

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2021, by and between Fremont County, State of Colorado (hereinafter referred to as the "County") and McCool Development Solutions, LLC (hereinafter referred to as "Consultant").

RECITALS:

- A. The County requires professional services.
- B. Consultant has held itself out to the County as having the requisite expertise and experience in providing planning and zoning services.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Consultant shall provide to the County, professional consulting services for the Project.

I. SCOPE OF SERVICES

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 is attached hereto and incorporated herein by this reference.

II. THE COUNTY'S OBLIGATIONS/CONFIDENTIALITY

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

III. OWNERSHIP OF WORK PRODUCT

The County acknowledges that the Consultant's work product is an instrument of professional service. Nevertheless, the products prepared under this Agreement shall become the property of the County upon completion of the work.

IV. COMPENSATION

- A. In consideration for the completion of the services specified herein by Consultant, the County shall pay Consultant in accordance with the schedule of charges in **Exhibit B**, which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include

hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by consultant in performing all services hereunder.

B. 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 Consultant under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the County.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the County on a monthly basis. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The County has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the County.

D. 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, 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, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the County) required by this Agreement have been turned over to and approved by the County and upon receipt by the County of Consultant's certification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Within seven (7) days of receipt from the County of a Notice to Proceed, 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. The contract term is through December 31, 2021. Provided, however, on January 1 of each succeeding year, this Agreement shall be renewed automatically for an additional one-year term until December 31, 2025. The County may provide Contractor with seven (7) days' advance written notice of termination at any time pursuant to the terms of the Original Agreement. Except as may be changed in writing by the County, the Project shall be complete and Consultant shall furnish the County the specified deliverables as provided in Exhibit A.

VI. 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 County. If Consultant proceeds without such written authorization, then 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 County 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.

VII. PROFESSIONAL RESPONSIBILITY

A. 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.

B. The work performed by 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.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the County for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the County of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the work. Neither the County'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 Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the County provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. COMPLIANCE WITH LAW

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

IX. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the County, 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, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any subconsultant of Consultant, or any officer, employee, representative, or agent of Consultant or of any subconsultant of Consultant, or which arise out of any workmen's compensation claim of any employee of Consultant or of any employee of any subconsultant of Consultant. Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Consultant, or at the option of the County, agrees to pay the County or reimburse the County for the defense costs incurred by the County in connection with, any such liability, claims, or demands. Consultant also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the County, its officers, or its employees, the County shall reimburse Consultant for the portion of the judgment attributable to such act, omission, or other fault of the County, its officers, or employees.

X. INSURANCE

A. 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 Consultant pursuant to paragraph A. above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section IX. 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.

B. Consultant shall procure and maintain, and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the County. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to Section IX. Indemnification, above. 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 six hundred thousand (\$600,000) 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 six hundred thousand dollars (\$600,000) 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 County and the County's officers, employees, and consultants as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the County, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by paragraph 1. above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.
5. The certificate of insurance provided for the County shall be completed by 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 County 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 County. The completed certificate of insurance shall be sent to:

Fremont County
615 Macon Avenue
Room 106
Canon City, CO 81212

6. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the County may immediately terminate this Agreement, or at its discretion, the County 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

County shall be repaid by Consultant to the County upon demand, or the County may offset the cost of the premiums against any monies due to Consultant from the County.

7. The County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the County, 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 three hundred fifty thousand dollars (\$350,000) per person and nine hundred ninety thousand dollars (\$990,000) 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 County, its officers, or its employees.

XI. ILLEGAL ALIENS.

- a. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien and that 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.
- b. Prohibited Acts. 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 Consultant that the subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- c. Verification.
 1. Consultant has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Consultant does not employ any illegal aliens and, if Consultant is not accepted into the basic pilot program prior to entering into this Agreement, that Consultant shall apply to participate in the basic pilot program every three (3) months until Consultant is accepted or this Agreement has been completed, whichever is earlier.
 2. Consultant shall not use basic pilot program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.

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

i. Notify the subconsultant and the County within three (3) days that 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 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. 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 Consultant is complying with the terms of this Agreement.

XII. NON-ASSIGNABILITY

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

XIII. TERMINATION

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon the County's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the County's issuance of said written notice of intent to terminate, the County shall pay Consultant for all work previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the County shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the County thereafter shall be at the County's sole risk, unless otherwise consented to by Consultant.

XIV. CONFLICT OF INTEREST

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

XV. VENUE

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

XVI. INDEPENDENT CONTRACTOR

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

XVII. NO WAIVER

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

XVIII. ENTIRE AGREEMENT

This Agreement and the attached Exhibits A and B is the entire Agreement between Consultant and the County, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

XVIII. NOTICE

Any notice or communication between Consultant and the County which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The County: Fremont County
615 Macon Avenue
Room 106
Canon City, CO 81212

Consultant: McCool Development Solutions
4383 Tennyson Street, Unit 1-D
Denver, CO 80212

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

FREMONT COUNTY, COLORADO

By: _____
Dwayne McFall, Chairman, BOCC

ATTEST:

Justin Grantham, Clerk of the Board

CONSULTANT

Carrie McCool

By: _____
Carrie McCool, Principal/Owner _____
Date

ATTEST:

Title Date



EXHIBIT A SCOPE OF SERVICES

Provide contract planning and zoning services to support the Fremont County Department of Planning and Zoning in maintaining the high level of customer service on all land use issues and development review functions of the department. The scope of services includes, but is not limited to:

- Serve as Project Planners in the review of development review applications (i.e., rezonings, PUDs, variances, commercial development plans, conditional use permits, subdivisions, vacation of right-of-way, etc.) for compliance and conformance with all applicable laws, County regulations, design standards, long range plans, policies, and processes relating to planning and land development.
- Confer with and advise applicants regarding County regulations, policies, processes, ordinances, and long range plans.
- Prepare staff reports and findings, in electronic format, for decision-making bodies.
- Attend and facilitate public hearings and meetings, in person and/or virtually, at the request of the County.
- Ensure that interested parties (external and internal) are informed of the progress of applications, such as changes to the application or scheduled meetings.
- Coordinate all review comments and recommendations from all County departments and external referral agencies.
- Collaborate with applicants to make changes to the development applications necessary to comply with referral comments, County regulations, design standards, long range plans, policies, and processes relating to planning and land development.
- Prepare and negotiate public improvement agreements in concert with County staff.
- Review approved PUD documents, plans, plats, and agreements to ensure accuracy and completeness before recordation.
- Work closely with County staff to conduct follow up meetings as necessary with applicants to determine compliance with conditions of approval, particularly before acceptance of certain improvements, and release of building permits or certificates of occupancy.
- Attend and facilitate development review meetings via conference calls or other virtual meeting platforms.
- Coordinate and ensure a streamlined process for final planning, engineering, and building department approvals resulting in building permit issuance.
- Assist with customer services functions of the department, including rebuild letters, pre-application meetings, responding to zoning and subdivision inquiries and inquiries regarding development applications.
- The County may, from time to time, have a need for other services not specifically listed above for which the Consultant has the necessary experience and capabilities. The Board of County Commissioners or its representative may authorize contractor to perform such selected services on an as needed basis.



**EXHIBIT B
SCHEDULE OF CHARGES**

All development review services are billed at \$115 per hour. All transportation expenses will be billed as a flat fee "trip charge" based on the IRS standard mileage reimbursement rate and hourly rate for drive time.

Service Type	RATE
Development Review	\$115/Hour
Flat Fee Trip Charge (Round Trip)	\$710