AGREEMENT FOR MASTER-PLANNING AND DESIGN SERVICES

THIS AGREEMENT, is made and entered this _____ day of _____, 2015, by and between the Town of Windsor, a Colorado home rule municipality ("Town") and [Entity name, state of incorporation/organization] ("Professional").

RECITALS

WHEREAS, the Town desires to retain a design professional for services associated with master-planning and Phase I design of a proposed Public Works Office and Shop Facility ("Facility"); and

WHEREAS, Professional is in the business of master-planning and designing public works facilities of the type proposed by the Town; and

WHEREAS, Professional has by written bid indicated a willingness to undertake Facility master-planning and design for the benefit of the Town; and

WHEREAS, the Town wishes to authorize Professional to undertake master-planning and design services under the terms set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES AGREE AS FOLLOWS:

I. Scope of Work.

The general Scope of Work ("SOW") for this Agreement is the master-planning and design of the Facility on a site already selected by the Town. The specific SOW shall consist of the following documents, attached hereto and incorporated herein by this reference:

- Request for Qualifications ("RFQ") issued by the Town on [date]; and
- Any Addenda to the RFQ issued by the Town, bearing the date(s) of [date(s)]; and
- The Professional's Bid, dated [date]; and
- [Any other SOW materials?].

The SOW shall be governed by the above-identified documents, except as may be amended by the issuance of Change Orders pursuant to Section II below.

II. Change Orders.

A. Any material change to the Scope of Work contemplated under Section I above shall be accomplished only as provided in this Section II.

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B. Should either party determine that a material change to the Scope of Work is necessary or advisable, the particular change shall be set forth in a writing entitled "Change Order, [date]", and shall bear the signatures of an authorized representative of each party. Upon execution by both parties of any such Change Order, the Scope of Work shall be deemed modified and incorporated by this reference into this Agreement as if set forth fully herein. The Town will retain all original Change Orders approved pursuant to this Section II, and Professional shall be provided a copy for its files.

C. The Town shall grant, deny or request a reasonable extension of time within twenty-four hours of a request for a Change Order by the Professional.

III. Project Commencement, Progress and Completion.

A. Professional's master-planning and design services shall be completed by [date]. Professional will undertake the services in a thorough and workmanlike manner in every respect and in compliance with the applicable standard of care for design professionals.

B. The services will be considered complete when all master-planning and design services described in the SOW has been finished, and the design materials have been accepted by Town.

IV. Relationship of Professional to Town.

A. Professional acknowledges that it, its employees and sub-contractors, if any, are in the relationship of independent contractor, and not as employees of the Town. Nonetheless, Professional accepts the relationship of trust and confidence established between it and the Town by this Agreement. Professional covenants with the Town to furnish its best skill and judgment and to assure master-planning and design services are undertaken and completed as contemplated herein.

B. The Town's Project Manager for all purposes under this Agreement is [Town's PM], and all communications from Professional to Town arising out of this Agreement shall be directed to Mr./Ms. [Town's PM's last name]'s attention, except as he may specifically designate in writing.

V. Representations of the Parties.

A. Professional's Representations.

Professional has the requisite experience, training, personnel and resources to complete the Scope of Work within the time frames set forth herein, and in accordance with the standard of care applicable to the Professional's occupation.

The Professional has familiarized itself with the nature and the extent of this Agreement, the SOW, the locality, all physical characteristics of the proposed Facility site, including without limitation, grade, soil conditions, drainage, topography, and all other features of the terrain, and

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with the local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the work, or apply in any manner whatsoever to the work.

B. Town's Representations.

The Town is a home rule municipal corporation, governed by the laws and Constitution of the State of Colorado. The Town has appropriated the funds from which payment to Professional will be made in accordance with this Agreement.

VI. Payment to Professional.

A. Professional agrees to accept the sum of [dollars in text][($dollars in numerals)] as full payment for the performance of the master-planning and design services contemplated under this Agreement, which sum shall be increased or decreased only by the amount representing the associated cost of any and all Change Orders approved as provided in Section II above. The Town shall render payment [progress payments? Installments?].

B. In addition to the payment referenced in sub-section VI (A) above, the Town shall be responsible for the payment of all Town-assessed fees due and payable with respect to site plan approvals associated with the Facility.

VII. Ownership of Plans, Specifications, and Documents.

All of the design plans are and shall remain the property of the Town upon payment in full as provided in Section VI above.

VIII. Indemnification.

To the fullest extent permitted by law, the Professional agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the work contemplated herein, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Professional or any subcontractor of the Professional, or any officer, employee, or agent of the Professional or any subcontractor, or any other person for whom Professional is responsible. The Professional shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Professional's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

IX. Insurance and Bonds.

A. Professional shall not commence work under this Agreement until it has presented Certificates of Insurance as required by sub-section IX (C) below, confirming it has obtained all

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insurance and bonds required by this Section IX, and with the minimum insurance coverage as follows:

(1) Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of any work called for under this Agreement.

(2) Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(3) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate with respect to each of Professional's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

(3) Professional Liability insurance with minimum limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000). [insert the following sentence for lawyers and accountants only] Professional Liability insurance with minimum limits of FIVE HUNDRED THOUSAND ($500,000) each claim and FIVE HUNDRED THOUSAND DOLLARS ($500,000) aggregate.

B. The policies required above, except for the Workers' Compensation insurance, shall be endorsed to include the Town as an additional insured. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Professional. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Professional shall be solely responsible for any deductible losses under each of the policies required above.

C Certificates of Insurance shall be completed by the Professional's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify this monument sign project and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

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D Failure on the part of the Professional to procure or maintain policies as provided herein shall constitute a material breach of contract upon which the Town may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Professional to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Professional from the Town.

E. Professional shall furnish a performance bond in an amount at least equal to the Payment to Professional set forth in Section VI above as security for the faithful performance of all Professional's obligations under the this Agreement. The performance bond shall be in the form approved by the Town's representative.

F. In the event the surety on the performance bond given by the Professional becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the state revoked, the Town may withhold payment of funds due Professional until the Professional has provided a bond or other security to the satisfaction of the Town in lieu of the bond so executed by such surety.

X. Costs and Attorneys' Fees.

In the event of litigation enforcing or interpreting the terms of the within Agreement, the Town shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses. Nothing in this Section XI shall be deemed a waiver of any constitutional or statutory protections afforded to municipal governments under Colorado law.

XII. No Assignment.

This Agreement shall not be assigned by the Professional without the prior written approval of the Town. However, Professional shall have the right to employ such assistance as may be required for the performance of the project, including the use of subcontractors, which employment shall not be deemed an assignment of the Professional's rights and duties hereunder.

XIII. Governing Law, Place of Trial.

The parties agree to the jurisdiction and venue of the courts of Weld County, Colorado, in connection with any dispute arising out of or in any matter connected with this Agreement. The parties further agree that the interpretation and enforcement of the within Agreement shall be in accordance with Colorado law.

XIV. Required Colorado Immigration Certification.

PURSUANT TO SECTION 8-17.5-101, C.R.S., *et. seq.*, Professional by its signature hereto certifies and represents that at this time:

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(i) Professional does not knowingly employ or contract with an illegal alien who will perform work under this Contract; and

(ii) Professional will participate in the E-VERIFY program authorized under 8 U.S.C., Section 1324(a), jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (hereinafter, "E-VERIFY Program"), or the Colorado Department of Labor and Employment program established under § 8-17.5-102 (5) (c), C.R.S., in order to confirm the employment eligibility of all employees who are newly-hired for employment within the United States.

Unless the E-VERIFY Program has been discontinued as of the date of this certification, Professional has confirmed the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-VERIFY program.

Professional is prohibited from using the E-VERIFY Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

If Professional obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Professional shall:

(i) Notify such subcontractor and the Town within three days that Professional has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Professional 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.

Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Professional violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Professional shall be liable for actual and consequential damages to the Town arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

Professional acknowledges the enforcement provisions of § 8-2-124, C.R.S., and further acknowledges that employment of illegal aliens in violation thereof may result in loss of

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Professional's "business license" as defined therein, together with such other enforcement measures as authorized by law.

TOWN OF WINDSOR, COLORADO

By: _____
[Town signatory]
[Title]

ATTEST:

_____
Patti Garcia, Town Clerk

[PROFESSIONAL'S NAME IN CAPS]

By: _____
[Signatory name]
[title]

[seal]

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