

**TOWN OF MEAD, COLORADO
INDEPENDENT CONTRACTOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____ 2018 (the “Effective Date”) by and between the Town of Mead, Colorado, a Colorado municipal corporation (the “Town”) and _____, (“Contractor”).

WHEREAS, The Town desires to engage the services of Contractor to provide the service more fully described on Exhibit A; and

WHEREAS, the Contractor wishes to become associated with the Town as an independent contractor; and

WHEREAS, the parties wish to memorialize their contractual relationship.

NOW, THEREFORE, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

SECTION 1: PARTIES

- 1.1** Town. Town is a municipal corporation located in Mead, Colorado.
- 1.2** Contractor. Contractor is a private, independent business who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means, and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with any and all applicable federal, state, and municipal laws, regulations, and orders.
- 1.3** Intent of the Parties. By this Agreement, Town and Contractor intend for Contractor to be an independent contractor in relationship to the Town and not the Town’s employee or agent. Consequently, Contractor will not be considered an employee or agent of the Town at any time under any circumstances, for any purpose.
 - a) Contractor does not have the authority to act for the Town, or to bind the Town in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the Town. Contractor is not an agent of the Town and will not hold itself out to the public as an agent of the Town

- b) Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder.
- c) Town will not provide training or instruction to Contractor or any of its employees regarding the performance of Services hereunder.
- d) Neither Contractor, nor its employees, will receive benefits of any type from the Town.
- e) Contractor represents that it is engaged in providing similar services to the general public and is not required to work exclusively for the Town.
- f) All Services are to be performed solely at the risk of Contractor, and Contractor shall take all precautions necessary for the proper and sole performance thereof.
- g) Contractor will not combine its business operations in any way with the Town's business operations, and each party shall maintain their operations as separate and distinct.

1.04 CONTRACTOR RESPONSIBILITIES

In addition to all other obligations contained herein, Contractor agrees:

- a) To furnish all tools, labor, and supplies in such quantities and of the proper quality to professionally and timely perform the Services.
- b) To proceed with diligence and promptness and hereby warrants that such Services shall be performed in accordance with the highest professional workmanship and service standards in the field to the satisfaction of Town.
- c) To comply, at its own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, requirements, and codes which are applicable to the performance of the Services hereunder or to Contractor as an employer.

SECTION 2. TERM, DUTIES, COMPENSATION

2.01 Term. This Agreement shall commence on the Effective Date, and shall remain in existence for a period of one (1) year unless sooner terminated as herein provided, and if necessary, shall be submitted to the Town sixty (60) days prior to the expiration of the Agreement to consider renewal.

- 2.02 Non-appropriation. No part of this Agreement shall be construed as creating a “multiple fiscal year obligations” as that term is defined by Article X, Section 20 of the Colorado Constitution. This Agreement may be terminated, without penalty, by the Town affirmatively declaring that it will not appropriate sufficient funds for the upcoming year. Notice of termination due to non-appropriation shall be provided no later than December 1, and shall be effective at the end of the fiscal year in which such notice was provided.
- 2.03 Duties and Compensation. The Contractor’s duties, compensation and provisions for payment thereof shall be as set forth in Exhibit A, and any contemplated change in said terms shall be submitted to the Town in writing for review and approval prior to any such change.
- 2.04 Background Check. The Town may, at its sole discretion, conduct a background check of Contractor, its owners and employees. Contractor agrees to execute any forms necessary to facilitate the background check.

SECTION 3. OPERATIONS

- 3.01 Expenses: The Contractor shall not incur any expense or debt on behalf of the Town without written authorization.
- 3.02 Federal, State, and Municipal Laws and Regulations. Town and Contractor each agree to abide by all applicable federal, state, and municipal laws and regulations and rules.

SECTION 4. INSURANCE AND INDEMNITY PROVISIONS

- 4.01 Insurance. Contractor shall maintain and keep in force during the term hereof one or more policies of liability insurance written by one or more responsible insurance carrier(s), which will include protecting and indemnifying the Town in the following amounts:
- a) Comprehensive General Liability - \$2,000,000 combined aggregate
 - b) Automobile Liability - \$1,000,000
 - c) Workers Compensation

Each liability insurance policy shall name the Town as an additional insured. Contractor shall furnish an original counterpart of such insurance policy to the Town upon the Town's written request. Contractor shall also furnish to the Town appropriate certificates for such insurance no later than seven days after execution of this Agreement. which shall include a commitment by each insurance company to notify the Town in writing of any material change, expiration or cancellation of the insurance policy required hereunder not less than thirty (30) days prior to such change, expiration or cancellation becoming

effective. In addition to the above, Contractor shall obtain and keep in force during the term hereof such insurance required by any law or regulation, or prudent business practices.

Insurance coverage shall not be reduced below the limits described above or canceled without Town's written approval of such reduction or cancellation.

Contractor shall require that any of its agents and/or subcontractors who enter upon the Town's premises shall maintain like insurance. Certificates of such insurance shall be provided to Town upon request.

With regard to all insurance, such insurance shall be primary insurance to the full limits of liability herein before stated and should Town have other valid insurance, Town insurance shall be excess insurance only.

- 4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities as authorized by this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or growing out of loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement. Contractor shall promptly pay to the Town, its successors or assigns, the full amount of any such costs, loss or damage which the Town, its successors or assigns may sustain or incur, or for which the Town, its successors or assigns, may become liable.

SECTION 5. TERMINATION

- 5.01 Termination. Either party upon fifteen (15) days prior written notice may terminate this Agreement with or without cause.
- a) Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, or any causes beyond the control of such party.
 - b) Upon termination by either party, Contractor shall immediately cease any and all activities related to this Agreement, and shall return any keys,

materials, tools, or other items provided by the Town to the contractor in conjunction with this Agreement.

SECTION 6. MISCELLANEOUS

- 6.01 Nonexclusive Nature. This Agreement does not grant Contractor an exclusive privilege or right to supply Services to the Town. Town makes no representations or warranties as to a minimum or maximum procurement of Services hereunder.
- 6.02 Savings Clause. If any part, term, or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between Contractor and Town is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.
- 6.03 Conflicts of Interest; Non-hire Provision. Contractor is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. During the term of this agreement, the Contractor shall devote as much productive time, energy and abilities to the performance of its duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the Town. For a period of six months following any termination, the Contractor shall not, directly or indirectly hire, solicit, or encourage to leave the Town's employment, any employee, consultant, or contractor of the Town or hire any such employee, consultant, or contractor who has left the Town's employment or contractual engagement within one year of such employment or engagement.
- 6.04 Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement will cause the Town irreparable injury and damage. The Contractor expressly agrees that the Town shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Town may have for damages or otherwise. The various rights and remedies of the Town under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law. Contractor

waives any and all right to injunctive relief in the event of any dispute with the Town, and the Contractor's sole remedy in such a dispute shall be at law.

- 6.05 Independent Contractor. This Agreement shall not render the Contractor an employee, partner, agent of, or joint venturer with the Town for any purpose. The Contractor is and will remain an independent contractor in their relationship to the Town. The Contractor shall have no claim against the Town hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

IMPORTANT NOTICE: INDEPENDENT CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OR WORKERS' COMPENSATION BENEFITS UNLESS SUCH COVERAGES ARE PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME OTHER ENTITY. CONTRACTOR SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO FEDERAL, STATE OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE TOWN.

- 6.06 Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor certifies that (i) Contractor does not knowingly employ or contract with any illegal aliens; (ii) Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United State; and (iii) Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision, the Town may terminate this contract for cause and the Contractor shall be liable for actual and consequential damages to the State. A Contractor that operates as a sole proprietor hereby swears or affirms under penalty of perjury that the Contractor (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law; and (ii) shall produce proper identification prior to the effective date of this Contract.
- 6.07 Ability to Bind the Other Party. Neither Town nor Contractor is the agent of the other, and neither shall have the right to bind the other by contract or otherwise, except as specifically provided in this Agreement.

- 6.08 Applicable Law. This Agreement shall be construed according to the laws of the State of Colorado.
- 6.09 Time. Time is of the essence of this Agreement and of each covenant thereof. In the computation of any period of time, which shall be required or permitted hereunder, for notice, or under any law for any notice or other communication or for the performance of any term, condition, covenant, or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case, the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 6.10 Recitals and Exhibits. The Recitals hereto and any Exhibits which may be attached to this Agreement are hereby incorporated herein and made a part of this Agreement by this reference; however, in the event of a conflict between provisions in this Agreement and any exhibits, the provisions in this Agreement shall control.
- 6.11 Attorney's Fees. If either party employs an attorney to enforce this Agreement, the party in default shall pay the prevailing party the reasonable expenses of the prevailing party, including but not limited to attorney's fees reasonably incurred whether occasioned by litigation or not.
- 6.12 Assignment and Subcontracting. Contractor may not delegate, assign or subcontract all or any part of its duties and obligations hereunder without obtaining the Town's prior written consent.
- 6.13 No Modification or Waiver of Conditions. Contractor may not waive or modify all or any part of its duties, obligations or conditions hereunder without obtaining the express written consent of the Town.
- 6.14 Merger of Understanding. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations, representations and agreements, whether written or oral, except as where noted. This Agreement may be modified only by a written document signed by both parties and approved by the Town Board at a public meeting.
- 6.15 Third Party Rights. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto and their respective successors and assigns.
- 6.16 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any

other breach or default in the performance of such party or any other party of the same or any other of its obligations. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any such party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

6.17 Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

6.18 Acknowledgment of Review. Contractor hereby expressly acknowledges that he/she has reviewed and understands each and every provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates written below.

TOWN OF MEAD

CONTRACTOR

By _____
Gary R. Shields, Mayor

By _____
Its _____

ATTEST:

Mary E. Strutt, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ and _____.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

My commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT A

SCOPE OF WORK AND COMPENSATION

SCOPE OF WORK:

Contractor shall provide the following professional services, (hereinafter “Services”) as outlined

COMPENSATION: