



# **Town of Johnstown, Colorado**

## **Request for Proposal**

### **Aquatics Centers Feasibility Study**

**Issue Date: Wednesday, January 18, 2023**  
**Due Date: Friday February 17, 2023 – 12:00 p.m.**  
**(Mountain Time)**

## REQUEST FOR PROPOSALS

Notice is hereby given that proposals will be received by the Town of Johnstown, Colorado, for:

### **Aquatics Centers Feasibility Study**

Submittals are to the Town of Johnstown either via email [mlecerf@johnstownco.gov](mailto:mlecerf@johnstownco.gov) or regular mail to 450 S. Parish Avenue / PO Box 609 / Johnstown, CO 80534

Proposals received later than **12:00 p.m. on Friday, February 17, 2023 will not** be considered.

A copy of this Request for Proposal (RFP) may be obtained from Town's web site at <http://www.johnstownco.gov/>. Click on the Bids & RFP's link found under "Doing Business".

The Town of Johnstown reserves the right to reject any and all proposals, and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the Town to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the Town to accept or contract for any expressed or implied services.

A Service Provider response that indicates that any of the requested information in this RFP will only be provided if and when the Service Provider is selected as the apparently successful Service Provider is not acceptable, and, at the Town's sole discretion, may disqualify the proposal from consideration.

The Town requires that no person shall, on the grounds of race, religion, color, national origin, sex, age, marital status, political affiliation, sexual orientation, or the presence of any sensory, mental, or physical disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Town further assures that every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs are federally funded or not.

In addition to nondiscrimination compliance requirements, the Service Provider(s) ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

**Dated this 18<sup>th</sup> Day of January 2023.**

Matt LeCerf  
Town Manager  
Town of Johnstown

## **Background Information**

The Town of Johnstown is located in Northern Colorado along the Interstate 25 corridor. The community and the Northern Colorado region is among one of the fastest growth areas in the State and the Nation. Johnstown is incorporated in both Weld and Larimer Counties and is surrounded by other suburban cities and pockets of unincorporated areas as well. The Town is near several major transportation routes including Interstate 25, State Route 60, and State Route 34. These routes connect the Town economically and socially.

Johnstown was incorporated in 1907, having a current estimated population of 19,500. The community is growing at a rate of about 5% annually. Johnstown is the 8<sup>th</sup> largest Town in Weld County. Since its incorporation, Johnstown has grown in geographic size to fifteen square miles. This growth occurred primarily through the annexation of property over time by interested property owners.

Johnstown operates under a Council-Manager form of government. The Town Council is the policy-making branch of Johnstown's government and consists of seven members elected at large to staggered, four-year terms. The Mayor is elected by the voting public. The Town Council is supported by several advisory boards and commissions and the Town Manager. The Town Manager is appointed by the Town Council and serves as the professional administrator of the organization, coordinating its day-to-day activities.

## **Purpose and Background**

The Town of Johnstown has developed several healthy partnerships and one of the most significant has been with the Weld RE-5J School District. As part of this partnership, in 2020 the Town agreed to exchange property with the District whereby the Town would provide the District with an approximately 10 acre parcel of land for the construction of a new elementary school. In exchange, Johnstown would receive the land which was the site of the old elementary school which is currently being demolished. After completion of demolition the Town would be provided with the land consisting of approximately 5.5 acres. The Town has also been the recipient of an approximate 60 acres of land, generally southeast of Town Hall.

Consequently, the Town has a unique opportunity to master plan these two properties. One of the proposals recently presented to Council was an idea from residents requesting that the Town consider pursuing the construction of an aquatics center. The Johnstown Town Council actively listens and considers requests from citizens about issues that benefit and enhance the quality of life in the Community.

To this extent, the Council desires to explore the option of an aquatics center that would meet the needs of the community by understanding the financial feasibility of the project from the planning, design, sizing, and construction and including the operations and maintenance of the facility into the future. This study will be the foundation and could possibly a decision point on if the Town will proceed with this project or not.

The Town is seeking a consultant to develop a robust aquatics facility financial feasibility study to identify and evaluate the two (2) potential locations and design concepts for a large aquatics facility. Right sizing of the aquatics facility should be based on the current and future

needs of the community, also considering the Town’s growth trends and the outside area of influence this facility will bring visitors. Based on the location of the facility it is unclear if there are opportunities for other amenities on the site that would be additional recreational amenities. If additional space does exist, recommendations may be requested as part of this study.

The final plan should include a full site analysis with all estimated costs, including design, constructing, permitting, soft costs, parking requirements, long-term operation and maintenance costs and projected revenues for 20 years, etc. for the site.

**Performance Schedule**

Work for this contract will commence in March 2023 with substantial completion by August 2023. A final presentation to Town Council is expected by the Consulting Firm following approval of the draft study.

March 2023	Work begins
March – July 2023	Consulting Firm team works with Town Staff and Exploratory Committee (PFEC) to present and refine work
August 2023	Substantial completion
August 2023	Presentations to Town Council

**Scope of Work**

**Project**

**Overview**

- Develop a robust aquatics facility financial feasibility study to evaluate the locations identified and design concepts for one large aquatics and if appropriate ancillary recreation amenities. Components of the facilities are established in the “Facility Concept Plans” section below.
- The final plan should include a full site analysis with all estimated costs, including design, constructing, permitting, soft costs, parking requirements, long-term operation and maintenance costs and projected revenues for 20 years, etc. for the site.

**Stakeholder Input/Engagement:**

Community engagement will be sought through an Exploratory Committee scheduled to occur approximately March 2023 through July 2023. This committee will consider concept plans developed by the contractor, sites and corresponding costs and make a recommendation as necessary and appropriate.

**Demographics and Market Analysis:**

The consultants will need to conduct a market and trends analysis to help refine the building

program plans.

**Site Selection and Analysis:**

For the selected sites, a site analysis should include a preliminary geotechnical site evaluation, an environmental evaluation of the natural and built environment, and other due diligence processes that will inform the site’s feasibility and associated costs specific to the site.

Site options for consideration include the following:

- Aquatics & Recreation Center (large facility)
  - Letford Elementary School Site
  - Town owned 60-acre parcel

**Facility Concept Plans:**

Based on community feedback and recommendations the consultant will work with the Exploratory Committee in pursuit of the optimal and most desired aquatics center facility. The consultant will be expected to work with the Exploratory Committee in identifying the desired amenities to be incorporated into the aquatics facility. The consultant is asked to create concept designs with corresponding costs for both capital and operating expenses. All facilities will require suitable administrative and storage spaces and will be built using universal design standards. As previously mentioned, right sizing\*\* the aquatics facility should be based on the current and future needs of the community, also considering the Town’s growth trends and the outside area of influence this facility will bring visitors.

Table 1: Draft Building Program Plans

<b>Draft Building Program Plans</b>
Aquatics Center (Large facility, approx. 80,000** sq. ft)
<ul style="list-style-type: none"><li>• Aquatics<ul style="list-style-type: none"><li>○ Lap pool</li><li>○ Warm water leisure pool with recreation elements (splash pad, lazy river, water slide(s) etc.)</li><li>○ Splash pad</li><li>○ Shade structures</li><li>○ Warm water instructional pool</li><li>○ Therapy pool</li><li>○ Locker rooms</li></ul></li></ul>

**Capital and Operations Analysis:**

Develop a cost analysis based on the building program for each of the concepts to include

capital and operating cost projections. Capital costs should include design, environmental review, permitting, construction, project management and other soft costs. Operating costs should include both revenue and expense.

**Deliverables:**

1. Site analysis and concept plan for the two sites with a large aquatics center.
2. Complete cost analysis for all selected concept plans.
3. Final written report including a digital PDF file.
4. Up to 4 presentations and discussions with the Exploratory Committee.
5. Presentations of findings/recommendations to Town Council.
6. Presentation file for Town use at additional community meetings.

**Submission Criteria**

Proposals should be prepared simply, providing straight forward, concise descriptions of the applicant's capabilities to satisfy the requirements of the request. Proposals should stay within the 25-page limit.

Proposals must include the following:

1. A description of qualifications, including:
  - Project specific experience related to aquatic center feasibility studies and plans.
  - Company information including time the company has been in business and business experience.
  - Key personnel, both internal and subcontracted, to be assigned to this Project; this should include their role(s), unique skills, experiences, and qualifications for this Project.
2. Implementation plan including:
  - A statement of your understanding of the various aspects of the Project.
  - A discussion of your firm's approach to this Project.
  - A complete description of method to complete the scope of work.
  - A summary work coordination plan and schedule(s) describing how the goals, tasks, and other elements of the Project can be expected to be completed during the Project duration.
  - Detailed information on the Contractor's proposed fee schedule for items and/or services, proposed and any variation for non-routine services.
3. Examples of relevant projects:
  - Provide information about similar projects or clients for whom you have completed projects or provided similar operations and services, with an emphasis on recent and related projects.
4. References:
  - A list of names and phone numbers of three client references that would be most knowledgeable of your firm's performance on these similar projects. Please verify both name and contact phone number in advance before including this information in the proposal. References involving past Town of Johnstown projects will not be accepted.

## **Minimum Qualifications**

Demonstrated experience creating similar park, recreation, and aquatic center redevelopment and facility concept plans.

## **Proposal Submittal Instructions**

Please note: The following general requirements are mandatory for all proposals. Proposals submitted after the deadline date and time or lacking one or more of the following requirements will not be accepted.

- 1. Proposals must be received no later than 12:00 p.m. on Friday, February 17, 2023 (Mountain Time).**
2. Emailed proposals should include, "Johnstown Aquatics Centers Feasibility Study" in the subject line and be addressed to [mlecerf@johnstownco.gov](mailto:mlecerf@johnstownco.gov).
3. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed 20MB.
4. Please make sure you stay within 25-page limit on your proposal. Front and back is considered 2 pages.
5. If paper proposals are being submitted, they must consist of one original and one copy. The Town must receive any paper submittal by 12:00 p.m. on Friday, February 17, 2023 (Mountain Time), and any delivery received after the deadline will be rejected. These can be mailed or delivered to:

Town of Johnstown  
ATTN: Town Manager  
450 S. Parish Avenue  
PO Box 609  
Johnstown, CO 80534

6. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principal place of business, mailing address, phone numbers, emails, fax number (if one exists) and primary contact person.
7. To be evaluated, a proposal should address all requirements and instructions contained within.
8. Provide all references and materials required by the RFP instructions within.

**Questions:** Questions regarding the RFP process, scope of work, or evaluation process must be submitted in writing and should be addressed to Matt LeCerf, Town Manager, at [mlecerf@johnstownco.gov](mailto:mlecerf@johnstownco.gov). Questions must be submitted before 5:00 p.m. on Wednesday, February 8, 2023. A response to all questions will be provided not later than February 10, 2023. An addendum of all questions and answers will be made available on the Town's website on the Bids and RFP page: <https://johnstown.colorado.gov/bidsrfps>.

## **Submittal Deadlines**

The Town's estimated\* schedule for review of the RFP submittals and final selection of the Contractor in 2023 is as follows:

Wednesday, January 18	RFP posted
Wednesday, February 8	Deadline for questions: 5:00 p.m. Final
Friday, February 10*	Addendum Issued - Responses to questions posted: 5:00 p.m.
Friday, February 17	Request for Proposal Submittals Deadline: 12:00 p.m.
February 20 – February 24*	Evaluation Period – including interviews (if necessary)
March 6, 2023*	Contract Awarded

## **Selection Criteria**

The Town will make a selection based on the evaluation of the written proposals. The Town may also conduct an interview process with scoring used to determine the selected Contractor. The Town may elect to interview some or all proposers who submitted proposals. The Town reserves the right to make a selection based only on the evaluation of the written proposals.

Written proposals will be evaluated based on the following criteria:

<b>Criteria</b>	<b>Points</b>
Previous experience in similar projects/references included	0-15
Expertise of key personnel and/or team partners for identified roles	0-20
Project understanding and proposed strategy for success	0-25
Approach to project management and delivery	0-25
Cost & Schedule	0-15
<b>Maximum Points</b>	<b>100</b>

Interviews may be conducted with two or more firms selected by Town staff from those who submit SOQs. The Town of Johnstown interview team will consist of members directly related to the Project's scope of work. The interviews will be conducted remotely, and the consultant team will be responsible for choosing, testing and running the interview platform.

If interviews are conducted, each interview shall not exceed one hour and will generally follow this format. Predetermined interview questions from Town will be provided to each firm selected for interview within 3 business days of being notified of their selection.

- Consultant presentation, format optional (approximately 20 minutes)
- Predetermined interview questions from Town Staff (approximately 20 minutes)
- Open question and answer session (approximately 20 minutes)



## **Contract**

The Consultant and the Town will execute a Professional Services Agreement for Recreation and Aquatics Centers Feasibility Study (Attachment A).

## **Terms and Conditions**

- A. The Town reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. Proposers responding to this RFP must follow the procedures and requirements stated in the RFP document. Adherence to the procedures and requirements of this RFP will ensure a fair and objective analysis of your proposal. Failure to comply with or complete any part of this RFP may result in rejection of your proposal.
- C. The Town reserves the right to request clarification of information submitted, and to request additional information on any proposal.
- D. The Town reserves the right to award any contract to the next most qualified agency, if the successful agency does not execute a contract within 30 days of being notified of selection.
- E. Any proposal may be withdrawn up until the date and time set above for opening of the proposals.
- F. The contract resulting from acceptance of a proposal by the Town shall be in a form supplied by the Town and shall reflect the specifications in this RFP. A copy of the Town's standard Professional Services Agreement is available for review (see attachment A). The Town reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP and which is not approved by the Town Attorney.
- G. The Town shall not be responsible for any costs incurred by the agency in preparing, submitting or presenting its response to the RFP.
- H. Any material submitted by a proposer shall become the property of the Town. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.
- I. The Town reserves the right not to award any portion or all of the project if it finds that none of the proposals submitted meets the specific needs of the project. The Town reserves the right to modify the scope of work and award portions of this RFP to the selected vendor. The Town reserves the right to award this work to multiple vendors if the scope of work would be best completed by multiple vendors and their associated experience.

## **Public Disclosure**

Once submitted to the Town, proposals shall become the property of the Town, and all proposals shall be deemed a public record as defined in "Colorado Open Records Act". Any proposal containing language which copyrights the proposal, declares the entire proposal to be confidential, declares that the document is the exclusive property of the proposer, or is in any way contrary to state public disclosure laws or this RFP, could be removed from consideration. The Town will not accept the liability of determining what the proposer considers proprietary or not. Therefore, any information in the proposal that the proposer claims as proprietary and exempt from disclosure must be clearly designated. It must also include the exemption(s) from disclosure upon which the proposer is making the claim, and the page it is found on must be identified. With the exception of lists of prospective proposers, the Town will not disclose RFP proposals until a bid selection is made. At that time, all information about the competitive procurement will be available with the exception of: proprietary/confidential portion(s) of the proposal(s), until the proposer has an adequate opportunity to seek a court order preventing disclosure. The Town will consider a proposer's request for exemption from disclosure; however, the Town will make a decision predicated upon the "Colorado Open Records Act".

### **DBE Participation**

The Town encourages DBE firms to submit qualifications and encourages all firms to team with DBE firms in their pursuit of this project.

### **Federal Debarment**

The Bidder shall not currently be debarred or suspended by the Federal government. The Bidder shall not be listed as having an "active exclusion" on the U.S. government's "System for Award Management" database ( [www.sam.gov](http://www.sam.gov) ).

**TOWN OF JOHNSTOWN  
PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”) (collectively, the “Parties”).

**RECITALS**

**WHEREAS**, the Town desires to engage the services of Contractor and Contractor desires to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), to the Town; and

**WHEREAS**, the Parties wish to memorialize their contractual relationship.

**AGREEMENT**

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

**SECTION 1: PARTIES**

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement.

**SECTION 2: SERVICES, COMPENSATION AND TERM**

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Compensation. In consideration of Contractor’s performance of the Services contemplated herein, the Town agrees to pay Contractor the compensation set forth on Exhibit A. Contractor shall submit detailed invoices reflecting the portion of the Services completed to the date of the invoice. The Town shall provide payment for Services to Contractor within thirty (30) days of receipt of the invoice. In its discretion, the Town may withhold payment for disputed portions of invoices on the condition that the Town provides written notice to Contractor of the dispute. Upon delivery of notice, the Town and Contractor shall promptly

endeavor to resolve such dispute.

2.03 Expenses: Contractor shall not incur any expense or debt on behalf of the Town without the Town's prior written authorization.

2.04 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through August 31, 2023, and shall not extend beyond that date absent the written approval of the Town.

### **SECTION 3: OPERATIONS**

3.01 Contractor Status. Contractor avers that it has the background, expertise and education to provide the Services. Contractor shall be responsible for the proper performance of the Services in accordance with the terms hereof. Contractor shall obtain the necessary permits, if any, and maintain all required licenses, including but not limited to a Town business license.

3.02 Schedule. Unless otherwise set forth in Exhibit A, Contractor shall provide the Services in accordance with the timeline requested by the Town

### **SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

#### 4.01 Insurance.

A. Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future Town comprehensive or personal injury liability insurance policies. As a material term of this Agreement, Contractor agrees to maintain and keep in force during the term of this Agreement one or more policies of insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado in the following amounts:

1. Workers' compensation insurance as required by law;
2. Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate;
3. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) 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 Town under this Agreement; and
4. Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION

DOLLARS (\$2,000,000.00) general aggregate.

B. Contractor shall procure and maintain the minimum insurance coverages listed herein. 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. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Contractor's insurance policies.

C. 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, upon request by the Town, shall be subject to review and approval by the Town. 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 thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities, or failures to act, under this Agreement. Contractor agrees that it will at all times protect, defend, indemnify and hold harmless the Town, its elected officials, employees, agents, and their successors and assigns, from and against all liabilities, losses, claims, demands, actions and costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons arising from or resulting in any manner from the actions or failures 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.

## **SECTION 5: TERMINATION**

5.01 Termination. The Town or Contractor may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

## **SECTION 6: INDEPENDENT CONTRACTOR**

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR**

IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

**SECTION 7: NOTICE**

7.01 Notices. All notices required under this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail (“email”) return receipt or written acknowledgment requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO THE TOWN:

Town of Johnstown

Attn: \_\_\_\_\_

450 S. Parish Avenue

P.O. Box 609

Johnstown, CO 80534

Email: \_\_\_\_\_

TO CONTRACTOR:

[ ]

Email: \_\_\_\_\_

**SECTION 8: MISCELLANEOUS**

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

8.03 Laws and Regulations. In the conduct of the Services, Contractor shall comply with all applicable laws, rules and regulations, and the directives or instructions issued by the Town or its designated representatives.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

8.06 Severability. 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 determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

8.07 Waiver. No consent or waiver, express or implied, by the Town to or of any breach or default by Contractor in the performance by Contractor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act or to declare Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time, or otherwise available to the Town, its elected officials, employees or agents.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the Parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

8.11 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.12 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.13 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, employee or agent of the Town.

8.14 No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this

Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

8.15 Controlling Document. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control.

8.16 Headings. The headings 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.

8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

8.18 Data Security. If Contractor has access to personal identifying information during the term of this Agreement, Contractor shall, pursuant to Section 24-73-101, *et seq.*, C.R.S., destroy all paper and electronic documents containing such personal identifying information within six months of termination of this Agreement, unless otherwise required by law. During the term of this Agreement, Contractor shall implement and maintain reasonable security procedures that are appropriate to the nature of the personal identifying information disclosed or maintained and that are reasonably designed to help protect the information from unauthorized access, use, modification, disclosure or destruction. If Contractor discovers or is informed of a security breach, Contractor shall give the Town notice in the most expedient time and without unreasonable delay, no later than ten (10) calendar days after it is determined a security breach occurred. Contractor shall cooperate with the Town in the event of a security breach that compromises computerized data, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the Town information relevant to the security breach.

8.19 Right to Injunction. The Parties hereto acknowledge that the Services to be rendered by Contractor 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 may not be reasonably or adequately compensated by damages in any action at law, and the breach by Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. Contractor agrees that the Town, in addition to other relief at law, 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 Contractor.

[Remainder of page intentionally left blank.]





**EXHIBIT A**  
**SERVICES**