



Town of Pagosa Springs
551 Hot Springs Boulevard
Post Office Box 1859
Pagosa Springs, CO 81147
Phone: 970.264.4152

**Request for Proposal 2024-CD-02
Yamaguchi South River Improvement: Design-Build Services
Town of Pagosa Springs**

Responses Due By 4 p.m. on April 22nd, 2024

The Town of Pagosa Springs is soliciting proposals from qualified entities ("Contractor") to provide design, permitting, engineering, and construction services for the Recreational and Ecological Enhancement of the San Juan River -Yamaguchi South Project (the "Project"). The primary purpose of the Project is to enhance the recreational experience for both anglers and river enthusiasts, improve public access to recreational features, improve fish habitat quality and promote sediment movement through the section of the San Juan River flowing through the Town's Yamaguchi Park. A vicinity map locating Yamaguchi Park is attached to this RFP as **Appendix B.**

Any requests for clarification or additional information deemed necessary by any respondent to present a proper proposal shall be submitted **in writing** to David Hilborn, Project Manager, PO Box 1859, Pagosa Springs, Colorado, 81147 or dhilborn@pagosasprings.co.gov, referencing this Request for Proposal. Written requests for information must be received a minimum of **three (3) days** prior to the proposal submission date. Any request received after the above stated deadline will not be considered. All requests received prior to the above deadline will be responded to in writing by the Town in the form of an addendum addressed to all prospective respondents.

A required pre-proposal site visit is scheduled for **Tuesday, April 10th, 2024 at 1pm.** Attendees will meet on the southern end of Yamaguchi Park, located at 684 S. 5th St, Pagosa Springs, CO, 81147. An orientation and walk-through for project reach will begin from this location. **Please contact David Hilborn, Project Manager, at dhilborn@pagosasprings.co.gov if attendance is planned.**

I. Background and Project Overview

The Town of Pagosa Springs ("Town") is working with the Upper San Juan Watershed Enhancement Partnership ("WEP") to assist in the implementation of select projects identified in the Upper San Juan Basin Integrated Water Management Plan (IWMP) in 2022. The IWMP is the culmination of WEP's three-year effort to assess river needs (with an emphasis on aquatic life

and recreational uses) and agricultural irrigation infrastructure needs, and to identify projects that would help meet those needs. The IWMP was developed after extensive public outreach and with public input.

In June 2021, WEP completed an assessment that identified the potential for trends in climate-change driven hydrology to produce increasingly limiting conditions for aquatic life and recreation in the Upper San Juan River, including potential for reduction in the number of days that various types of recreational floating activities can be performed above, below and through the Town of Pagosa Springs, including within the Project area. Stream and recreation access improvements at Yamaguchi Park was identified as a potential project in the IWMP based on the needs and issues identified in the 2021 assessment.

A conceptual design for the Project was developed, identifying potential structures and improvements designed to improve recreation access and to address some of the issues identified in the 2021 assessment in the portion of the San Juan River that flows through the Town's Yamaguchi Park area. One aspect of the project is to create a new river access at the southern end of Yamaguchi South Park to extend the in-river experience another 1700 feet. The original concept plan adopted by the Town will need to be revised as the Town wants to reserve some land for a potential sanitary sewer treatment facility in Yamaguchi South. The location of the proposed river access may be reconsidered during the design phase of the project to avoid interfering with the future treatment plant. The concept plan shows a new Wave Feature, however, the Colorado Department of Parks and Wildlife (CPW) has denied the inclusion of the Wave Feature as part of this project. A copy of the conceptual design is attached to this RFP as **Appendix C**. It should be noted that this is only a concept. The chosen contractor will be responsible for coordinating with the Town for elements incorporated in the final design. The Town has secured grant funds to proceed with design, permitting and construction of the Project, with the majority of funding from the Colorado Water Conservation Board.

The goals of the Project are to:

- Enhance the recreational experience for both anglers and river enthusiasts.
- Improve public access to recreational features.
- Improve fish habitat quality.
- Promote sediment movement through this section of the San Juan River.

II. Scope of Work

The selected Contractor will be responsible for full design, permitting and construction of the Project to meet the Project's goals and objectives including, but not limited to:

60% Design, Draft Design Report, Technical Specifications and Cost Estimate. The Contractor will prepare a 60% design, following review input from the Town. Technical specifications, permits and cost estimate will be a part of this design milestone. A draft design report will be included detailing assessment and feasibility of preferred approaches. The 60% milestone products will be reviewed by the Town, commented on and approved prior to any work to complete to 100%

design. Furthermore, at least one public meeting will be held prior to the 60% design to address public concerns and take public comments for design consideration.

Permitting: The contractor shall identify all requisite permits, including but not limited to FEMA floodplain requirements and applicable Army Corps of Engineers permitting, and promptly initiate the permitting process at the earliest practicable juncture. The Contractors will be responsible for acquiring all necessary permits and authorizations for construction of the Project.

Access agreements: The Town is in the process of obtaining written access agreements from private landowners along the 1,700 linear foot reach of the river where work will take place. Contractor will not be responsible to obtain river access, however notice and coordination with the landowners will be necessary. Landowners will also be given an opportunity by the Town to review design and engineering for the project within the reach of the river where their property is located.

100% Design, Technical Specifications and Cost Estimate. After approval from the Town, the Contractor will take the 60% designs to a 100% design plan, incorporating comments from the review process.

Drawings and Design Details. The Contractor shall include site analysis drawings, sketches of design details (plan view, cross section, and profile) for each proposed structure and the associated river channel geometry, and a final plan view drawing of each structure. Drawings should include:

- a) The date of preparation, scale, north arrow, and legend.
- b) Project title and title sheet with index.
- c) Property ownership, construction easements, and permanent easements (if required).
- d) Existing conditions, including location of all utilities.
- e) Plan view, cross section, and profile plans and details.

Final Design and Engineering Report. The Contractor will prepare and deliver a final report, via electronic submittal to the Town which addresses comments by the Town and WEP. The report shall also include all modelling (hydraulic, etc.), physical, and all technical information gathered and analyzed in support of the designs.

Construction. The Contractor will construct the identified Project features in accordance with the 100% design and in compliance with all permits and other legal requirements.

Maintenance Estimates. The Contractor will prepare a summary of Project features maintenance that would be required and include cost estimates.

Please refer to Appendix A for the Description and Scope of Project as included in the awarded Colorado Water Conservation Board grant application.

III. Meetings, Reviews, and Input Process:

The Contractor and appropriate sub-contractors will coordinate project update and review meetings (weekly to biweekly contact as appropriate) with David Hilborn, Town Project Manager, and appropriate stakeholders. In addition, the Contractor and appropriate sub-contractors will participate in the following meetings with the Town:

- a) An initial coordination meeting where the Contractor will provide and review a detailed schedule of the design process, including the work of any sub-contractors, identifying important milestones in the process and target dates for these milestones.
- b) Three Property Owner Meetings (individually or as a group as determined appropriate in the initial coordination meeting):
 - a. Project kickoff meeting.
 - b. One meeting at the 60% design phase.
 - c. One meeting at the 100% design phase.
- c) Two Public Engagement Meetings to provide the public with a design overview, solicit feedback, and address public concerns:
 - a. One meeting at the 60% design phase.
 - b. One meeting at the 100% design phase.
- d) Two Stakeholder Design Review Meetings:
 - a. One meeting at the 60% design phase.
 - b. One meeting at the 100% design phase.

Additional meetings may be scheduled as needed.

The Contractor will be expected to establish a project specific FTP site or use a simple web-based tool (Google Drive, DropBox, etc.) for data sharing accessible to the Town. The tool will also be used during the design process for review and distribution of submittals. Documents and plans shall be provided in Adobe Acrobat format and Word for commenting to minimize software issues.

III. Proposal Elements:

The response to this RFP, as described below, is limited to a maximum of 10 total pages, excluding front and back covers, resumes and references. Use no smaller than 11-point font and 0.5-inch margins. Each response should be complete yet concise and contain only the elements shown below. Please avoid submittal of extraneous and unnecessary information.

A. Cover Letter

A one-page cover letter shall be provided expressing the Contractor's interest to be considered for the project and identifies the Contractor's primary contact person. Please provide the name, telephone number, and email address of the primary contact person. The cover letter shall be

signed by a person who has contractual authority with the Contractor, such as a principal, partner, senior manager, or officer of the Contractor.

B. Project Team

The lead Contractor shall be experienced in stream, channel, and wetland restoration, and aquatic habitat improvement work, with significant experience in western Colorado streams or similar Rocky Mountain streams. Additional services should include fluvial geomorphologic analysis, landscape architect (particularly riparian restoration), hydrologic and hydraulic modeling, shear stress analysis, and similar services coordinated and managed by the lead Contractor as well as experience with non-motorized boating access design and construction, also to be coordinated and managed by the lead Contractor.

All Contractors and sub-Contractors must provide references and meet the required qualification that demonstrates experience comparable to the scope and complexity of this project as outlined in the Selection Process section.

Describe the Contractor's team for the project and the Contractor's qualifications, including defined responsibilities, key team members experience working together (continuity), and an organizational chart for the team. Please also list any proposed sub-Contractors. For the key project team members, which as a minimum should include the Contractor's Project Manager and Project Engineer(s), please include:

1. A brief description of the individual's background and experience (resume should be included in an appendix, not to be counted as part of page limit). Keep resumes to within 2 pages each);
2. Where the individual is located (their primary office location);
3. Years of experience (total) designing, permitting and constructing on Rocky Mountain streams;
4. The individual's relevant experience; and
5. The individual's role on the project.

C. Relevant Project Experience

Please provide the project team's relevant project experience regarding:

1. Construction of similar projects;
2. Structure resilience;
3. Reduced maintenance;
4. River hydraulics;
5. Geomorphology;
6. Scour analyses;
7. Demonstrated understanding of State, Town and Archuleta County planning and floodplain regulations related to the proposed work;
8. Preparation of construction drawings and technical specifications;
9. Understanding of bidding and construction processes; and
10. Demonstrated experience with natural channel design and bio-stabilization techniques, as an alternative to hard engineering (e.g. rip rap).

Whenever possible, please identify in each project summary the following items:

- Name of project and client/owner.
- Project location.

- Description of the project and scope of services provided by the Contractor.
- Project construction cost (for projects that went to construction).
- Contractor's fee.
- Project Manager and project engineer(s).
- Any other key staff and sub-Contractors involved with the project that are also designated as part of the team proposed herein – identify their role in the project.
- Year project occurred.

Provide a total of three (one for each project, for up to three projects) references that have specific knowledge of how the primary Contractor performed on three of the included project descriptions.

D. Workload Capacity

This project has time requirements for scoping, analysis and design, review, permitting and construction. Therefore, the Contractor's ability and commitment to perform the work in the available time frame is essential. Please list your proposed project team's current workload capacity and commitments in addition to its anticipated capacity for June 1st, 2024 through December 1st, 2025. Please provide the percentage of time that each project team member would be committed to this project. Please identify any current contractual obligations for similar engineering and construction services and indicate how the Contractor proposes to meet multiple obligations.

E. Project Approach

This section shall include the Contractor's detailed approach and understanding of the project based upon the provided background information, available resources, and assumptions as provided in this RFP. Provide specific examples of how the Contractor might approach this river restoration project using natural channel design and bio-stabilization techniques. Please present the approach as written text in paragraph format and not as a scope of services outline.

F. Rates and Cost

As an attachment (not included in total page limits), please provide your Contractor's current rate sheet with the following clearly written on the front: "Professional Services Rates & Project Cost" and your Contractor's name. In the same attachment, please include your proposed cost for this project broken down into the sub-projects/tasks and key areas of work needed to complete this project based on your understanding of the RFP.

The contract will be awarded on a Not-to-Exceed Fee Schedule, Time and Expense direct cost basis agreement. The Contractor should provide an itemized schedule of fees, based upon the services described herein, and other requirements listed below in this request for proposals.

The cost for the entire Project may not exceed \$508,320.

Other Proposal Elements and Conditions

1. Town of Pagosa Springs reserves the right to remove, eliminate or modify the proposed scope of work prior to contract award. Town of Pagosa Springs must know what the cost of design and engineering will be to adequately estimate the total cost of this project.
2. Scoring results may be disclosed to the public or other Contractors, upon request, after the selection process is complete.

3. The Contractor shall provide an updated project schedule after the initial meeting with the Town of Pagosa Springs, as well as monthly or at intervals appropriate to the design process. The Contractor shall notify the Town of Pagosa Springs if at any time the schedule is falling behind.
4. Include any additional information you feel will assist us in the evaluation of your qualifications. Please state why you and/or your firm should be selected.
5. **Conflict of Interest**-Disclose any potential conflict of interests in working on behalf of the Town, including any employees, elected officials, or other stakeholders working for the Town.
6. Any objections to the Proposed Contract attached as Attachment B should be included in the proposal.

IV. Submission Deadline and Requirements

- A. **Submission Deadline:** The deadline for proposals is **4p.m. on April 22nd**, at the Town of Pagosa Springs Town Hall, 551 Hot Springs Blvd., Pagosa Springs, CO 81147. Candidates will be notified in writing by email or by phone if selected to be interviewed. Late proposals will not be accepted.

- B. **Submittal Requirements:** Proposals shall be submitted via email to David Hilborn, Town Project Manager, at dhilborn@pagosasprings.co.gov

With prior approval, hard copies may be sent to Town of Pagosa Springs, 551 Hot Springs Boulevard, PO Box 1859, Pagosa Springs, CO 81147. Proposals shall be submitted in a single sealed envelope marked in the lower left-hand corner "**Yamaguchi South Project**".

V. Selection Process

The proposals will be evaluated using the following criteria with a maximum of 100 points possible:

Project Approach (35%)

1. Understanding of the unique elements of the project and project area.
2. Understanding of issues, risks, concerns, multiple elements, and variety of interests.
3. Approach to design concepts and construction methodology.
4. Ideas for cost effective solutions, both in the engineering services themselves and the ultimate constructed elements.
5. Ability to work with the Colorado Parks and Wildlife, U.S. Army Corp of Engineers, and other permitting agencies collaboratively and effectively.
6. Proposal prioritizes a process-based design.

Relevant Project Experience (30%)

1. Ditch diversions / fish passage / hydraulic engineering.
2. Demonstrated knowledge of State and County floodplain regulations, water rights, and permitting processes.
3. Experience on San Juan River streams, or other western Colorado mountain streams.
4. Natural channel design and bio stabilization techniques.

5. References

Understanding (10%)

1. Overall understanding and completeness.
2. Understanding and completeness of the approach necessary to perform the desired services.
3. Clarity and professionalism of the proposal.
4. Adherence to RFP's proposal conditions and elements

Proposed Project Team (10%)

1. Definition and clarity of roles.
2. Project Manager's qualifications.
3. Project Engineer(s) qualifications.
4. Other key team members' qualifications.
5. Sub-contractor's qualifications.
6. Experience of key team members working together (continuity).
7. Design team's proximity to Project Site.

Fee (10%)

1. Detailed itemization of costs for each project task and materials.

Workload Capacity/Management (5%)

1. Availability and commitment of key team members and resources to perform the work.
2. Other contractual obligations and ability to meet multiple obligations.
3. Support staff and production capabilities.

Scoring for above 6 criteria

90 – 100 Outstanding

80 - 89 Excellent

60 - 79 Good

40 - 59 Fair

20 - 39 Poor

0 - 19 Unsatisfactory

The contract will be awarded to the most responsible contractor whose proposal will be, on an overall basis, most advantageous to the Town. Qualifications, experience, and performance factors will be considered as elements of a responsible proposal at the sole discretion of the Town of Pagosa Springs. The Town's selection decision is final. The Town may require follow-up oral interviews with selected respondents and may require the respondents to participate in negotiations.

VI. Terms and Conditions

This Request for Proposal does not commit the Town to award a contract, to pay any costs incurred in the preparation of proposals to the requests, or to procure or contract service or supplies. The Town reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified source, or to cancel in part or in its entirety the Request for Proposals, if it is in the best interest of the Town.

Services provided are on an as needed basis only. By entering into professional services agreement with the Town under this Scope of Work, the Town makes no obligations to the awarded firm of a guaranteed minimum number of hours.

The Agreement to be executed for professional services contains standard terms and conditions related to Insurance, Indemnification, Contractor status, Compliance with Laws, etc. An example of the Town's Prosecutor Agreement is attached for review. The awarded firm shall maintain a valid Town of Pagosa Springs business license in good standing. The town's Services Agreement Contract is attached as **Appendix D**.

VII. Timeline for Selection and Critical Dates

RFP release date:	March 29 th , 2024
Site Visit:	April 10 th , 2024
Request for Clarification Deadline:	April 18 th , 2024
Response to Clarification:	April 19 th , 2024
Proposal Submission Deadline:	April 22 nd , 2024
Consultant Interviews (if needed):	April 24 th through April 26 th , 2024
Award Selection:	May 7 th , 2024
Contract Fully Executed:	May 22 nd , 2024
Notice to Proceed:	May 24 th , 2024
Final Design Completion:	June 1 st , 2024
Construction Completion:	December 1 st , 2025

VIII. Duration of Services

Services will terminate upon completion of the project, subject to the terms of the contract.

IX. Appendices

Appendix A: Description and Scope of Project: Colorado Water Conservation Board Grant Application

Appendix B: Vicinity Map of Project Area

Appendix C: Conceptual Design

Appendix D: Design-Build Services Agreement Contract Template

Appendix A:

Description and Scope of Project as included in the awarded Colorado Water Conservation Board grant application

Request for Proposals: Design-Build Services

Yamaguchi South River Improvement Project

The Project objectives are to:

- Create diverse aquatic habitat that support cold water trout and native fish populations in the face of drought and climate change.
- Create a geomorphology more resilient to hydrological and sediment deposition changes.
- Enhance recreation options at various river flows and reduce access conflicts.
- Improve the water irrigation system for Yamaguchi Park including a new in-stream rock diversion structure with headgate and an open water delivery ditch to an adjacent wetland pond that would be used for irrigation water storage and wetland pond habitat.

Design and engineering plans will be developed for each identified structure. Conduct investigations needed to obtain permits, including:

- Identify the extent of jurisdictional wetlands and other Waters of the U.S. (WUS) associated within the boundaries of the proposed project including impacts and mitigation if required.
- Conduct a biological assessment with the identification of any potential endangered species impacts.
- Determine any potential historic properties, artifacts and associated impacts and Mitigation.
- Obtain a section 401 water quality certification from the CDPHE.
- Complete an alternative analysis for a 404 individual permit if required.
- Address any public comments or other governmental agency concerns.
- Obtain a floodplain development permit from the local floodplain administrators (Town and County).

1. Habitat structures

A variety of fish habitat/channel stability improvement structures will be built per the design and engineering plans, including:

- **Rock Cross Vane**-This structure is built with large angular rocks place to converge water towards the middle of the river. The objectives of the structures are to: provide cover and holding water for fish, cause a redirection of shear stress away from the bank towards the center of the river, sustain a pool form on the downstream side of the structure, provide vertical grade control, increase the width/depth ratio, improve sediment transport capacity, and provide a natural sorting of gravel on the tail out of the downstream pool. The structure is usually symmetrical in shape and ties into the ordinary high-water elevation on each side of the river.

- **Rock J-hook/Short Vane**-The structure is similar to the rock cross vane except it ties to only one side of the river typically on the outside of a river bend. The objectives of the structures are to: create and sustain cover and holding water for fish, protect the bank from erosion, and create wide long pools that provide spawning habitat for fish. The structure is asymmetrical in shape and ties into the ordinary high-water elevation on one side of the river.
- **Rock Deflectors**-The rock deflector is a series stacked rocks place is in such a way to turn water off the outside of a bank and converge the water on the downstream face of the structure causing a deep scour pool to form. The objectives of the structures are to: provide increased bank stability in high shear stress locations, maintain a wide navigation lane in the center of the river, create cover and holding water for fish, and to create excellent spawning gravels in the downstream eddy below the structure. The structure is usually tied to an elevation equal to or above ordinary high water on one side of the river.
- **Rock Habitat Clusters**-The rock habitat cluster is a series of several rocks clustered together usually located near the center of the river channel. The objectives of these clusters are to: provide in stream holding areas for fish, to create local scour and flow diversity in the middle of the channel. These structure typically are built by placing 4-5 large rocks (50 square feet) in clusters in the exiting river channel.
- **Native Material Revetment/Root Wads**-The root wad structure are typically used in combination with a large rock structure to ensure the wood material remains stable during high water events. The objectives of these structures are to: provide shade and cover, detritus, terrestrial insect habitat, enhance the natural look of the river, and provide complexity to the subsurface fish habitat. These structures consist of 5-10 large (1'-3' diameter) cottonwood root balls with approximately 10'-20' of trunk that are partially buried in the riverbank and extend out into the river channel with the root ball to provide the desired habitat.

2. Boat Ramp/River Access

Access to the river will be improved through individual pedestrian trails down to the river bank as well as a new boat ramp that will be available for commercial and private river users. The new river features will be accessed utilizing a new access road, trail system, parking area, and boat ramp.

3. Wetland area/Pond improvements

An existing pond area will be enhanced with intense riparian and wetland species planting. A strong riparian vegetation community means better cover for terrestrial species that use the river for water and for its riparian forage potential. Dense riparian vegetation encourages deposition of fine-grained sediment for soil building, and also creates backwater areas that are the genesis of obligate wetland communities. Mature riparian vegetation stands, where existing, will remain intact during and after construction. This vegetation is important for streambank stability, terrestrial habitat and visual/aesthetic screening.

4. Channel shaping structures including riffles and pools

The channel shaping proposed involves rearranging on the existing river alluvium to create the desired channel dimensions. All of the proposed channel shaping will occur below the ordinary high-water

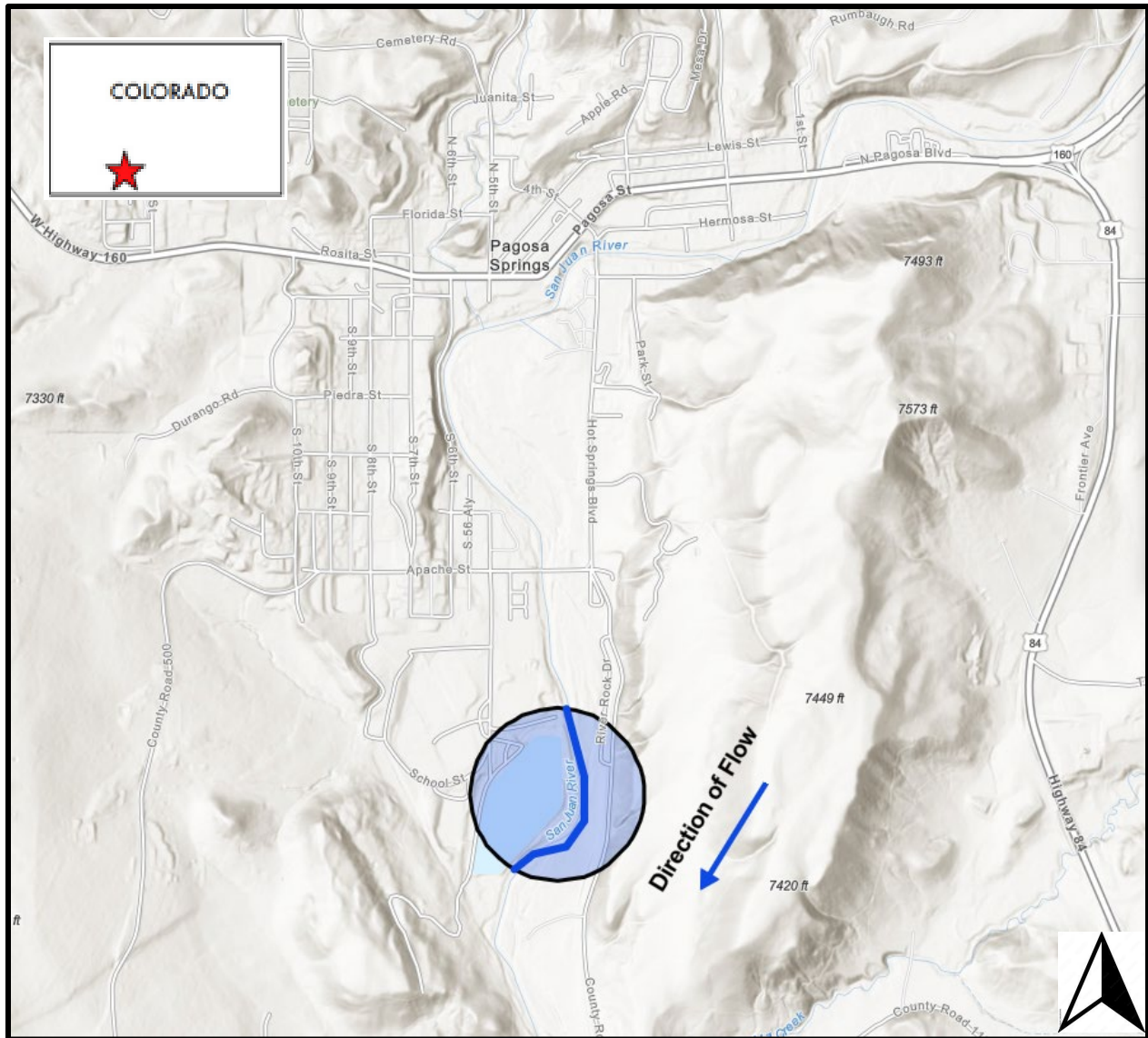
mark. Channel shaping will encourage the compliment the appropriate spacing of pool riffle sequencing for this reach of the San Juan River.

Project deliverables will include constructed habitat improvement structures, a newly constructed boat ramp and parking area, a newly constructed pedestrian river access trail, new wetland/pond area vegetation with reliable water delivery, and improved channel geometry (channel and streambank shaping) to be more resilient to hydrological and sediment changes.

Appendix B: Vicinity Map of Project Area

Request for Proposals: Design-Build Services

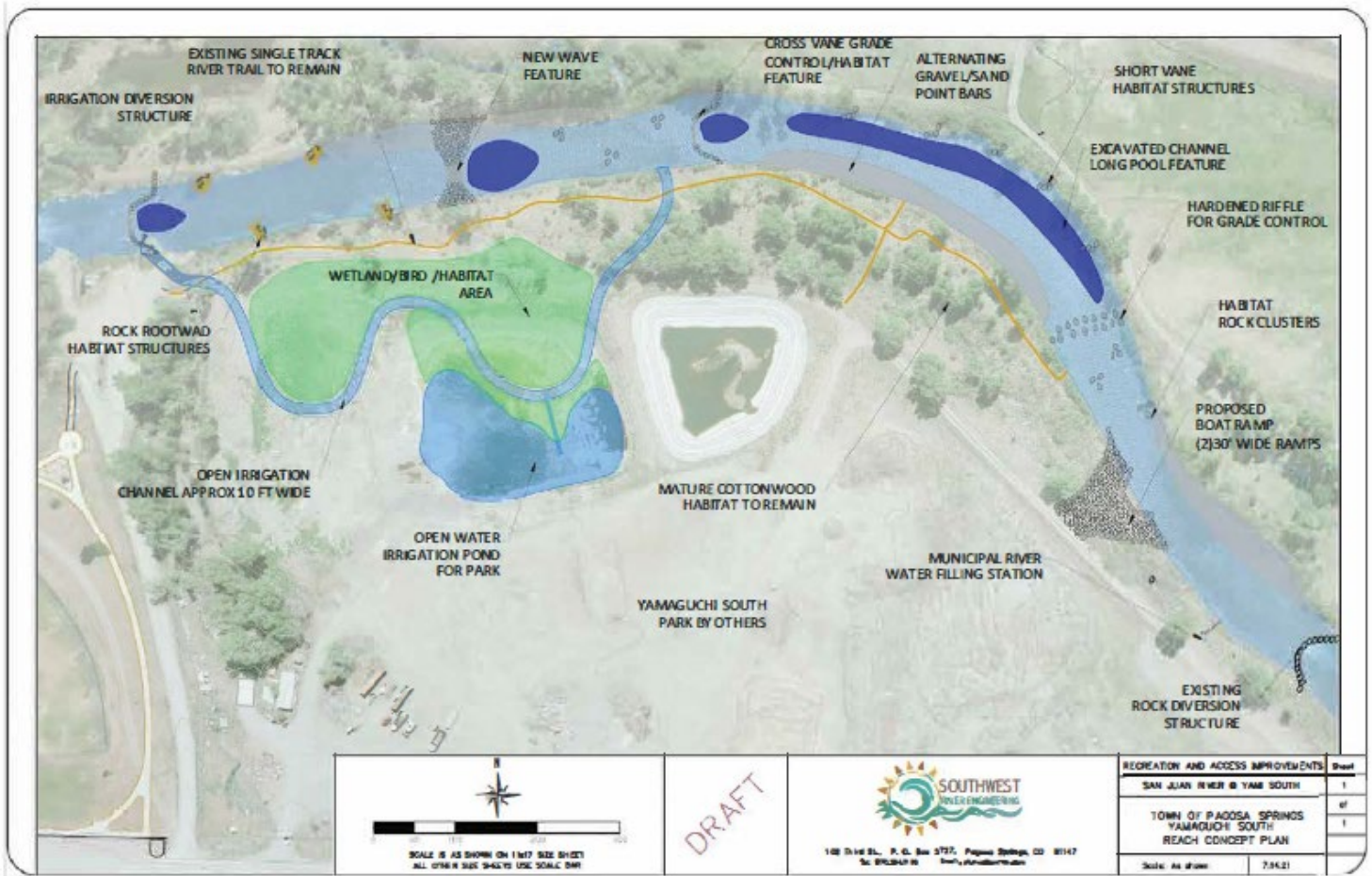
Yamaguchi South River Improvement Project



Appendix C: Conceptual Design

Request for Proposals: Design-Build Services

Yamaguchi South River Improvement Project



Appendix D – Proposed Contract

Request for Proposals: Design-Build Services

Yamaguchi South River Improvement Project

DESIGN-BUILD SERVICES AGREEMENT BETWEEN

Town of Pagosa Springs

and

Name of Contractor

CONTRACT NO.: Contract Number

RE: Project Description

THIS DESIGN-BUILD SERVICES AGREEMENT (“Agreement”) is made and entered into the most recent day and year set forth below by and between the Town of Pagosa Springs, a municipal corporation and political subdivision of the State of Colorado, whose mailing address is P.O. Box 1859, Pagosa Springs, CO 81147 (the “Town”), and **NAME OF CONTRACTOR**¹, a Form of Entity² (“Contractor”), whose mailing address is Contractor Mailing Address. The Town is referred to in this Agreement as “Owner.” The Owner and the Contractor are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

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

1. Scope of Services. The Contractor agrees to provide professional design, engineering, permitting, and construction services related to the Pagosa Gateway Project, as further described in **Exhibit A**, attached hereto and incorporated herein by this reference (“Scope of Services”). All provisions of **Exhibit A**, including without limitation any terms and conditions included therein, shall be subject to the provisions of this Agreement. In the event of a conflict or inconsistency between a provision in the body of this Agreement

¹ Insert name of Contractor; should match records on Secretary of State’s website (see next comment).

² Insert type of entity and State of registration (e.g., a Colorado limited liability company)..

and a provision in **Exhibit A** or any other exhibit or schedule attached hereto, the provision in the body of this Agreement shall control.

2. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated no later than Commencement Date and completed no later than Completion Date. Any modifications to such deadlines must be agreed upon in writing by the Parties prior to the applicable deadline.

3. Early Termination by Owner. Notwithstanding the time periods contained herein, the Owner may terminate this Agreement at any time without cause by providing written notice of termination to the Contractor. Such notice shall be delivered at least three (3) days prior to the termination date contained in said notice unless otherwise agreed in writing by the Parties. In the event of any such early termination by the Owner, the Contractor shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Contractor's obligations under this Agreement. Contractor understands and agrees that such payment shall be the Contractor's sole right and remedy for such termination.

4. Suspension. Without terminating this Agreement or breaching its obligations hereunder, the Owner may, at their convenience, suspend the services of the Contractor by giving the Contractor written notice one (1) day in advance of the suspension date. Upon receipt of such notice, the Contractor shall cease its work in as efficient a manner as possible so as to keep its total charges to the Owner for services under this Agreement to the minimum, but in no circumstance later than three (3) business days after receipt of the notice of suspension. No work shall be performed during such suspension except with prior written authorization by the Owner Representative (as defined below). If a suspension is still in effect thirty (30) calendar days after the Contractor's receipt of the notice of suspension, the Contractor may terminate this Agreement by providing the Owner with written notice of termination. Upon the Owner's receipt of such notice of termination from Contractor, this Agreement will be deemed terminated.

5. Compensation. In consideration of the services to be performed pursuant to this Agreement, the Owner agree to pay Contractor the amounts set forth in **Exhibit A**. Total compensation shall not exceed amount spelled out Dollars (\$Numeric amount). Compensation shall be on a labor and materials basis as further set forth in **Exhibit A**. Reasonable expenses incurred by Contractor as a direct result of providing the services, such as travel, lodging, meals, reproduction, communication and outside services, will be reimbursed by Owner as provided in **Exhibit A**. The Owner shall provide no benefits to Contractor other than the compensation stated above. The Contractor shall bill its charges to the Owner periodically, but no more frequently than once a month.

6. Qualifications on Obligations to Pay. No partial payment made by the Owner shall be considered final acceptance or approval of that part of the Scope of Services paid for or shall relieve the Contractor of any of its obligations under this

Agreement. Notwithstanding any other terms of this Agreement, the Owner may withhold any payment (whether a progress payment or final payment) to the Contractor if any one or more of the following conditions exists:

(a) The Contractor is in default of any of its obligations under this Agreement, including without limitation the obligation to maintain insurance and provide Certificates of Insurance to the Owner in accordance with Section 12 (Insurance).

(b) Any part of such payment is attributable to services that are not performed in accordance with the terms of this Agreement and its associated exhibit(s). The Owner will pay for any portion of the services performed in conformance with this Agreement and its associated exhibit(s).

(c) The Contractor has failed to make payments promptly to any third party used to perform any portion of the services hereunder, subject to Section 9 (Assignment), for which the Owner has made payments to the Contractor.

7. Owner Representative. The Owner will designate, prior to commencement of work, their project representative (the "Owner Representative") who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the Scope of Services. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the Owner Representative.

8. Independent Contractor. The Contractor agrees that the services to be performed by Contractor are those of an independent contractor and not of an employee of the Owner. **The Contractor is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement. Neither the Contractor nor its employees, if any, are entitled to workers' compensation benefits from the Owner for the performance of the services described in this Agreement.**

9. Assignment. The Contractor shall neither assign any responsibilities nor delegate any duties arising under this Agreement to a third party without the prior written consent of the Owner, which may be granted or denied in Owner's sole discretion.

10. Standard of Care. The Contractor shall perform the services hereunder pursuant to the professional standard of care in Colorado for the professional services provided by the Contractor.

11. Corrections to Work. The Contractor shall correct any errors or deficiencies in the Contractor's services of which it becomes aware promptly and without additional compensation unless such corrective action is directly attributable to errors or deficiencies in information furnished by the Owner. The Owner's approval of the Contractor's services shall not diminish or release the Contractor's duties or obligations hereunder, since the Owner are ultimately relying upon the Contractor's skill and knowledge to perform

the Scope of Services. The obligations contained in this Section 11 shall survive for a period of two (2) years following termination or expiration of this Agreement.

12. Insurance.

(a) During the term of this Agreement, the Contractor shall purchase and maintain, at its own cost and expense, the following:

(i) Workers' compensation insurance for its employees, if any, as required by Colorado law with limits of at least \$500,000 per injury or illness an employee suffers as a result of providing the services hereunder, with a \$500,000 aggregate per occurrence.

(ii) Employer's liability insurance with limits of at least \$500,000 per employee/accident and \$1,000,000 aggregate.

(iii) Commercial general liability insurance covering, without limitation, premises operations, products-completed operations, contractual liability insuring the obligations assumed by the Contractor under this Agreement, personal and advertising injury, and broad form property damage, with limits of at least \$2,000,000 per occurrence for bodily injury, death or damage to property; \$2,000,000 per occurrence for personal and advertising injury; \$2,000,000 products-completed operations; and \$2,000,000 general aggregate;

(iv) Automobile liability insurance covering all owned, hired and non-owned vehicles used in the performance of the Contractor's services under this Agreement with a limit of at least \$2,000,000 combined per accident for bodily injury and property damage; and

(v) Professional liability insurance with limits of at least \$2,000,000 per claim and \$2,000,000 aggregate.

(b) The insurance required herein may be satisfied through any combination of primary and excess/umbrella liability policies.

(c) The insurance required herein shall be written by an insurance company or companies that (i) have an A.M. Best Company rating of "A-VII" or better, and (ii) are authorized to issue insurance in the State of Colorado.

(d) The Owner, the Owner Representative, and the Owner' directors, officers, and employees shall be endorsed as "Additional Insureds" under the (i) commercial general liability insurance policy for both ongoing and completed services for a period of two (2) years; and (ii) automobile liability policy.

(e) The Contractor shall provide a waiver of subrogation endorsement, or its equivalent, under the (i) workers' compensation; (ii) commercial general liability; and (iii) automobile liability insurance policies in favor of the Owner, its directors, officers, agents, and employees.

(f) All liability insurance policies required herein shall provide that the coverage is primary and non-contributory to other insurance available to the Owner and their directors, officers, agents, and employees. Any insurance maintained by the Owner and their directors, officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

(g) Prior to commencement of performance, the Contractor shall provide certificates of insurance satisfactory to the Owner that clearly evidence all insurance coverages required herein, including but not limited to endorsements (individually and collectively, "Certificates of Insurance"). The Contractor agrees that, until the Owner are supplied with Certificates of Insurance, no payment under this Agreement will be made by the Owner. The Contractor will provide the Owner with updated Certificates of Insurance within ten (10) calendar days of the anniversary of the effective date of coverage should that date fall during the term of this Agreement. Failure of the Owner to require Certificates of Insurance or to identify a deficiency in coverage shall not relieve the Contractor of its responsibility to provide the specific insurance coverages set forth herein.

(h) Subject to Section 9 (Assignment), the Contractor shall require each subcontractor and/or third-party performing work for the Contractor related to the Scope of Services to purchase and maintain insurance of the types and with policy limits no less than those required of Contractor under this Section 12. All general liability policies carried by a subcontractor and/or third-party shall be endorsed to include the Additional Insureds identified above. Each subcontractor and/or third-party shall be required to provide Contractor, upon request, with certificates of insurance evidencing such coverage prior to commencement of work by a subcontractor and/or third party.

(i) The insurance policies afforded hereunder shall not be cancelled or allowed to expire unless at least thirty (30) days' prior written notice has been delivered to the Owner, except in the event of cancellation due to non-payment of a premium, in which case notice shall be given to the Owner no later than ten (10) days prior to cancellation of the policy. Upon receipt of any notice of cancellation or non-renewal, the Contractor shall, within five (5) days, procure other policies of insurance as necessary to comply with this Section 12 and provide Certificates of Insurance evidencing the same to the Owner. Notwithstanding the provisions contained in Section 16 (Remedies), if the Contractor fails to procure the required insurance or provide the Owner with Certificates of Insurance within the timeframe provided, the Owner may terminate or suspend this Agreement upon written notice to the Contractor.

13. Compliance with Laws and Federal Funding Requirements. The Contractor is obligated to familiarize itself and comply with all laws applicable to the performance of the Scope of Services, including without limitation all state and local licensing and registration requirements. Contractor's compensation under the terms of this Agreement is partly funded by federal grants. Accordingly, the Contractor shall comply with the Federal Provisions set forth in Exhibit B. By entering into this Agreement, Contractor certifies that it can meet the requirements Exhibit B including, without limitation, the Buy America Procurement Preference set forth in Paragraph 16 of Exhibit B. By signing this Agreement, Contractor certifies that it will be able to meet said requirements without the need for a waiver. To the extent federal funds cannot be used due to Contractor's failure to comply with the terms of Exhibit B, the portion of compensation to Contractor that is funded by federal funds shall be deducted from the total amount of compensation for services provided.

14. Acceptance Not Waiver. The Owner' approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the Owner under this Agreement.

15. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default.

16. Remedies. Except as provided in Section 12(i) (Insurance), in the event a Party declares a default by the other Party, such defaulting Party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event of litigation, the prevailing party shall be entitled to receive from the other party its reasonable attorneys' fees and costs.

17. Indemnification; No Waiver of Liability or Immunity. The Contractor agrees to indemnify, defend, and hold harmless the Owner and its officers, directors, employees, agents, engineers, architects and attorneys from all costs, claims, damages, judgments, losses, liability and expenses of every nature, including reasonable attorneys' fees, arising at any time from any act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. The Contractor shall upon request of the Owner promptly assume the defense, with defense counsel of Owner' choice and at the Contractor's sole expense, of any claim, action, proceeding or suit that is brought against the Owner arising from any act or omission of the Contractor, its agents, representatives, subcontractors, or suppliers. If other persons and/or entities, excluding the Owner and its officers, directors, employees, agents, engineers, architects, and attorneys, at fault exist, the Contractor agrees to work in good faith with such persons and/or entities in determining how the Owner' defense costs shall be covered, but under no circumstances shall the Owner be responsible

for those costs. The Contractor further agrees that, to the extent applicable, indemnification shall only be to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or its agents, representatives, subcontractors, or suppliers. The extent of the Contractor's obligation to indemnify the Owner and its officers, directors, employees, agents, engineers/architects and attorneys may be determined only after the Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement of the Parties. The Contractor's obligations under this Section 17 shall be to the fullest extent permitted by law and shall survive termination or expiration of this Agreement. **Notwithstanding any other provision contained in this Agreement, the Owner does not agree to defend, indemnify, or hold harmless the Contractor or waive or limit its rights and/or claims in any respect regarding the Contractor's liability (either by type of liability or amount).** The Owner is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, defenses 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 the Owner or its officers or employees. Nothing herein shall be construed to require any indemnification that would make this Section 17, or any portion thereof, void or unenforceable or to eliminate or reduce the indemnification rights the Owner has by law.

18. Binding Effect. This writing constitutes the entire agreement between the Parties and shall be binding upon the Parties, their officers, employees, agents and assigns and shall inure to the benefit of the Parties' respective survivors, heirs, personal representatives, successors and permitted assigns.

19. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for Archuleta County.

20. Severability. In the event any term or condition of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

21. Annual Appropriation. The Owner's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the Owner's Board of Directors.

22. Ownership of Work Product. All documents such as reports, plans, drawings and contract specifications, information, and other materials prepared or furnished by the Contractor (or the Contractor's independent professional associates, permitted subcontractors, and Contractors) and paid for pursuant to this Agreement are instruments of public information and property of the Owner. All internal documents which support

the public information such as field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by Contractor as instruments of service shall be provided to the Owner. The Owner understand such documents are not intended or represented to be suitable for reuse by the Owner or others for purposes outside the specific scope and conditions of the Scope of Services. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at Owner' sole risk and without liability or legal exposure to the Contractor, or to the Contractor's independent professional associates, permitted subcontractors, or Contractors.

23. Taxes. The Town is a governmental entity and is therefore exempt from state and local sales and use tax. The Owner will not pay for or reimburse any sales or use tax that may not directly be imposed against the Owner. The Contractor shall use the Town's sales tax exemption for the purchase of any and all products and equipment on behalf of the Owner.

24. Time is of the Essence. All times stated in this Agreement are of the essence.

25. Notices. All notices which are required, or which may be given under this Agreement shall be effective when mailed via registered or certified mail, postage prepaid and sent to the address first set forth above.

26. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S.

27. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

28. Section Headings. The section headings in this Agreement have been inserted for convenience of reference only and shall not affect the meaning or interpretation of any part of this Agreement.

29. Not Construed Against Drafter. Each Party acknowledges that it has had an adequate opportunity to review each and every provision contained in this Agreement, including the opportunity to consult with legal counsel. Based on the foregoing, no provision of this Agreement shall be construed against either Party by reason of such Party being deemed to have drafted such provision.

Town of Pagosa Springs, a municipal corporation and political subdivision of the State of Colorado

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:
Name of Contractor³

By: _____

Name: _____

Title: _____

Date: _____

³ **NOTE TO USER:** Insert name of Contractor and type of entity. This should match the name of the Contractor in the Introductory paragraph of the Agreement.

EXHIBIT A

SCOPE OF SERVICES AND COMPENSATION

(Attach Contractor's proposal or other documentation if available and intended for incorporation into the Agreement)