Project:	
Contractor:	
Total Cost:	
Term:	
Acct or P O #	



## CENERAL CONTRACT FOR COODS AND/OR SERVICES

FOR CONTRACTS FOR GOODS AND/OR SERVICES OF \$50,000 OR MORE AND FOR CONTRACTS FOR CONSTRUCTION FOR \$50,000 TO \$80,000 (LONG FORM)
THIS AGREEMENT ("Agreement"), made this day of, 20, between the City of Lafayette, a Colorado home rule city and municipal corporation, hereinafter referred to as "LAFAYETTE," and, an independent contractor, hereinafter referred to as "CONTRACTOR," provides as follows:
ARTICLE I SCOPE OF SERVICES
Section 1.1 <u>Services</u> : LAFAYETTE retains CONTRACTOR, and CONTRACTOR agrees to provide the goods and to perform and complete the work, personal services and/or furnish the necessary equipment, supplies or materials in accordance with and/or as described in <u>Schedule A</u> , hereinafter referred to as the "Project." <u>Schedule A</u> is hereby incorporated by reference and made a part of this Agreement. To the extent that this Agreement and Schedule A conflict, the provisions of this Agreement shall prevail. Additional goods or services beyond those set out in <u>Schedule A</u> , if requested, shall be provided only when authorized in writing by LAFAYETTE.
Section 1.2 <u>Contract Time</u> : CONTRACTOR shall commence work upon direction to proceed from Lafayette and complete the Project on or before
Section 1.3 <u>Independent Contractor</u> : CONTRACTOR shall at all times control the means and manner by which CONTRACTOR performs the work, subject to LAFAYETTE's right to monitor, evaluate and improve such work. CONTRACTOR shall at all times be and extended.

right to monitor, evaluate and improve such work. CONTRACTOR shall at all times be and act as an independent contractor and not as an employee of LAFAYETTE.

Section 1.4 <u>Warranty of Contractor</u>: CONTRACTOR warrants that title to all goods, materials and equipment covered and paid for under this Agreement will pass to LAFAYETTE, either by incorporation in the Project or upon the receipt of payment by CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no services, goods, materials or equipment paid for under this Agreement will have been acquired by CONTRACTOR, or by any other person performing services at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by CONTRACTOR or such other person.

CONTRACTOR warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses required by law. All professional services shall be performed timely in accordance with generally accepted professional practices and the level of competency presently maintained by other professionals providing the same general type of work as set forth in the Scope of Services.

## ARTICLE II COMPENSATION FOR SERVICES

Section 2.1 <u>Compensation</u> : In consideration of the completion of the Project
specified herein by CONTRACTOR, LAFAYETTE shall pay CONTRACTOR (check and initial
below as applicable):
A fixed sum of \$
Based upon a time, materials and expenses basis, pursuant to the rate schedule
attached hereto as Schedule A, but in no event shall the total compensation exceed
\$
As described in Schedule A.
Section 2.2 <u>Payment</u> : LAFAYETTE will make payment due to CONTRACTOR for
compensation for completed work within thirty (30) days after invoices submitted by
CONTRACTOR, which invoice(s) may not be submitted more frequently than monthly.
Invoices shall indicate the basis upon which payment is requested, such as percentage of the
Project completed, or actual time, materials and expenses. LAFAYETTE shall submit invoice
disputes, if any, to CONTRACTOR within thirty (30) days for resolution by mutual consent.
Section 2.3 Expenses: LAFAYETTE $\square$ shall $\square$ shall not reimburse CONTRACTOR
for actual cost of administrative expenses associated with this Agreement such as long distance
telephone, facsimile transmissions, photocopies, reproduction of exhibits, travel expenses and

Section 2.4 <u>Final Settlement</u>: [Applicable to all contracts for construction or repairs to any public building or any public works, for more than \$50,000; if the Contract Price is less than \$50,000, this provision shall be applicable only if specifically checked and initialed by CONTRACTOR and LAFAYETTE.]

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- (a) If, on the basis of LAFAYETTE's observation of the Project during construction and final inspection, and LAFAYETTE's review of the final invoice and accompanying documentation as required by this Agreement, LAFAYETTE is satisfied that the Project has been completed and CONTRACTOR's other obligations under this Agreement have been fulfilled, LAFAYETTE will, within ten days after receipt of the final invoice, schedule a date for final settlement, which date shall be within 60 days after the Work is completed satisfactorily and finally accepted by the City. The date of final settlement shall be duly advertised at least 10 days prior thereto by publication of notice thereof at least twice in a public newspaper of general circulation published in Boulder County. Alternatively, LAFAYETTE will return the invoice to CONTRACTOR, indicating in writing the reasons for refusing to schedule final settlement, in which case CONTRACTOR shall make the necessary corrections and resubmit the invoice.
- (b) If LAFAYETTE receives, at any time up to and including the date of final settlement, a notarized statement by any person, partnership, or corporation, or other entity that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by CONTRACTOR or its Subcontractor(s) in or about the performance of the Project, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Project, whose claim therefor has not been paid by CONTRACTOR or any Subcontractor(s), LAFAYETTE shall withhold from all payments to CONTRACTOR sufficient funds to insure the payment of said claims until the same have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with LAFAYETTE a receipt in full or an order for withdrawal in writing and signed by the person filing such claim or his duly authorized agent or assign. Such funds shall not be withheld longer than 90 days following the date of final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of such pending action is filed with LAFAYETTE.
- (c) At the expiration of such 90-day period, LAFAYETTE shall pay to CONTRACTOR such monies and funds as are not the subject of suit and pending action notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments that may result from such suit. At any time within 90 days following the date of final settlement as published, any claimant whose claims have not been paid by CONTRACTOR or any Subcontractor(s) may commence an action to recover the same, individually or collectively, against the surety on the bonds provided herein.

- (d) Whenever a notarized statement of a claim has been filed in accordance with this Section, CONTRACTOR may substitute a bond, pursuant to C.R.S. § 38-26-108, at which time LAFAYETTE shall release the funds being withheld pursuant to the notarized statement of claim on the same terms and conditions as if the notarized statement of claim had been released by the claimant.
- Section 2.5 <u>No Lien Rights</u>: [Applicable to all contracts for design, construction or repairs to any public building or any public works.]

CONTRACTOR understands that this is a contract for the design, construction or repair of a public building or public work, and is therefore governed by C.R.S. §§ 38-26-105 through 107. CONTRACTOR further understands that these statutory provisions are in lieu of any lien rights. CONTRACTOR further understands that failure on the part of CONTRACTOR, any Subcontractor(s) or any other entity furnishing labor or supplies to the Project must follow the said statutory provisions in filing any claim for payment, and that failure on the part of any such claimant to comply with said statutory requirements shall relieve LAFAYETTE from any liability for making payment to such claimant. CONTRACTOR agrees to include this provision in any and all Subcontracts.

- Section 2.6 <u>LAFAYETTE's Right to Withhold</u>: Notwithstanding any other provision of this Agreement and without prejudice to any of LAFAYETTE's rights or remedies, LAFAYETTE shall have the right at any time or times, whether before or after approval of any pay request, to deduct and withhold from any payment that may be due under this Agreement such amount as may reasonably appear necessary to compensate LAFAYETTE for any actual or prospective loss due to:
- (a) work that is defective, damaged, flawed, unsuitable, nonconforming or incomplete;
  - (b) damage for which CONTRACTOR is liable under this Agreement;
  - (c) liens or claims of liens regardless of merit;
  - (d) claims of subcontractors, suppliers or other person regardless of merit;
  - (e) delay in the progress or completion of the Project;
  - (f) inability of CONTRACTOR to complete the Project;
- (g) reasonable doubt that the unpaid balance available under the Agreement is adequate to cover actual or liquidated damages, if any;
  - (h) failure of CONTRACTOR properly to complete or document any pay request;

- (i) any other failure of CONTRACTOR to perform any of its obligations under this Agreement; or
- (j) the cost to LAFAYETTE, including attorneys' fees and administrative expenses, for correcting any of the aforesaid matters or exercising any one or more of LAFAYETTE's remedies.
- Section 2.7 <u>Liquidated Damages</u>: If CONTRACTOR fails to comply with the completion date set forth in Section 1.2, subject to any extensions of time provided for by written agreement, CONTRACTOR shall pay to LAFAYETTE <u>\$</u> per day as liquidated damages therefor until the Project is completed. The parties agree that this provision for liquidated damages is not in the nature of a penalty, but is assessed by the parties by reason of the inability of a judge or jury to determine the amount of compensation due LAFAYETTE in the event of such default.
- Section 2.8 <u>Set Off</u>: In addition to any other rights LAFAYETTE has under this Agreement to indemnification or recoupment, CONTRACTOR agrees that LAFAYETTE is entitled to set off any amounts it may owe CONTRACTOR under this Agreement against such claims for indemnity or recoupment.
- Section 2.9 <u>No Multi-Year Fiscal Obligation</u>. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, LAFAYETTE's obligations under this Agreement are subject to annual appropriation by the City Council of the City of LAFAYETTE. Any failure of a City Council annually to appropriate adequate monies to finance LAFAYETTE's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to CONTRACTOR of any failure to appropriate such adequate monies.
- Section 2.10 <u>Appropriation</u>: If this is a contract for the design or construction, or both, the design and construction of a public works project, LAFAYETTE has appropriated funds equal to or in excess of the Contract Price.

# ARTICLE III ADMINISTRATION OF THIS AGREEMENT

applicable portions of the documents prepared by the CONTRACTOR appropriate to and for use in the execution of their work under this Agreement. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the documents prepared by CONTRACTOR.

- (2) CONTRACTOR, and any subcontractor or supplier or other person or organization performing or furnishing any work for the Project under a direct or indirect contract with LAFAYETTE (i) shall not have or acquire any title to or ownership rights in any of any documents (or copies of documents) prepared in connection with the Project by a design professional and (ii) shall not reuse any of such documents or copies for extensions of the Project or any other project without written consent of LAFAYETTE and the design professional and specific written verification or adaption by the design professional.
- (3) Notwithstanding the provisions of Sections 2.3(b)(1) and (2) above, LAFAYETTE may utilize any documents generated in connection with the Project by a design professional or CONTRACTOR for other projects, provided that such design professional and CONTRACTOR are not held liable for future project applications other than the Project described pursuant to this Agreement. LAFAYETTE shall not convey any such documents generated by CONTRACTOR to a third party or use any such documents in a manner adverse to the CONTRACTOR.

### Section 3.4 <u>Insurance</u>: (Check and initial all that apply)

- \_\_\_\_\_ (a) Insurance requirements for nonprofessionals (contractors, suppliers, etc.). The following insurance requirements may apply to professionals but only with regard to claims arising from nonprofessional activities and business operations.
- (1) CONTRACTOR 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 CONTRACTOR under this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law.
- (2) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) for 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. The policy shall include coverage for explosion, collapse and underground hazards. The policy shall name LAFAYETTE, its employees and agents as additional insureds and shall include waiver of subrogation provisions.
- \_\_\_\_\_ (b) Insurance requirements for professionals (architects, engineers, etc.). Professional Liability Project Policy with limits of \$1,000,000.00 per claim and \$1,000,000.00 per project aggregate. This policy shall remain in force for the period of design and construction

and shall include a discovery period of three years, to commence upon substantial completion of the Project.

- (c) Insurance provisions applicable to professionals and nonprofessionals.
- (1) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this Section.
- (2) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) 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 policy shall contain a severability of interests provision. If CONTRACTOR has no owned automobiles, the requirements of this Section shall be met by each employee of CONTRACTOR providing services to LAFAYETTE under this Agreement.
- (3) The insurance policies required by Sections 3.4(a) and (c)(2) shall name LAFAYETTE, its employees and agents as additional insureds. No additional insured endorsement to a policy shall contain any exclusion for bodily injury or property damage arising from completed operations.
- (4) Every policy required under this Section shall be primary insurance, and any insurance carried by LAFAYETTE, its officers, or its employees, or carried by or provided through any insurance pool of LAFAYETTE, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above. Any insurance policy required under this Agreement shall be written by a responsible company as determined by LAFAYETTE.
- (5) Prior to commencement of this Agreement, CONTRACTOR shall provide LAFAYETTE with a certificate of insurance completed by CONTRACTOR's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage 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 LAFAYETTE. The completed certificate of insurance shall be sent to:

City of Lafayette
1290 South Public Road
Lafayette, Colorado 80026
Attn:

(6) CONTRACTOR shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section by reason of CONTRACTOR's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of CONTRACTOR to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which LAFAYETTE may immediately terminate this Agreement, or at its discretion LAFAYETTE 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 LAFAYETTE shall be repaid by CONTRACTOR to LAFAYETTE upon demand, or LAFAYETTE may withhold the cost of the premiums from any monies due to CONTRACTOR from LAFAYETTE.

(7) The parties hereto understand and agree that LAFAYETTE is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to LAFAYETTE, its officers, or its employees.

#### Section 3.5 Indemnification:

[ ] \_\_\_\_\_ (a) Indemnification requirements for nonprofessionals (contractors, suppliers, etc.). The following may apply to professionals but only with regard to claims arising from nonprofessional activities and business operations.

CONTRACTOR shall indemnify, defend, and hold harmless LAFAYETTE and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from this Agreement, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (ii) is caused, or alleged to have been caused, in whole or in part, by any negligent act or omission of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any person described in this Section 3.5(a)(1).

\_\_\_\_\_ (b) Indemnification requirements for professionals (architects, engineers, etc.).

CONTRACTOR shall indemnify, defend, and hold harmless LAFAYETTE and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from this Agreement, to the extent that

any such claim, damage, loss or expense is caused, or alleged to have been caused, in whole or in part, by any negligent act or omission of CONTRACTOR or anyone directly employed by CONTRACTOR or anyone for whose acts CONTRACTOR may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any person described in this Section 3.5(b)(1).

- (c) *Indemnification provisions applicable to professionals and nonprofessionals.*
- (1) In any and all claims against LAFAYETTE or any of its agents or employees by any employee of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, the indemnification obligation under this Section 3.5 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's or workman's compensation actions, disability benefit acts or other employee benefit acts.
- (2) In the event it becomes necessary for LAFAYETTE to bring any action to enforce any provision of this Agreement or to recover any damages LAFAYETTE may incur as a result of the breach of this Agreement, including, but not limited to, defective work, and LAFAYETTE prevails in such litigation, CONTRACTOR shall pay LAFAYETTE its reasonable attorneys' fees as determined by the court.
- Section 3.6 <u>Bonds</u>: [Applicable to all contracts for construction or repairs to any public building or any public works, for more than \$50,000; if the Contract Price is less than \$50,000, this provision shall be applicable only if specifically checked and initialed by CONTRACTOR and LAFAYETTE.]
- CONTRACTOR shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under this Agreement. These bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by applicable law. All bonds shall be in the form prescribed by LAFAYETTE and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Governmental Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this paragraph, CONTRACTOR shall within 10 days thereafter substitute another bond and surety, both of which must be acceptable to LAFAYETTE.
- Section 3.7 <u>Subcontractor</u>: CONTRACTOR shall, as soon as practicable after the signing of this Agreement, notify LAFAYETTE in writing for LAFAYETTE's approval, of any

subcontractors who may be involved in the Project and the general scope of work to be performed by each subcontractor. LAFAYETTE may, in its reasonable discretion, reject any proposed subcontractor; in which case CONTRACTOR shall either perform such component of the work itself, or secure a subcontractor acceptable to LAFAYETTE.

- Section 3.8 <u>Termination of Agreement for Convenience</u>: This Agreement may be terminated by LAFAYETTE without cause upon seven (7) days written notice to the CONTRACTOR. In the event of termination, LAFAYETTE will pay CONTRACTOR for all services satisfactorily performed and for goods provided to date of termination. If payment is otherwise due in a fixed sum, LAFAYETTE will pay CONTRACTOR for the pro rata value of the completed portion of the Project. If, however, CONTRACTOR has substantially or materially breached the standards or terms of this Agreement, LAFAYETTE shall have any remedy or right to set off available at law and equity.
- Section 3.9 <u>Binding Effect</u>: LAFAYETTE and CONTRACTOR each bind itself, its successors and assigns to the other party to this Agreement with respect to all rights and obligations under this Agreement. Neither LAFAYETTE nor CONTRACTOR shall assign or transfer its interest in, or obligation under, this Agreement without the written consent of the other.
- Section 3.10 <u>Compliance with Law</u>: CONTRACTOR agrees to perform the work in compliance with all applicable federal, state, county and city laws, ordinances, rules and regulations.

#### Section 3.11 Immigration Status Obligations:

a) Contractor certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the United States Government's E-Verify Program or the State of Colorado Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

#### b) Contractor shall not:

- 1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
- 2) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.
  - c) Contractor shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the

employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

- d) Contractor is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- e) If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Contractor shall be required to:
- 1) Notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (b)(2) the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f) Contractor shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et seq., as amended from time to time.
- g) If Contractor violates any of the provisions set forth in this section, the City may terminate the Agreement and Contractor shall be liable for all actual and consequential damages incurred by the City.
- Section 3.12 <u>Notice and Communications</u>: Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and e-mail addresses are provided for convenience only.

Lafayette:	City of Lafayette 1290 South Public Road	Contractor:	
	Lafayette, Colorado 80026 Attn:		
	Telephone:		Attn:
	Facsimile:		Telephone:

E-mail:	Facsimile:	
	E-mail:	

### ARTICLE IV RESPONSIBILITIES OF LAFAYETTE

- Section 4.1 <u>Project Materials</u>: LAFAYETTE shall make available data related to the Project, including design specifications, drawings and other necessary information. Data so furnished to CONTRACTOR shall be furnished at a cost of \$0 per set.
- Section 4.2 <u>Access to Property and Records</u>: LAFAYETTE shall provide CONTRACTOR with access to its property as required and necessary to complete the contract. To the extent required by law, LAFAYETTE and CONTRACTOR agree to make this Agreement and any related records available for public disclosure pursuant to any open records law, including, without limitation, the Colorado Open Records Act, C.R.S. §§ 24-72-101, *et seq*. CONTRACTOR agrees to hold LAFAYETTE harmless from the disclosure of any records that LAFAYETTE reasonably believes it is legally required to disclose.
- Section 4.3 <u>LAFAYETTE's Representative</u>: LAFAYETTE shall designate, in writing, a representative who shall have authority to act for LAFAYETTE with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define LAFAYETTE's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONTRACTOR's services.
- Section 4.4 <u>Verbal Agreement or Conversation</u>: No verbal agreement or conversation with any officer, agent or employee of LAFAYETTE, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever under the terms of this Agreement.

## ARTICLE V CONSTRUCTION COST ESTIMATE

[This Article shall apply only if CONTRACTOR is a Design Professional charged with responsibility for providing the design for a construction project, including cost estimates, in preparation for the bidding of such construction project.]

Section 5.1 <u>Definition</u>: The term "Construction Cost" shall mean the total cost or estimated cost to LAFAYETTE of all elements of the Project designed or specified by CONTRACTOR. The Construction Cost shall include the cost at current market rates of labor

and materials furnished by LAFAYETTE and equipment designed, specified, selected or specially provided for by CONTRACTOR, plus a reasonable allowance for the construction contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes to the Project during construction. The term "Construction Cost" does not include the compensation of CONTRACTOR and CONTRACTOR's consultants, the cost of the land, rights-of-way, financing or other costs that are the responsibility of LAFAYETTE.

#### Section 5.2 Responsibility for Construction Cost:

- (a) Evaluations of LAFAYETTE's budget for the Project, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by CONTRACTOR, represent the CONTRACTOR's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither CONTRACTOR nor LAFAYETTE has control over the cost of labor, materials or equipment, over the construction contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, CONTRACTOR cannot and does not warrant or represent that bids or negotiated prices will not vary from LAFAYETTE's budget for the Project or from any estimate of Construction Cost or evaluation prepared or agreed to by CONTRACTOR.
- (b) No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a budget for the Project, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, CONTRACTOR shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in any construction contract documents, to make reasonable adjustments in the scope of the Project and to include in the construction contract documents alternate bids to adjust the Construction Cost to the fixed limit.
- (c) If LAFAYETTE does not issue its invitation to bid within 90 days after CONTRACTOR submits the proposed contract construction documents to LAFAYETTE, CONTRACTOR shall have no further responsibility with respect to the Construction Cost.
- (d) If a fixed limit of Construction Cost is exceeded by the lowest bona fide bid, LAFAYETTE shall:
  - (1) give written approval of an increase in such fixed limit;
  - (2) authorize re-bidding within a reasonable time;
  - (3) abandon the Project; or

- (4) cooperate in revising the scope of the Project and its quality as required to reduce the Construction Cost.
- (e) If LAFAYETTE chooses to proceed under subsection (d)(4) hereof, CONTRACTOR, without additional charge for services or out-of-pocket costs, shall modify its design and/or the proposed construction contract documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents shall be the limit of CONTRACTOR's responsibility arising out of the establishment of a fixed limit.

## ARTICLE VI MISCELLANEOUS

- Section 6.1 <u>Colorado Law</u>: This Agreement is to be governed by the laws of the State of Colorado. Venue for any litigation shall be in Boulder County.
- Section 6.2 <u>Amendments; Change Orders</u>: This Agreement may only be amended, supplemented or modified in a written document signed by both parties (a "Change Order").
- (a) Any other provision of this Agreement notwithstanding, for purposes of this Section 6.2, and only for purposes of this Section 6.2, the term "LAFAYETTE" shall have the following meaning with respect to the approval and execution of Change Orders.
- (1) With respect to any Change Order that results in an increase in the Contract Price of an amount equal to five percent or less of the Contract Price, the department director who has responsibility over the Project may act as "LAFAYETTE" with respect to the approval and execution of such Change Order up to and until such time as the total dollar amount of all Change Orders exceeds Ten Thousand Dollars (\$10,000.00), at which time such Change Order shall be subject to approval and execution pursuant to the provisions of Subsection (2) of this Section 6.2(a);
- (2) With respect to any Change Order that results in an increase in the Contract Price of an amount greater than five percent (5%) but less than ten percent (10%) of the Contract Price, the Lafayette City Administrator may act as "LAFAYETTE" with respect to the approval and execution of such Change Order up to and until such time as the total dollar amount of all Change Orders exceeds Fifty Thousand Dollars (\$50,000.00), at which time such Change Order shall be subject to approval and execution pursuant to the provisions of Subsection (3) of this Section 6.2(a);
- (3) With respect to any Change Order that results in an increase in the Contract Price of an amount equal to or greater than ten percent (10%) of the Contract Price and further, with respect to any Change Order which results in <u>any</u> increase in the Contract Price when the total dollar amount of <u>all</u> Change Orders exceeds Fifty Thousand Dollars (\$50,000.00),

the Lafayette City Council shall act as "LAFAYETTE" with respect to the approval and execution of such Change Order.

- (b) Nothing within Section 6.2(a) or any subsection thereof shall prevent the Lafayette City Council from acting as "LAFAYETTE" with respect to the approval and execution of any Change Order of any amount whatsoever; it is the intent of Section 6.2(a) and the subsections thereof only to authorize the department director who has responsibility for the Project and the Lafayette City Administrator, in the absence of Lafayette City Council approval and execution, to approve and execute certain Change Orders under the circumstances detailed above.
- (c) Notwithstanding the foregoing, no change in the Contract Price requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Agreement, shall be valid, unless LAFAYETTE gives CONTRACTOR written assurance that the lawful appropriations to cover the costs of the additional work have been made, or unless such work is covered under a remedy-granting provision in this Agreement.
- Section 6.3 <u>Counterparts</u>: This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.
- Section 6.4 <u>No Third Party Benefit</u>: This Agreement is between LAFAYETTE and CONTRACTOR and no other person or organization shall be entitled to enforce any of its provisions or have any right under this Agreement.
- Section 6.5 <u>Severability</u>: If any term, covenant, or condition of this Agreement is deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be binding upon the parties.
- Section 6.6 <u>Entire Agreement:</u> This Agreement constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in any instrument delivered pursuant to this Agreement.
- Section 6.7 <u>Default/Attorney's Fees:</u> In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.
- Section 6.8 <u>No Waiver:</u> Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the

other terms or obligations of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement the day first written above.

	CITY OF LAFAYETTE
	By: Name: Title:
Attest:	APPROVED AS TO FORM:
City Clerk	City Attorney
	CONTRACTOR
	By: Name: Title:

## **SCHEDULE A**

(Attached to and made	a part of the Agreement between	the City of Lafayette
and	dated	)