



TOWN HALL PO Box 10 | 201 N. Railroad Street | Ridgway, Colorado 81432 | 970.626.5308 | www.town.ridgway.co.us

Town of Ridgway

Planning and Design
Engineering Services for
the Beaver Creek Diversion
Restoration Project

Request for Proposals

TOWN OF RIDGWAY
Request for Proposal
for Planning and Design Engineering Services for the
Beaver Creek Diversion Restoration Project

Notice is hereby given that the Town of Ridgway, Colorado will receive proposals from qualified, professional consultants for Planning and Design Engineering Services for design and conceptual development of the Beaver Creek Diversion Restoration Project.

Two paper copies and one electronic copy of the proposal in a sealed envelope clearly marked "Beaver Creek Diversion Restoration Project" and the name, address and phone number of the bidder must be received by Pam Kraft, Town Clerk at Ridgway Town Hall, 201 N. Railroad Street, or PO Box 10, Ridgway, CO 81432 **by 4:00 pm on Thursday, January 30, 2025**. Any proposals received after said date/time will be returned unopened.

Owner reserves the right to reject any and all proposals, to waive any and all informalities and to negotiate contract terms with the successful proposer, or to accept the proposal for the contract, which in Owner's judgement best serves the interest of the Town of Ridgway. Owner reserves the right to disregard all non-conforming, non-responsive, or conditional proposals.

The full Request for Proposals ("RFP") can be viewed at <https://www.colorado.gov/pacific/ridgway/requests-proposals-bids>.

By: Pam Kraft, Town Clerk

Publication: Ouray County Plaindealer – January 9, January 16, 2025

BACKGROUND

The Town of Ridgway is nestled in a quaint, river valley at the foothills of the San Juan Mountains in Southwest Colorado. Incorporated in 1891 pursuant to the initiation of the Rio Grande Southern Railroad, the Town rests at an average altitude of 6,998 feet and is home to approximately 1050 people. Additional information about the Town of Ridgway is accessible on the Town website at: <https://townofridgway.colorado.gov/>.

The Town has two principal diversion locations for raw water. One is the “Beaver Creek Diversion.” At the Beaver Creek Diversion, the Town diverts the water from Beaver Creek into a side channel that runs the water over a “grizzly”, which screens out the larger rocks and some debris and into a trough. The first section of the trough includes a swing gate that can either direct the water directly into the Ridgway Ditch and/or divert some or all of the flow into a side channel that serves as both an overflow and rock chute.

On the morning of August 12, 2024, Town staff made a routine check of the Beaver Creek Diversion and found that a rain event over the weekend had severely impacted Beaver Creek above the Town’s diversion point. For the first time in the 40 plus years current Town staff has observed, the Creek was significantly altered by the weather event. The weather event washed out the land between the two braids of the Creek, eroded the side banks and undercut the river so that the river at the diversion location appears to be below the elevation of the grizzly that screens the water from the diversion before it goes into the Ridgway Ditch. In addition, the event filled the diversion channel, grizzly, diversion trough, and the Ridgway Ditch with a mud slurry bank to bank to the top of the Ditch for hundreds of feet.

At this time, the Creek is no longer aligned with the Ridgway Ditch. The Creek is undercut and at a lower elevation. The Creek is also much wider than it was previously. In addition, the new stream banks are unstable. The trees at the top edge of the bank in many cases have parts of their root systems exposed. Given the increased intensity of the storms that took place in the summer of 2024, the long-term fix for diversion will need to be something that takes into account extreme weather events and that can handle the normal fluctuations in flows and gravel loads.

SCOPE OF SERVICES

Introduction

The scope of services being requested are intended to restore and improve the Beaver Creek Diversion and the Ridgway Ditch beginning with developing a conceptual plan to restore the diversion with an emphasis on minimizing the risk from future runoff and rain events as well as decreasing debris flows to the Town’s water transmission system.

The following provides a more detailed description of the Scope of Services the Town is requesting from consultants to restore and improve the Town’s Beaver Creek Diversion and the upper parts of the Ridgway Ditch.

Alternatives Analysis

The selected consultant will perform an alternatives analysis that considers the technical, economic, and legal feasibility of each alternative identified as part of the preliminary engineering phase of the project in order to determine the most beneficial alternatives. At a minimum, the selected consultant shall examine options like the following:

- Restoration of the Diversion in the existing location and restoration of the creek channel to pre-flood conditions,
- Move the diversion upstream where the topography would allow for gravity flow to the grizzly (located at the upstream end of the Ridgway Ditch) with less modification to the creek bed, and
- Sub surface diversion (infiltration gallery or similar).

Upon completion of the development of alternatives, the selected consultant will present the preliminary options to the Town Engineer and Town Manager for their thoughts and suggestions before proceeding with the more detailed analysis.

Based on any input from the Town, the selected consultant will develop a more comprehensive analysis of each of the options including a detailed narrative analysis, conceptual design, and preliminary costs for each option.

The alternatives analysis shall, at a minimum, evaluate how each option addresses the items below and any others identified by the Town.

Technical:

- Ability to get materials, equipment and labor to the work area.
- Need for significant access improvements from the turn off on CR 5 to the project site (Likely will need to pipe the section where the ditch and the access road are beside one another before other improvements can proceed).
- Area in which to stage and work
- Impacts of changes in topography from the August event including that the creek is now below the diversion.
- Based on the size of the August 2024 event, evaluate each option's ability to handle even more extreme events.
- Lack of stability of the new stream banks.
- Gravel and rock burden of the stream under normal flows, peak rain events, and major debris flows in excess of what was experienced in August of 2024.

- How to capture very low flows as well as flows up to 10 cfs.
- Limited construction season.

Legal Issues:

- Water Rights
- Property Ownership
- Legal access issues
- Permitting
- Need for easements for access and construction (Federal and private lands)

Economic Analysis:

The economic analysis shall include the capital costs for design, legal services, permitting, construction, inspection, project management, and all other ancillary costs for a complete project. In addition, the O&M costs, debt services and other long-term costs shall also be evaluated and a present worth analysis completed for each of the options included in the detailed analysis.

Alternative Procurement:

Evaluate whether it would be in the project's interest, and acceptable to the funding agencies, to use an alternate procurement methodology such as Design Build, CMAR, etc. rather than traditional design, bid, build.

Site Improvements:

The design, construction, and the cost estimate should also include the need to pipe +/- 2,000 ft of the Ridgway Ditch and the need for road improvements for another mile or more of road on private property from the head of the Ridgway Ditch to CR 5.

The selected consultant shall conduct any additional survey and topography, hydrologic, geotechnical and other work needed to properly evaluate options and to have sufficient information to prepare a design.

The selected consultant will be expected to submit the more detailed analysis, and any requested updates, to the Town Engineer and Town Manager for review and approval before proceeding to the Design phase.

Design and Bidding Phase

In consultation with the Owner and on the basis of the state and federal agency approvals for the selected option and the Owner securing or the Owner being confident that they can secure the

needed water rights, land rights, and permits, the Owner will direct the consultant to commence design of the project. The consultant shall:

- Provide technical criteria, written descriptions and design data for Owner's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist Owner in preparing the applications in consultation with the appropriate authorities.
- Prepare for review and approval by Owner, its legal counsel, and other advisors the contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, design documents with narrative descriptions of the work and assist in the preparation of other related documents.
- On the basis of the accepted preliminary design documents and submittals, prepare final design drawings and design calculations and specifications of sufficient detail for contractors to competitively bid the work, showing the scope, character, and extent of the Project. Such design shall be in accordance with or more stringent than the requirements in the Town standards, funding agency requirements, property owner requirements, and requirements of entities from whom permits are required as well as good engineering practice.

After authorization to proceed with bidding from the Owner and funding agencies, proceed with the Bidding or Negotiating Phase, the consultant shall:

- Assist Owner in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services; and, where applicable, and maintain a record of prospective bidders to whom Bidding Documents have been issued.
- Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.
- Conduct a pre-bid meeting including a site visit to familiarize bidders with the project site and address bidder questions, and prepare written summary of such pre-bid meeting.
- Attend the bid opening, if requested, prepare bid tabulation sheets and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services as appropriate.

Overall Deliverables

- Conceptual narrative of options with discussion of the feasibility, challenges, and preliminary economics of each.
- Detailed analysis of each option not eliminated from the initial review.
- Matrix analysis of the options included in the detailed analysis.
- All additional survey work, permit applications, summary of discussions with funding agencies, property owners (public and private), etc. collected during the analyses.

- Bid documents including plans and specifications for construction (for the selected option).
- Design calculations
- Cost estimates and present worth analysis
- Addenda
- Bid summary

Information Available from the Town

- [Town of Ridgway Water Supply Intake Structure and Transmission System Rehabilitation – Conceptual Plan and Cost Estimate for Design and Construction – From Wright Water Engineers, Inc.](#) (dated September 20, 2024)
- [Topographic survey of the upper end of the Ridgway Ditch and the historic diversion area](#)
- Drone footage of Beaver Creek Diversion (available upon request)

SUBMITTAL REQUIREMENTS

Proposers shall submit two (2) paper copies printed double sided and one (1) electronic copy of the proposal in a sealed envelope, clearly marked with “Request for Proposal for Planning and Design Engineering Services for the Beaver Creek Diversion Restoration Project”, **no later than 4:00 p.m. on Thursday, January 30, 2025** to:

Ridgway Town Clerk
PO Box 10
201 N Railroad Street
Ridgway, CO 81432

Proposals shall be limited to 25 pages. Proposals should focus on the qualifications and experience in providing the services requested above. A short list of individuals or firms may be developed based upon the proposals submitted. Proposals shall include the following in the order given:

- A. Letter of Interest: Provide a letter of introduction stating your firm’s interest and understanding of the scope of this project. The letter must be signed by an authorized agent for your firm.
- B. Capabilities and Experience:
 - i. Provide specific information regarding your experience and capabilities on similar projects or related services that have been provided by the firm in general and for the specific people that will be assigned to the project. Please provide at least two (2) examples.

- ii. Address the following questions:
 - a. How does your firm incorporate context-sensitive design into your project planning and design process?
 - b. How does your firm provide value-added, cost-effective services?
 - c. What are your firm's Quality assurance/Quality control processes?
 - iii. Provide resumes for key personnel that would be assigned to the project.
 - iv. List any scopes of service that will be performed by sub-consultant work. Identify the names of any sub-consultants and information regarding their expertise to provide those services.
- C. Proposed Methodology:
- i. Proposed approach to accomplish the scope of services and deliverables.
 - ii. Any suggested changes or additions to the scope of services and/or deliverables that the Town has overlooked and that are important for project success.
 - iii. Details of what input and assistance the consultant will need from the Town.
 - iv. Proposed timeframe of the project.
- D. Cost: Provide a detailed budget for the consulting services including: personnel, rates, hours and totals for each of the tasks and an overall cost, with standard hourly rates and a schedule for additional services not outlined in the Scope of Services, if applicable.

TIMELINE

Identified below are the milestone dates associated with this project (subject to change).

<i>RFP Issued:</i>	<i>Thursday, January 2, 2025</i>
<i>Site Visit (Meet at Ridgway Town Hall, 201 N Railroad St. – Site visit weather dependent and estimated to be 3 to 4 hours)</i>	<i>Thursday, January 16, 2025 at 1:00 p.m.</i>
<i>Last Date for Questions:</i>	<i>Wednesday, January 22, 2025 by 10:00 a.m.</i>
<i>Responses to Questions and/or Addendum Issued by Town (if necessary)</i>	<i>Thursday, January 23, 2025 by 5:00 p.m.</i>
<i>Proposal Due Date/Opening of Proposals:</i>	<i>Thursday, January 30, 2025 by 4:00 p.m.</i>
<i>Notifications Re Interview Status</i>	<i>Monday, February 3, 2025</i>

<i>Interviews (in-person or virtually)</i>	<i>Thursday, February 6, 2025</i>
<i>Final Consultant Selection/Notice of Award:</i>	<i>Wednesday, February 12, 2025</i>
<i>Executed Contract and Required Documents Submitted</i>	<i>Monday, February 17, 2025</i>
<i>Project Commences:</i>	<i>Tuesday, February 18, 2025</i>
<i>Desired Project Completion:</i>	<i>Friday, May 16, 2025</i>

Please note that the Town desires services to start as soon as possible once an agreement is executed. The Town needs for the project to be constructed during the 2025 construction season. Interested parties are encouraged to submit questions regarding the Request for Proposal to Preston Neill, Town Manager, at pneill@town.ridgway.co.us. Responses to questions will be provided directly by email and posted on the Town's website at <https://www.colorado.gov/pacific/ridgway/requests-proposals-bids> directly after the "Last Date for Questions" identified in the timeline above. Interested parties are highly encouraged to check the Town's website at the link above immediately after January 23, 2025 and prior to submitting a proposal to ensure they have all necessary and up-to-date information.

SELECTION PROCESS

The Town's review of proposals will focus in general on the expertise, experience and understanding of the scope of services as evidenced by the project team. Proposals will be evaluated using the following criteria:

- Qualifications of the individual or team members and their experience with similar projects.
- Understanding or experience with the requested scope of services and working with small local governments with limited resources.
- Time frame for completion of the project.
- Ability of the consultant to complete the work in a cost-effective and timely manner.
- Comprehensive proposal package, including unique and creative technical approaches which are clearly articulated in the proposal that will enhance the project outcomes and deliverables.
- Overall responsiveness to the RFP.
- The degree to which the proposal meets or exceeds the terms of the Request for Proposal.
- Results of reference checks and past performance for other clients.

ADDITIONAL INFORMATION

The Town intends to select one consultant to provide the services described herein. The Town reserves the right to accept or reject any or all proposals, to waive any and all informalities and to negotiate contract terms with the successful Proposer, or to accept the proposer for the contract, which in its judgement best serves the interest of the Town, and the right to disregard all non-conforming, non-responsive, or conditional proposals.

The Town will work to honor confidentiality requests to the extent possible and reasonable. If you feel certain aspects of your proposal are proprietary in nature, please clearly indicate those specific components in the submittal as the Town is subject to Colorado Open Records Act requests.

For more information about the Town of Ridgway, please visit <https://townofridgway.colorado.gov/>.

ATTACHMENT

Professional Services Agreement



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of this _____ day of _____, 20____, by and between the Town of Ridgway, State of Colorado, hereinafter referred to as "Town" and _____, _____, hereinafter referred to as "Contractor".

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF SERVICES**

Contractor agrees to perform services in accordance with the Scope of Consulting Services attached hereto as Exhibit "A" and incorporated herein by this reference.

2. **TIME OF COMPLETION**

The services to be performed pursuant to this Agreement by Contractor shall be initiated upon execution of this Agreement, shall be pursued with due diligence thereafter, and shall be continued until << Month, dd, yyyy >>, unless terminated prior.

3. **PROFESSIONAL RESPONSIBILITY**

Contractor shall be responsible for the professional quality, timely completion and coordination of all services as outlined in Exhibit A and shall without additional compensation promptly remedy and correct any errors, omissions or other deficiencies. Contractor is solely responsible for the timing, means and methods of performing the work. Contractor shall meet or exceed industry standards applicable to the services and shall provide for all training and education needed and provide all tools necessary to perform the services. Contractor shall comply with all applicable laws.

4. **RELEASE AND INDEMNIFICATION**

Contractor hereby waives any claims for damage to Contractor's property or injury to Contractor's person against the Town, its officers, agents and employees arising out of the performance of the services under this Agreement. To the fullest extent permitted by law, the Contractor 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 Services, 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 Contractor or any subcontractor of the Contractor, or any officer, employee, or agent of the Contractor or any subcontractor, or any other person for whom Contractor is responsible. The Contractor 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 Contractor'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.

5. **WORKER'S COMPENSATION**

Contractor shall obtain statutorily required Worker's compensation insurance to cover Contractor's employees and provide the Town a certificate of such insurance. Contractor hereby agrees to release, waive, save, hold harmless, defend and indemnify the Town, its officers, agents or employees on account of any claims arising under the Worker's compensation laws of the State of Colorado on behalf of Contractor or any of Contractor's employees, subcontractors or subcontractor's employees.

6. **PAYMENT**

In consideration of the proper performance of the Contractor's services, Town agrees to pay the Contractor at the rate of << \$XX/hour, or flat fee >> for time expended by Contractor's principals, billable in << ¼ hour increments >>. Payment shall be made upon itemized monthly billing statements allowing for 30 days processing time by the Town. Contractor is not entitled to reimbursement for supplies, materials or expenses without the prior approval of the Town Manager.

7. **TOWN REPRESENTATIVE**

The Town hereby designates its Town Manager, or her designee as its representative and authorizes her to make all necessary and proper decisions with reference to this Agreement.

8. **INDEPENDENT CONTRACTOR**

The services to be performed by the Contractor are those of an independent contractor and not as an employee of the Town. As an independent contractor, Contractor is not entitled to worker's compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

9. **ASSIGNMENT**

This Agreement may not be assigned nor subcontracted by either party without the written consent of the other party. Provided, however, Contractor shall arrange for substitute service in those instances when Contractor is not able to perform the services due to temporary absence.

10. **INSURANCE**

The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to



procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

Contractor shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Town. All coverages shall be continuously maintained from the date of commencement of services hereunder.

- A. Worker's Compensation insurance to cover obligations imposed by the Worker's Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under this contract.
- B. 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) 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.
- C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than five hundred thousand dollars (\$500,000) each occurrence and five hundred thousand dollars (\$500,000) aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services.

The policies required above, except of the Worker's Compensation insurance, shall be endorsed to include the Town and the Town's officers and employees as additional insureds. 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 Contractor. The Contractor shall be responsible for any deductible losses under any policy required above.

Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement. The Town reserves the right to request and receive a certified copy of any policy.

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

The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as from time to time amended.

11. **SECURITY**

Contractor shall procure an irrevocable letter of credit in a form and with a lending institution satisfactory to the Town for a term equal to the term of this Agreement, or such other security that is satisfactory to the Town, in the amount of Twenty Five Thousand Dollars (\$25,000), insuring full performance of this Agreement by Contractor and reflecting the ability of the Town to call on such security if Contractor fails to perform any of the services as obligated by this Agreement.

12. **CONTRACTOR OPERATIONS**

Contractor shall provide services as set forth in Exhibit A.

Contractor shall establish and maintain an office in where service may be obtained and complaints rendered, utilizing regular business hours (8AM to 5 PM), Monday through Friday. During off hours, telephone inquiries shall be received either by voice mail or through an answering service.

All personnel of the Contractor involved with the services of the Contractor to the Town shall be courteous and respectful at all times. Personnel driving Contractor's vehicles shall each at all times possess and carry the appropriate Colorado Commercial Drivers License ("CDL") for the particular type of vehicle or equipment operated. The Town may request the removal or transfer of any employee of the Contractor who violates the provisions hereof, or who is wanton, negligent or discourteous in the performance of such duties.

Contractor shall not use a firm name containing "Town of Ridgway" or other words which could imply municipal ownership.

13. **ADMINISTRATION**

The administration of this Contract shall be the responsibility of

It shall be the responsibility of the Town to.... The Town may adopt rules and regulations to enforce or carry out the terms and conditions of this Agreement, which



shall be binding upon the Contractor.

The Town shall ...

The Town shall ...

14. **BREACH AND TERMINATION**

All terms and conditions of this Agreement are considered material and failure to perform any of said conditions on be considered a breach of this Agreement. In such event, either party may notify the other of the breach, in which case there shall be a thirty day opportunity to cure the breach, except for failure to provide service which must be corrected within 3 days. If the breach is not cured the non-breaching party may have recourse to any and all remedies provided by law, including damages, specific performance, and termination of the contract.

15. **REMEDIES**

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- a. Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- b. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- c. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or
- d. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

16. **RECORDS AND OWNERSHIP**

- A. Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with



this Agreement, are to be retained and stored in accordance with the Town's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the Town offices or accessible and opened for public inspection in accordance with CORA and Town policies. Public records requests for such records shall be processed in accordance with Town policies. Contractor agrees to allow access by the Town and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the Town. For purposes of CORA, the Town Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

- B. Town's Right of Inspection. The Town shall have the right to request that the Contractor provide to the Town a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the Town of all documents and records produced or maintained in accordance with this Agreement.
- C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the Town of Ridgway upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the Town. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the Town not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the Town and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The Town shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Town staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the Town.
- D. Return of Records to Town. At the Town's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the Town in a reasonable format and with an index as determined and requested by the Town.

17. **MISCELLANEOUS**

- A. Governing Law and 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 Ouray County, Colorado.



B. 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.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

E. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

F. Assignment. 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.

G. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

H. Governmental Immunity. 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 or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended ("CGIA"), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

I. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

J. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of



Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

K. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

L. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

M. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), (N) (Release of Information) and (O) Attorneys' Fees, shall survive the expiration or termination of this Agreement.

N. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

O. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

P. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party services providers.

Q. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the Town and the Contractor and bind their respective entities.

R. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised



Statutes.

18. **DATE**

This Agreement is dated _____, 20__.

19. **EMPLOYMENT OF "ILLEGAL ALIENS"**

The following provisions are required by Colorado Revised Statutes §8-17.5-102, as amended. The term "illegal alien" is used as it is referenced in the above Statutes and is not a term chosen or endorsed by the Town.

- A. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- B. Contractor shall not 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 this Agreement.
- C. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this agreement through participation in either (1) the e-verify program, (the electronic employment verification program created in Public Law 104-208 as amended and expanded in Public Law 108-156, as amended, and jointly administered by the US Department of Homeland Security and the Social Security Administration, or its successor program) or (2) the Department Program (the employment verification program established pursuant to CRS §8-17.5-102(5)(c)).
- D. Contractor is prohibited from using the e-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- E. If the Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (a) notify the Subcontractor and the Town 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 (a) of this paragraph (E), 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 Department of Labor and Employment in the course of an investigation that the Department is undertaking pursuant to CRS §8-17.5-102(5).
- G. If Contractor violates these illegal alien provisions, the Town may terminate this Agreement for a breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town. The Town will notify the Office of the Secretary of State if Contractor violates these provisions and the Town terminates this Agreement for that reason.
- H. Contractor shall notify the Town of participation in the Department program and shall within 20 days after hiring an employee who is newly hired for employment to perform work under this Agreement affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC §1324a and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the Town.

20. **APPROPRIATION REQUIRED**

This Agreement shall NOT be construed to constitute a debt of the Town beyond any current fiscal year and shall be subject to the availability of an annual appropriation therefore by the Town.

TOWN OF RIDGWAY

By _____
<<name, title>>

ATTEST:

Town Clerk

CONTRACTOR: <<Business Name>>

By _____
<<name, title>>



**EXHIBIT A
SCOPE OF SERVICES**

#-Year Term (to conclude <<mm, day, year>>):

-;
-;
-;
- Other requests as appropriate and related to _____ services;

All services and products are non-proprietary; all services and products shall be related solely to the business of Town Government.



CRS 8-17.5-102 Certification

Name of Project: _____

Date: _____

Pursuant to CRS 8-17.5-102(1) the undersigned hereby certifies that at this date it does not knowingly employ or contract with an illegal alien who will perform work under the contract for the above referenced project and that the Contractor will participate in the E-Verify Program or the Department Program in order to confirm the employment eligibility of all employees who are newly hired for work under the contract for the above referenced project.

CONTRACTOR: _____

By: _____
<<Insert: Name, Title>>