

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (The "Agreement") is entered into this ____ day of _____, 2017, by and between the Board of County Commissioners of Summit County, having its principal place of business at 208 Lincoln Avenue, Breckenridge, Colorado 80424 ("County"), and _____ having its principal place of business at _____ ("Contractor").

WHEREAS, the County desires to contract with Contractor to perform certain machine built trail services on an independent contractor basis services in accordance with terms of this Agreement; and

WHEREAS, Contractor desires to perform certain machine built trail services on an independent contractor basis as set forth in this Agreement.

NOW THEREFORE, in consideration of the above Recitals, which are hereby incorporated into the below Agreement, and in consideration of the mutual promises made herein, the receipt and sufficiency of which are hereby acknowledged, the County and Contractor further agree as follows:

1. Services. Contractor agrees to perform the following services (the "Services") in a timely, expeditious and professional manner: machine build of approximately 2,500 feet of mountain biking trail near Dillon Cemetery Road in the spring of 2017. The planned section of trail construction is .5 miles east of the Dillon Cemetery Road and .25 miles west of the Snake River crossing of Hwy 6. Trail design and alignment will be marked for the operator in accordance with all applicable provisions of the scope of work dated _____, which is attached hereto as Exhibit "A" and incorporated herein by this reference. In the event of any conflicts between the Agreement and any of the terms of the attached exhibits, the terms of this Agreement shall prevail.

Contractor represents and acknowledges that the Services performed under this Agreement will be done using Contractor's own equipment at Contractor's own home or place of business, and at hours and times as determined by Contractor. Contractor is engaged in providing these types of services for persons or entities other than the County, and the Contractor is not required to provide services exclusively to the County during the term of this Agreement.

2. Compensation. For satisfactory performance of the Services hereunder, County shall pay Contractor a fixed sum not to exceed \$_____ for its services in accordance with the terms of this Agreement. Payment will not be made on a salary or hourly rate. County shall have no obligation to make any payments until such time as County accepts Contractor's performance as satisfactory. All payments under this contract shall be to the trade or business name of the Contractor. No payments will be personally made to an individual under this contract.

A. Invoices. The Contractor will submit invoices on a monthly basis, which will describe the Services performed and expenses incurred pursuant to this Agreement. Invoices will be reviewed by _____, who will submit them to the Summit County Finance Department for payment upon his/her approval. Invoices shall

provide detail of Contractor's performance of Services sufficient to the County's requirements. Upon request, Contractor shall provide documentation of its expenses. Payment of such invoices will be due within thirty (30) days of the receipt thereof.

B. Fund Availability/Annual Appropriation. Payment pursuant to this Agreement, whether in whole or in part, is subject to and contingent upon the continuing availability of County funds for purposes hereof. In the event that said funds, or any part thereof, become unavailable as determined by the County, the County may immediately terminate this Agreement or amend it accordingly.

C. Multi-Year Contracts. The obligations of the County hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

3. Term. The term of this Agreement shall be from _____, 2017 until _____, 2017. The Agreement may be terminated earlier by final completion of the Services by the Contractor and acceptance of the services by the County or through the termination provisions provided herein.

4. Default. The failure of either party to comply with any of the terms and conditions of this Agreement shall constitute a default under this Agreement. Should either the Owner or the Contractor commit any breach of the terms and provisions of this contract, the party adversely affected by such breach shall provide written notice to the breaching party. The breaching party shall have the right to cure such breach within five days of actual or constructive receipt of such notice. If the defaulting party is given written notice of any default hereunder and fails to remedy such default within thirty (30) days of its receipt of such notice, at the election on the non-defaulting party, and in addition to any other remedy provided by law or equity, the non-defaulting party may terminate this Agreement.

5. Termination. Either party may terminate this Agreement at any time by giving the County written notice of not less than sixty (60) days. County may terminate this Agreement at any time in the event that Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement. In the event of termination, payments will be made to Contractor for all work performed up to the date of termination.

6. Relationship. The parties understand and agree that Contractor is an independent contractor and that Contractor is not an employee, agent or servant of the County, nor is Contractor entitled to County employment benefits. CONTRACTOR UNDERSTANDS AND AGREES THAT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS AND THAT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THIS CONTRACT. As an independent contractor, Contractors agrees that:

- A. Contractor does not have the authority to act for the County, or to bind the County in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the County; and
- B. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed or contracted by Contractor for performing the Services hereunder; and
- C. County will not provide training or instruction to Contractor or any of its employees regarding the performance of Services hereunder; and
- D. Neither Contractor, nor its employees or contractors, will receive benefits of any kind from the County. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for the County; and
- E. All Services are to be performed solely at the risk of the Contractor and Contractor shall take all precautions necessary for the proper performance thereof; and
- F. Contractor will not combine its business operations in any way with the County's business operations and each party shall maintain their operations as separate and distinct.

7. 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; and
- 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 the County; and
- 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 employer.
- D. To require its subcontractors to comply, at their 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 subcontractor as an employer, including maintenance of standard Workers' Compensation as required by law in the State of Colorado.

8. Work Quality. The Contractor warrants to the County that all services provided will be of good quality, in conformance with the highest standards of the profession and in conformance with this Agreement.

9. Work Product. Any data, reports, drawings documents or other things or information provided by the County to the Contractor during the performance of services under this Agreement and any reports, drawings or other writings required under the services of this Agreement shall be and remain the sole property of the County at all times. The Contractor shall return or provide to the County such documents, etc. by the completion date and before full payment of the compensation herein.

10. Indemnification and Insurance. Contractor shall indemnify and hold harmless the County from and against all claims, damages, losses, and expenses arising out of or resulting from acts or omissions of the Contractor, Contractor's sub-contractors or otherwise arising out of the performance of services by Contractor. No later than seven days after execution of this Agreement, Contractor shall provide the County with certificates of insurance evidencing the types and amounts of insurance specified below:

- A. Standard Workers' Compensation as required by law in the State of Colorado; and
- B. Comprehensive General Liability Insurance for operations and contractual liability adequate to cover the liability assumed hereunder with limits of not less than \$350,000 on account of any one person and \$990,000 for each occurrence of property damage and personal injury; and
- C. Automobile Liability insurance in those instances where Contractor uses an automobile, regardless of ownership, for the performance of the Services. Contractor shall carry insurance, written on the comprehensive automobile form insuring all owned and non-owned automobiles with limits of not less than \$100,000 (bodily injury per person), \$300,000 (each accident) and \$50,000 (property damage).

Insurance coverage shall not be reduced below the limits described above or cancelled without County's written approval of such reduction or cancellation. Reduction, cancellation or termination of insurance coverage, or failure to obtain insurance coverage, without the County's written approval shall constitute a material breach of the Agreement and shall automatically terminate the Agreement. Contractor shall require that any of its agents or subcontractors who enter upon the County's premises shall maintain like insurance. Certificates of such insurance, of agents and subcontractors, shall be provided to the County upon request. With regard to all insurance, such insurance shall:

- A. Be primary insurance to the full limits of liability herein before stated and, should County have other valid insurance, County insurance shall be excess insurance only; and
- B. Not cancelled without thirty (30) days prior written notice to the County.

11. Notice. Any notice to be given hereunder by either party to the other, shall be in writing and shall be deemed given when sent by certified mail.

- A. Notices to the County shall be addressed to:

Brian Lorch, Open Space & Trails Director
Open Space and Trails Department
Summit County Government
P.O. Box 5660
Frisco, CO 80443

- B. Notices to the Contractor shall be addressed to:

Name, title
Address

If either party changes its address during the term herein, it shall so advise the other party in writing as herein provided and any notice thereafter provided to be given shall thereafter be sent by certified mail to such new address.

12. Illegal Aliens. As required by C.R.S. §8-17.5-101 C.R.S., *et seq.*, regarding Illegal Aliens - Public Contracts for Services, and this Contract, Contractor certifies and agrees as follows:

- A. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract; or 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 the Contract.
- B. The Contractor shall confirm through participation in either the E-Verify Program or the Department Program, the employment eligibility of all employees who are hired to perform work under this Contract. (For information on applying for the Basic Pilot the Contractor may log on to <https://www.vis-dhs.com/employerregistration> and for information on applying for the Department Program the log on to <http://www.coworkforce.com/lab/pcs/default.asp>)
- C. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Contract is being performed.
 - (1) If the Contractor obtains actual knowledge that a Subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
 - a. Notify the Subcontractor and the County within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and
 - b. Terminate the Subcontract with the Subcontractor if within three days of receiving the notice required pursuant to (C)(1)(a) of this Contract, the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor 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.
 - (2) The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to its authority.

- D. If Contractor fails to comply with any requirement of this section, the County may terminate the Contract for breach and the Contractor shall be liable for actual and consequential damages.

13. Governmental Immunity. The County does not intend to waive by any provision of this Agreement the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

14. Third Parties. This Agreement does not and shall not be deemed to confer upon any third party any right to claim damages to bring suit, or other proceeding against either the County or Contractor because of any term contained in this Agreement.

15. Assignment. This Agreement is for personal services predicated upon Contractor's special abilities or knowledge, and Contractor shall not assign this Agreement in whole or in part without prior written consent of the County.

16. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.

17. Modification. No modification or waiver of this Agreement, or of any covenant, condition, or provision herein contained, shall be valid unless in writing and duly executed by the Parties to be charged herewith.

18. Severability. If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the party shall be construed and enforced accordingly, to effectuate the essential intent and purposes of this Agreement.

19. Enforcement and Waiver. The failure of either party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Agreement, shall not be construed as a waiver of the right to assert any such terms and provisions on any future occasion or of damages caused thereby.

20. Nonexclusive Nature. This Agreement does not grant Contractor an exclusive privilege or right to supply services to the County. County makes no representations or warranties as to a minimum or maximum procurement of Services hereunder.

21. Interpretation. The validity, interpretation and effect of this Agreement shall be determined under Colorado law. All actions arising directly or indirectly as a result or in consequence of this Agreement shall be instituted and litigated only in courts having situs in Summit County, Colorado. Any provision found to be invalid or unenforceable shall have no effect upon the validity of any other section of this contract.

22. Effective Date. The effective date of this Agreement shall be the date first written above regardless of the date when the Agreement is actually signed by the parties.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this **INDEPENDENT CONTRACTOR AGREEMENT** as of the date first written above.

[CONTRACTOR NAME]

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY

By: _____
[Name, Title]

By: _____
Scott Vargo, County Manager

