PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for professional services is entered into this day of by and between the CITY OF GOLDEN (hereinafter referred to as “City”) a home rule municipal corporation and (hereinafter referred to as “Contractor”).

W I T N E S S E T H:

WHEREAS, the City desires to obtain professional services as described herein from Contractor; and

WHEREAS, Contractor has held itself out to the City as having the requisite expertise, experience and resources to perform the duties requested by the City.

THEREFORE, for and in consideration of the promises and covenants herein appearing, the parties agree as follows:

I. SCOPE OF SERVICES.

Contractor agrees to provide the services set forth in the attached document, which is incorporated herein and made a part of this Agreement. (Exhibit A) In the event of any conflict between the terms and conditions of the Scope of Services and this Agreement, the Agreement shall prevail.

II. CITY OBLIGATIONS/CONFIDENTIALITY.

The City shall provide Contractor with, information, reports and such other documentation as may be available to the City, and reasonably required by Contractor to perform the Scope of Services. The information shall not be disclosed by Contractor to third parties without prior written consent of the City or as otherwise required by law. All documents provided by the City to Contractor shall be returned to the City. Contractor is authorized by the City to retain copies of such data and materials at it expense.

III. COMPENSATION.

In consideration of the completion of the Scope of Services specified herein, the City shall pay Contractor .

The fee specified herein shall include all fees and expenses incurred by Contractor in performance of the Scope of Services. The City may withhold final payment for any portion of the work not deemed complete by the City.

IV. COMMENCEMENT OF WORK.
Immediately upon execution of this Agreement, Contractor shall commence work on all obligations set forth in the Scope of Services.

V. CHANGES IN SCOPE OF SERVICES.

A change in the Scope of Services shall constitute any change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by the City Manager. If Contractor proceeds without such written authorization, then Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee of representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VI. PROFESSIONAL RESPONSIBILITY.

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

The work performed by Contractor shall be performed timely in accordance with generally accepted professional practices and the level of competency presently maintained by other professionals providing the same general type of work set forth in the Scope of Services.

VII. COMPLIANCE WITH LAW.

The work and services to be performed by Contractor hereunder shall be done in compliance with all applicable laws, ordinances, codes, rules and regulations.

VIII. INDEMNIFICATION.

Contractor agrees to indemnify and hold harmless the City, and its officers, attorneys and employees, from and against all liability, claims, demands, and expenses, including court costs and reasonable attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement, if such injury, loss, or damage is caused by, or is claimed to be caused by, the negligent act or omission, error, professional error, mistake, accident, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, or agent of Contractor. The obligations of this Section VIII shall not apply to damages which the City shall become liable by final judgment to pay to a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City.

IX. INSURANCE.

A. Contractor agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following insurance coverages:

1. Commercial General or Business Liability Insurance with minimum
combined single limits of SIX HUNDRED THOUSAND DOLLARS ($600,000.00) each occurrence and ONE MILLION DOLLARS ($1,000,000.00) general aggregate.

2. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than SIX HUNDRED THOUSAND DOLLARS ($600,000.00) for any one occurrence, with respect to each of Contractor’s owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that Contractor’s insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Contractor who utilizes an automobile in providing services to the City under this Agreement.

B. If approved by the City, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

C. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

D. A Certificate of Insurance shall be completed by Contractor’s insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under this Agreement. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The completed Certificate of Insurance shall be sent to:

Human Resources Director
City of Golden
911 10th Street
Golden, CO 80401

E. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or at its discretion the City 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 City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

F. The City shall have the right to request and receive a certified copy of any policy and any endorsement thereto.

G. The parties hereto understand and agree that the City, its officers, attorneys, and its employees, are relying on, and do not waive or intend to waive by an provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et.seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, attorneys, or its employees.

X. NON-ASSIGNABILITY.
Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XI. TERMINATION.

The parties further agree that any obligation of the City beyond the current year is contingent upon its City Councils’ annual appropriation of funds.

Either party may terminate this Agreement with or without cause upon providing the other party sixty (60) days prior written notice.

XII. DEFAULT/ATTORNEY FEES.

In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses, expert fees and costs incurred as a result of the default.

XIII. VENUE.

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Jefferson, State of Colorado.

XIV. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is an employee of the City for any purposes.

XV. NO WAIVER.

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms of obligation of this Agreement.

XVI. ENTIRE AGREEMENT.

This Agreement and the attached Exhibit are the entire Agreement between Contractor and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XVII. NOTICE.

Any notice or communication between Contractor and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent via facsimile, electronically or by pre-paid, first class United States Mail, addressed as follows:
XVIII. IMMIGRATION STATUS OBLIGATIONS

A) Contractor certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien and that it has participated or attempted to participate in the United States Department of Homeland Security Basic Pilot Program in order to verify that it does not employ any illegal aliens.

B) Contractor shall not:

1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2) 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 public contract for services.

C) Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the Basic Pilot Program and, if Contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement that Contractor shall apply to participate in the Basic Pilot Program every three months until Contractor is accepted or the terms and conditions of this Agreement have been completed, whichever is earlier. The provision specified in this subparagraph shall not be required or effective if the Basic Pilot Program is discontinued.

D) Contractor is prohibited from using Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

E) If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Contractor shall be required to:

1) Notify the subcontractor and the City within three days that the Contractor 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 sub-subparagraph (B)(2) 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.
F) Contractor shall comply with any reasonable request by the State Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to its authority.

G) If Contractor violates any of the provisions set forth in this section, the City may terminate the Agreement and Contractor shall be liable for all actual and consequential damages incurred by the City.

CITY OF GOLDEN:                                  CONTRACTOR:

____________________________________________________________________________________
Department Director  Date  By: Name and Title

____________________________________________________________________________________
Mike Bestor, City Manager  Date  Signature  Date