. Any attempt to assign this Agreement without such consent shall be void.

g. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors in interest. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely for the parties, and not to any third party.

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h. No failure or delay by either party in the exercise of any right hereunder shall constitute a waiver thereof. No waiver of any breach shall be deemed a waiver of any preceding or succeeding breach.

i. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

j. Consultant shall maintain for a minimum of three years, adequate financial and other records for reporting to County. Consultant shall be subject to financial audit by federal, state or county auditors or their designees. Consultant authorizes such audits and inspections of records during normal business hours, upon 48 hours' notice to Consultant. Consultant shall fully cooperate during such audit or inspections.

k. The signatories to this Agreement aver to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the Services or Property described in this Agreement. The Consultant has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services and Consultant shall not employ any person having such known interests.

16. Data Security.

a. Definitions:

i. "County Data" means all data created by or in any way originating with County and End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with County and End Users, in the course of using and configuring the Services provided under this Agreement, and includes all records relating to County's use of Contractor Services and Protected Information.

ii. "End User" means the individuals (including, but not limited to employees, authorized agents, students and volunteers of County; Third Party consultants, auditors and other independent contractors performing services for County; any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any Services; customers of County provided services; and any external users collaborating with County) authorized by County to access and use the Services provided by Contractor under this Agreement.

iii. "Protected Information" includes, but is not limited to, personally-identifiable information, student records, protected health information, criminal justice information or individual financial information and other data defined under C.R.S. §§ 24-72-101 et seq., and personal information that is subject to local, state or federal statute, regulatory oversight or industry standard restricting the use and disclosure of such information. The loss of such Protected Information would constitute a direct damage to the County.

iv. "Security Incident" means the potentially unauthorized access by non-authorized persons to personal data or non-public data the Contractor believes could reasonably result in the use, disclosure or theft of County Data within the possession or control of the vendor. A Security Incident may or may not turn into a data breach.

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b. During the course of Contractor's performance of the Work, the Contractor may be required to maintain, store, process or control County Data. The Contractor represents and warrants that:

i. Contractor will take all reasonable precautions to maintain all County Data in a secure environment to prevent unauthorized access, use, or disclosure, including industry-accepted firewalls, up-to-date anti-virus software, and controlled access to the physical location of the hardware containing County Data;

ii. Contractor's collection, access, use, storage, disposal and disclosure of County Data shall comply with all applicable data protection laws, as well as all other applicable regulations and directives;

iii. Contractor will notify County of any Security Incident as soon as practicable, but no later than 24 hours after Contractor becomes aware of it;

iv. Contractor will provide information sufficient to satisfy County's legal and regulatory notice obligations. Upon notice of a Security Incident, County shall have the authority to direct Contractor to provide notice to any potentially impacted individual or entity, at Contractor's expense, and Contractor shall be liable for any resulting damages to County.

v. Where Contractor has been contracted to maintain, store or process personal information on behalf of the County, it shall be deemed a "Third-Party Service Provider as defined in C.R.S. § 24-73-103(1)(i), and Contractor shall maintain security procedures and practices consistent with C.R.S §§ 24-73-101 et seq.; and

vi. Contractor will promptly return or destroy any County Data upon request from the County Representative.

c. Contractor's indemnification obligations identified elsewhere in this Contract shall apply to any breach of the provisions of this Paragraph.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first set forth above.

COUNTY OF EAGLE, STATE OF COLORADO,
By and Through Its COUNTY MANAGER

By: _____
Jeff Shroll, County Manager

COUNTY OF EAGLE, STATE OF COLORADO,
By and Through Its BOARD OF COUNTY
COMMISSIONERS

By: _____
Jeanne McQueeney, Chair

Attest:

By: _____
Regina O'Brien, Clerk to the Board

CONSULTANT

By: _____

Print Name: _____

Title: _____

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EXHIBIT A
SCOPE OF SERVICES, SCHEDULE, FEES

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EXHIBIT B
Insurance Certificate