**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into the day of 2013, by and between the Town of Bayfield (hereinafter referred as “Town”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the “Town Consultant”).

# RECITALS

1. The Town requires professional services.
2. The Town Consultant has held itself out to the Town as having the requisite expertise and experience to perform the required work for the Project.
3. The Town Consultant has appropriate licenses and certifications as required by the State of Colorado or the industry.

NOW THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Town Consultant shall provide to the Town project management, civil engineering, environmental permitting, off-system bridge requirement management, tracking, and submittal, and construction observation and management.

## SCOPE OF SERVICES

The Town Consultant shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project which are described or reasonably implied from **Exhibit A** which isattached hereto and incorporated herein by this reference.

**II. THE TOWN’S OBLIGATIONS/CONFIDENTIALITY**

The Town shall provide Town Consultant with reports and such other data/information as may be available to the Town and reasonably required by Town Consultant to perform hereunder and Town Consultant is entitled to rely on that information. No project information shall be disclosed by Town Consultant to third parties without prior written consent of the Town or pursuant to a lawful court order directing disclosure. All documents provided by the Town to Town Consultant shall be returned to the Town. Town Consultant is authorized by the Town to retain copies of such data and materials at Town Consultant expense.

**III. OWNERSHIP OF WORK PRODUCT**

The Town acknowledges that Town Consultant’s work product is an instrument of professional services. Nevertheless, the products prepared under this Agreement shall become the property of the Town upon completion of the work and payment in full of all monies due to Town Consultant with respect to the work. The Town shall not reuse or make any modifications to any documents completed as part of the scope of services without the prior written authorization of the Town Consultant.

**IV. COMPENSATION**

1. In consideration for the completion of the services specified herein by Town Consultant, subject to annual appropriations the Town shall pay Town Consultant in accordance with the Schedule of Standard Rates in **Exhibit B,** which is attached hereto and incorporated herein by this reference. Invoices will be itemized by Task Order number and include hourly breakdown for all personnel and other charges. Invoice totals shall include all fees and expenses incurred by Town Consultant in performing all services hereunder. Maximum project amount billed by Town Consultant to the Town under this Agreement shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($ ) without prior written approval by the Town Manager.
2. Town Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Town Consultant under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the Town.
3. All invoices, including the Town Consultant’s verified payment request, shall be submitted by Town Consultant to the Town no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Town Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Town Consultant defers its right to payment pursuant to said late invoices until the twenty-fourth (24th) day of the following month.
4. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoices as provided by this Agreement.
5. The Town has the right to ask for clarification on any Town Consultant invoice after receipt of the invoice by the Town.
6. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Town Consultant may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Town Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Town Consultant will continue with all authorized services.
7. Final payment for Project shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the Town) required by this Agreement have been turned over to and approved by the Town and upon receipt by the Town of Town Consultant certification that services required herein by Town Consultant for the Project have been fully completed in accordance with this Agreement.

1. **COMMENCEMENT AND COMPLETION OF WORK**

Within seven (7) days of receipt from the Town of a Notice to Proceed on Project, Town Consultant shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the Town, the Project shall be complete and the Town Consultant shall furnish the Town specified deliverables as provided in the **Exhibit A**.

## CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material 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 Town Manager. If Town Consultant proceeds without such written authorization, the Town Consultant 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, or representative of the Town 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.

1. **PROFESSIONAL RESPONSIBILITY**
2. Town Consultant 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.
3. The work performed by Town Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.
4. Town Consultant shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all items described in **Exhibit A**. Town Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in its professional services, which fall below the standard of professional services.
5. Approval by the Town of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Town Consultant of responsibility for technical adequacy of the work. Neither the Town’s review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Town Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.
6. The rights and remedies of the Town provided for under this Agreement are in addition to any other rights and remedies provided by law.
7. **COMPLIANCE WITH LAW**

The work and services to be performed by Town Consultant hereunder shall be done in compliance with the applicable laws, rules and regulations.

1. **INDEMNIFICATION**

Town Consultant agrees to indemnify and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage to the extent such injury, loss, or damage is caused by the negligent act, omission, error, professional error, of Town Consultant, or any subcontractor of Town Consultant.

**X. INSURANCE**

1. Town Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Town Consultant pursuant to the Section entitled Indemnification above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Town Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant the provision entitled Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
2. Town Consultant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Town Consultant 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.
	1. Workmen's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employer’s Liability insurance with minimum limits of five hundred thousand dollars ($500,000) each accident, one million dollars ($1,000,000) disease – policy limit, and one million dollars ($1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the workmen's compensation requirements of this paragraph.
	2. Commercial general liability insurance with minimum combined single limits of one million dollars ($1,000,000) each occurrence and one million dollars ($1,000,000) general 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, products, and completed operations. The policy shall contain a severability of interests provision.
	3. Professional liability insurance with minimum limits of one million dollars ($1,000,000) each claim and one million dollars ($1,000,000) general aggregate.
	4. The policy required by paragraph 2. above shall be endorsed to include the Town and the Town's officers, employees, and Town Consultant as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, its employees, or its Town Consultant shall be excess and not contributory insurance to that provided by Town Consultant. Town Consultant shall be solely responsible for any deductible losses under any policy required above.
	5. The certificate of insurance provided for the Town shall be completed by Town Consultant’s insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. The completed certificate of insurance shall be sent to:

Town of Bayfield

1199 Bayfield Parkway

PO Box 80

Bayfield, Colorado 81122

Attn: Town Manager

* 1. Failure on the part of Town Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the Town may immediately terminate this Agreement.
	2. The parties hereto understand and agree that the Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars ($150,000) per person and six hundred thousand dollars ($600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101 *et seq.,* 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

**XI. NON-ASSIGNABILITY**

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

**XII. TERMINATION**

The Town may terminate this agreement upon the Town providing Town Consultant with thirty day (30) days advanced written notice. Town Consultant may terminate this agreement upon the Town Consultant providing Town with sixty (60) days advance written notice. In the event the Agreement is terminated, the Town Consultant shall provide the Town all work product developed under this Agreement, all data and materials furnished to Town Consultant by the Town or others associated with the Project, and a complete accounting of all professional services rendered from the date of receipt of notice to terminate.

## CONFLICT OF INTEREST

The Town Consultant shall disclose any personal or private interest related to property or business within the Town. Upon disclosure of any such personal or private interest, the Town shall determine if the interest constitutes a conflict of interest. If the Town determines that a conflict of interest exists, the Town may treat such conflict of interest as a default and terminate this Agreement.

**XIV. ILLEGAL ALIENS.**

 a. Certification. By entering into this Agreement, Town Consultant hereby certifies that, at the time of this certification, it does no knowingly employ or contract with an illegal alien and that Town Consultant has participated or attempted to participate in the basic pilot program administered by the U.S. Department of Homeland Security in order to verify that it does not employ any illegal aliens.

1. Prohibited Acts. Town Consultant 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 subconsultant that fails to certify to Town Consultant that the subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

1. Verification.

1. Town Consultant has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Town Consultant does not employ any illegal aliens and, if Town Consultant is not accepted into the basic pilot program prior to entering into this Agreement, that Town Consultant shall apply to participate in the basic pilot program every three (3) months until Town Consultant is accepted or this Agreement has been completed, whichever is earlier.

2. Town Consultant shall not use basic pilot program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.

3. If Town Consultant obtains actual knowledge that a subconsultant performing work under this Agreement knowingly employs or contracts with an illegal alien, Town Consultant shall:

i. Notify the subconsultant and the Town within three (3) days that Town Consultant has actual knowledge that the subconsultant is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subconsultant if within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subconsultant does not stop employing or contracting with the illegal alien; except that Town Consultant shall not terminate the contract with the subconsultant if during such three (3) days the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with an illegal alien.

 d. Duty to Comply with Investigations. Town Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Town Consultant is complying with the terms of this Agreement.

## VENUE

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

## INDEPENDENT CONTRACTOR

 TOWN CONSULTANT IS AN INDEPENDENT CONTRACTOR. NOTWITHSTANDING ANY PROVISION APPEARING IN THIS AGREEMENT, ALL PERSONNEL ASSIGNED BY TOWN CONSULTANT TO PERFORM WORK UNDER THE TERMS OF THIS AGREEMENT SHALL BE, AND REMAIN AT ALL TIMES, EMPLOYEES OR AGENTS OF TOWN CONSULTANT FOR ALL PURPOSES. TOWN CONSULTANT SHALL MAKE NO REPRESENTATION THAT IT IS THE EMPLOYEE OF THE TOWN FOR ANY PURPOSE. TOWN CONSULTANT IS SOLELY RESPONSIBLE FOR ITS OWN FEDERAL, STATE, AND LOCAL TAXES, WORKER’S COMPENSATION, INSURANCE, OFFICES, HOURS OF WORK, AND MANNER AND METHOD OF WORK.

**XVII. CORPORATE PROTECTION**

Town agrees that Town Consultant’s services under this Agreement shall not subject Town Consultant’s individual employees, officers or directors to any personal legal exposure for the risks associated with work under this Agreement, so long as said employees, officers or directors are acting within the scope of this Agreement and the scope of any corporate authority. Therefore, and notwithstanding anything to the contrary contained herein, Town agrees that as the Town’s sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Town Consultant, so long as said employees, officers or directors are acting within the scope of this Agreement and the scope of said corporate authority.

 **XVIII. NO WAIVER**

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

 **XIX. ENTIRE AGREEMENT**

This Agreement and the attached exhibits constitute the entire agreement

between Town Consultant and the Town. None of this Agreement may be amended, modified, or changed, except as provided herein.

**XX. NOTICE**

 Any notice or communication between Town Consultant and the Town 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 sufficiently given when directly presented or pre-paid, first class United States Mail, addressed as follows:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town of Bayfield:

Town of Bayfield

PO Box 80

Bayfield, CO 81122

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By:

 Title:

State of Colorado }

 } ss.

County of }

 The forgoing instrument was subscribed, sworn to, and acknowledged before me this day of , 2013,

by as the of

 .

 My commission expires:

(S E A L)

 Notary Public

**TOWN OF BAYFIELD**

 By:

 Chris S. La May, Town Manager

State of Colorado }

 } ss.

County of }

 The forgoing instrument was subscribed, sworn to, and acknowledged before me this day of , 2013,

by as the of

 .

 My commission expires:

(S E A L)

 Notary Public

**Exhibit A**

**SCOPE OF SERVICES:**

**EXHIBIT B**

**COMPENSATION:**