

REQUEST FOR QUALIFICATIONS

Cover Sheet



welcome neighbors.

Date of RFQ Issuance: 3/26/2024
Project Number: 24-003
RFQ Title: **On-Call Professional Services**
Proposals Due: April, 15 2024: 10:00 a.m., Local Time
Submit Proposals to: [Submission Form](#)

For Additional Information Please Contact: Robin Price
(303) 644-3249 Ext. 1013
Email: rprice@bennett.co.us

Documents Included in This Package:
RFQ Cover Sheet
Project Background and Specifications
RFQ Instructions
Terms and Conditions
Special Terms and Conditions
Substitute Form W-9
Sample Agreement

If any of the documents listed above are missing from this package, they may be requested via email or picked up at Town Hall, 207 Muegge Way, Bennett, Colorado.

The undersigned hereby affirms that (1) he/she is a duly authorized agent of the Proposer, (2) he/she has read all terms and conditions and technical specifications which were made available in conjunction with this RFQ and fully understands and accepts them unless specific variations have been expressly listed in his/her offer, (3) the offer is being submitted on behalf of the Proposer in accordance with any terms and conditions set forth in this RFQ, and (4) the Proposer will accept any awards made to it as a result of the offer submitted herein for a minimum of ninety calendar days following the date of submission.

PRINT OR TYPE YOUR INFORMATION

Name of Company: _____ Fax: _____
Address: _____ City/State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone: _____
Authorized Representative's Signature: _____ Phone: _____
Printed Name: _____ Title: _____ Date: _____
Email Address: _____

PROJECT BACKGROUND AND SPECIFICATIONS

I BACKGROUND

The Town of Bennett ("Town") desires to solicit proposals from consultants interested in providing on-call professional services for the Town in the categories listed in Section III. ("Project"). This document sets forth general information and requirements for persons and firms ("Proposers") interested in submitting "Proposals" in response to this Request for Qualifications ("RFQ").

II PROJECT DESCRIPTION

The goal of the RFQ is to establish a roster of consultants that can provide professional services to the Town on an as-needed basis. Therefore, the Town invites qualified consultants to submit proposals to provide on-call professional services in the categories listed in Section III. The Town intends to select consultants in each category of service but reserves the option to award single or multiple contracts and may award more than one category of service to one consultant. On-call contracts will have a term of one-year, which may be extended for additional terms.

III SCOPE OF WORK

- A. The Town is seeking Proposals from consultants in the following categories of professional services:
 - a. Architectural and Design
 - b. Engineering
 - c. Surveying
 - d. ROW Agents
 - e. Ecological Services
 - f. Security Services
 - g. Geo-tech Services

- B. The selected consultants will perform services on an as-needed basis as may be requested by the Town on a variety of capital projects throughout the Town. Project values will not exceed \$100,000 per project. Selected consultants shall provide all necessary personnel, labor, materials and equipment to accomplish assigned projects. Work will be awarded by issuing task orders under the on-call contract. Task orders will include specific project requirements, a schedule, hourly rates and price. Proposers should note that that issuance of an on-call contract does not authorize any specific work or constitute a guarantee that any work will be assigned to a consultant.

RFQ INSTRUCTIONS

I QUESTIONS ABOUT RFQ

All technical inquiries regarding this RFQ shall be made in writing to **Robin Price rprice@bennett.co.us** no later than five (5) days before Proposals are due. Non-technical inquiries may be directed to **Finance Department (Danette Ruvalcaba, druvalcaba@bennett.co.us)**

II AMENDMENTS TO RFQ

The Town reserves the right to amend this RFQ by an addendum at any time prior to the date set for receipt of Proposals. Addenda or amendments will be posted on the Town's website as soon as available and shall be the responsibility of the Proposer to obtain all addenda. If revisions are of such a magnitude to warrant, in the Town's opinion, the postponement of the date for receipt of Proposals, an addendum will be issued announcing the new date.

III CONTENTS OF PROPOSAL

The Proposal shall contain, at a minimum, the following information:

1. Statements of Qualifications including:
 - i. General firm information including length of time in business and average number of employees
 - ii. Resumes of key project personnel and percent of team that is local.
 - iii. Location of key project personnel and availability
2. Proposed Project team including Project Manager and proposed subcontractors (if any).
3. Experience of the firm reflecting technical capabilities, project experience in conjunction with projects of this nature, and addressing the scope of services.
4. The name, organization and phone numbers of three clients (preferably municipal or other public entities) who may be contacted and who have worked with the proposed primary contract.
5. Fee schedule, including hourly rates for key personnel and equipment. Provide a maximum escalation factor that will be applied to future years of the contract.
6. Signed copy of the cover page of this RFQ (page 1 of this RFQ)
7. Completed Sample W-9 (form attached)
8. List any requested deviations from the attached Sample Agreement

IV INSTRUCTIONS FOR SUBMITTING PROPOSAL QUALIFICATIONS

One (1) copy of the Proposal shall be submitted electronically [here](#):

Proposals received after the Proposal deadline shall be considered non-responsive.

V MODIFICATIONS TO OR WITHDRAWAL OF PROPOSALS.

Proposals may only be modified in the form of a written notice on company letterhead and must be received prior to the Proposal deadline.

Proposals may be withdrawn prior to Proposal deadline. Such requests must be made in writing on company letterhead. Proposals may not be withdrawn after the Proposal deadline for a period of ninety (90) calendar days. If a Proposal is withdrawn during this ninety-day period, the Town may, at its option, choose not to accept any Proposal from the Proposer for a six-month period following the withdrawal.

VI EVALUATION CRITERIA

Proposals shall be reviewed and evaluated by Town staff and/or consultants who may request additional information from Proposers or request interviews with one of more Proposers. Final evaluation and selection may be based on, but not limited to any of the following:

1. Qualifications of the Proposer
2. Reference checks
3. Hourly Rates of Personnel/Equipment
4. Ability of the Proposer to provide quality and timely services and products

VII ANTICIPATED SCHEDULE

The following activities and dates are just a tentative outline of the process to be used by the Town.

March 26, 2024	Issue Request for Qualifications
April 15, 2024 10:00 a.m.	Proposal Submittal Deadline
April 15, 2024	Bid Opening <u>(Please Note: Not a Public Opening!*)</u>
April 24, 2024	Award Notification
May 1, 2024	Award Contract

TERMS AND CONDITIONS

1. **Responses to RFQ.** All Proposals shall become the property of the Town upon receipt and will not be returned to the Proposer. Selection or rejection will not affect this right. Any confidential/proprietary information submitted in response to this request shall be readily identified, clearly marked and separated from the rest of the response. Co-mingling of confidential/proprietary and other information is not acceptable. Submittals will be handled in accordance with applicable federal and state public records laws and procurement regulations. Neither cost information nor the total Proposal will be considered confidential/proprietary.
2. **Rejection Rights.** The Town reserves the right to reject all Proposals and re-solicit if deemed by the Town to be in its best interests, and to abandon the Project and this RFQ at any time for any or no reason. The Town is not obligated to accept the lowest cost proposed, is not obligated to accept any Proposal, and will make its determination based on the best interests of the Town.
3. **Other Conditions; Reservation of Rights.** This is a solicitation and not an offer to contract. The provisions in this RFQ and any procurement or purchasing policies or procedures of the Town are solely for the fiscal responsibility of the Town and confer no rights, duties, or entitlements to any party submitting responses to this solicitation. The Town reserves the right to issue clarifications and other directives concerning this RFQ, to make and issue modifications to the RFQ schedule; to require clarification or further information with respect to any response or Proposal received; to waive any informalities or irregularities; and to determine the final scope and terms of any contract, and whether to enter any contract. The provisions herein confer no rights, duties or entitlements to any Proposer.
4. **Proposer's Responsibilities.** Proposer shall make all investigations necessary to thoroughly inform themselves regarding the Project and are expected to examine the drawings, specifications, schedule of delivery, and all instructions. Failure to do so is at the risk of the Proposer.
5. **Costs of Response Preparation and Other Charges.** Proposers are solely responsible for all costs of preparing their proposals and participation in this RFQ, and the Town assumes no responsibility for payment of any expenses incurred by a Proposer as part of this process. For the selected firm, no reimbursement will be made by the Town for any costs incurred prior to full execution of a contract and issuance of written notice by the Town to commence Project services.
6. **Agreement Required.** A written agreement will be required between the Town and the selected Proposer, which agreement will be in the form and substance required by the Town. A sample agreement is included with this RFQ, but the Town reserves the right to modify the terms and conditions thereof. The agreement shall include insurance requirements for both general liability and errors and omissions.
7. **Taxes.** Proposers shall not include federal, state, or local excise or sales taxes in prices offered, as the Town is exempt from payment of such taxes. Town tax identification numbers will be

made available to the selected contractor.

- 8. Pricing.** Proposers may offer a cash discount for prompt payment. Discounts will be considered in determining the lowest net cost for the evaluation of Proposals; discounts for periods of less than twenty days, however, will not be considered in making the award. Proposers are encouraged to provide their prompt payment terms in the space provided on the Pricing Form. If no prompt payment discount is being offered, the Proposer shall enter a zero (0) for the percentage discount to indicate net thirty days.
- 9. No Collusion.** The Proposer, by affixing its signature to this RFQ, certifies that its Proposal is made without previous understanding, agreement, or connection either with any persons, firms or corporations making a Proposal for the same items, or with the Town. The Proposer also certifies that its Proposal is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. To ensure integrity of the Town's public procurement process, all Proposers are hereby placed on notice that any and all Proposers who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.
- 10. Elimination from Consideration.** A Proposal may not be accepted from, nor any contract be awarded to, any person or firm which is in arrears to the Town upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the Town. A Proposal may not be accepted from, nor any contract awarded to, any person or firm which has failed to perform faithfully any previous contract with the Town, state or federal government, for a minimum period of three years after this previous contract was terminated for cause.
- 11. Equal Opportunity.** The Town intends and expects that the contracting processes of the Town and its vendors provide equal opportunity without regard to gender, race, ethnicity, religion, age or disability and that its vendors make available equal opportunities to the extent third parties are engaged to provide goods and services to the Town as subcontractors, vendors, or otherwise. Accordingly, the vendor shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the contract.

SPECIAL TERMS AND CONDITIONS

COMPETENCY OF CONTRACTORS - MINIMUM YEARS OF EXPERIENCE AND OPERATIONAL FACILITIES REQUIRED: Responses will only be considered from Proposer which have been engaged in the business of performing services as described in this RFQ for a minimum period of five (5) years prior to the date of this RFQ. The Proposer must be able to produce evidence that they have an established satisfactory record of performance for a reasonable period of time and have sufficient financial support, equipment and organization to ensure that they can satisfactorily execute the services if awarded a contract. The term 'equipment and organization' as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices in the industry and as determined by the proper authorities of the Town. The Town reserves the right, before awarding the contract, to require a Proposer to submit such evidence of its qualifications as it may deem necessary, and may consider any evidence available to it (including, but not limited to, the financial, technical and other qualifications and abilities of the Proposer, including past performance and experience with the Town) in making the award in the best interests of the Town.

QUALIFICATIONS OF CONTRACTOR: The Town may make such investigations as deemed necessary to determine the ability of the Proposer to perform work, and the Proposer shall furnish all information and data for this purpose as the Town requests. Such information includes but not limited to: insurance coverages; current licensing information, audited financial statements, history of the firm on s, contracts cancelled prior to completion and/or lawsuits and/or pending lawsuits against the firm and/or its principals. The Town reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the Town that such Proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

NON-APPROPRIATION: Pursuant to C.R.S. § 29-1-110, as amended, financial obligations of the Town after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted and otherwise available. Any contract entered with respect to this project will provide that it is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated. The Town shall give the Proposer or written notice of such non-appropriation.

JOINT VENTURES ARE ENCOURAGED. The Proposer shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The Proposer shall maintain records demonstrating its compliance with this article and shall make such records available to the Town upon the Town's request.

SUBSTITUTE FORM W-9
REQUEST FOR TAXPAYER
IDENTIFICATION NUMBER AND CERTIFICATION
(A copy of the W-9 instructions is available upon request)

Vendor# _____

1 NAME OF FIRM:

NAME (Legal Name)

BUSINESS NAME (If different from above e.g. DBA)

2 ADDRESS WHERE NOTIFICATIONS, PURCHASE ORDERS ETC. SHOULD BE MAILED
(if different from above):

NAME (As it appears on invoice)

ADDRESS

CITY, STATE, ZIP

3. PAY TO OR REMITTANCE INFORMATION

(If more than one remit to address, please attach on additional page.)

STREET ADDRESS

CITY, STATE, ZIP

The Internal Revenue Service requires that you submit a Taxpayer Identification Number to comply with this regulation, please fill in the required information on this form, sign and return it to:

By fax (303) 644-4125
By mail Town of Bennett
ATTN: Danette Ruvalcaba
207 Muegge Way
Bennett, CO 80102

TAXPAYER IDENTIFICATION NUMBER (TIN)

Social Security Number _____-_____-_____
OR
Federal Identification Number _____-_____

Name of Business Owner (please print) _____

Check Appropriate Box:

- | | | | |
|---|--|-------------------------------------|-------|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Government | |
| <input type="checkbox"/> Individual/Sole Prop | <input type="checkbox"/> Non-Profit Organization | <input type="checkbox"/> | Other |
- _____

(Must explain)

CERTIFICATION

Under penalties of perjury, I certify that:

- (1) The number shown on this form is my correct Tax Identification Number, and
- (2) I am not subject to backup withholding.
- (3) I am a US person (including a US resident alien)

Signature _____

Date _____

Print Name _____

Telephone Number ()

**NOTICE! CHECKS OR PURCHASE ORDERS WILL NOT BE ISSUED BY THE TOWN OF BENNETT
UNTIL YOUR TAX PAYER ID NUMBER IS ON FILE IN THIS OFFICE!**

FOR OFFICE USE ONLY:

Individual/Sole Proprietorships: For Corporation:

- | | | |
|---|--|---------------------------------------|
| <input type="checkbox"/> Merchandise Only | <input type="checkbox"/> Services | <input type="checkbox"/> Attorney |
| <input type="checkbox"/> Employee expense reimbursement | <input type="checkbox"/> Contract Labor | <input type="checkbox"/> Non Attorney |
| <input type="checkbox"/> Garnishment / Child Support | <input type="checkbox"/> Other (Explain) | |
| <input type="checkbox"/> Damage awards & other reimb | <input type="checkbox"/> Sale of Land | |

Approved:

Town Administrator

Date

SAMPLE AGREEMENT

AN AGREEMENT BY AND BETWEEN THE TOWN OF BENNETT AND _____ FOR ON-CALL CONSULTING SERVICES

1.0 PARTIES

This AGREEMENT FOR ON-CALL CONSULTING SERVICES (this “Agreement”) is made and entered into this ____ day of _____, 20__ (the “Effective Date”), by and between the **Town of Bennett**, a Colorado municipal corporation, hereinafter referred to as the “Town”, and _____ [Name of Contractor], a _____ [State of Formation and Type of Entity] hereinafter referred to as the “Consultant”.

2.0 RECITALS AND PURPOSE

- 2.1 The Town desires to engage the Consultant for the purpose of providing on-call professional services.
- 2.2 The Consultant represents that it has the special expertise, qualifications and background necessary to complete the services.

3.0 SCOPE OF SERVICES

a. The Consultant agrees to provide the Town with the following on-call professional services: _____ (the “Services”), as requested in writing by the Town in accordance with the terms of this Agreement.

b. No Services shall be commenced until the parties develop and agree to one or more written task orders specific to the Services to be performed (the “Task Order”) and, if requested by the Town, until after a meeting of the Consultant and Town representatives. No such Task Order shall be effective until signed by the Town and Consultant. The Town shall have no obligation to pay the Consultant for work done without a written Task Order.

c. The Consultant shall finally complete each Task Order in a thorough and workmanlike manner in every respect to the satisfaction and approval of the Town, within the time specified in the Task Order. Prompt completion of the Services is essential to the Town, and time is of the essence in all respects regarding this Agreement and the Services.

d. The parties agree the Town is not obligated to use the Consultant for any specific project or for any projects at all during the term of this Agreement. In its sole discretion, the Town may contract with other consultants to provide the same or similar services during the term of this Agreement.

4.0 COMPENSATION

- 4.1 The Town shall pay the Consultant for the Services in the amounts and hourly rates specified in the Task Order specific to the Services. The Town shall not pay mileage and other reimbursable expenses (such as meals, parking, travel expenses, necessary memberships, etc.), unless such expenses are (1) clearly set forth in the Task Order, and (2) necessary for performance of the Services (“Pre-Approved Expenses”). The foregoing amounts of compensation shall be inclusive of all costs of whatsoever nature associated with the Consultant’s efforts, including but not limited

to salaries, benefits, overhead, administration, profits, expenses, and outside consultant fees. The scope of Services and payment therefor shall only be changed by a properly authorized amendment to this Agreement.

- 4.2 The Consultant shall submit monthly an invoice to the Town for Services rendered and a detailed expense report for Pre-Approved Expenses incurred during the previous month. The invoice shall document the Services provided during the preceding month, identifying by work category and subcategory the work and tasks performed and such other information as may be required by the Town. The Consultant shall provide such additional backup documentation as may be required by the Town. The Town shall pay the invoice within thirty (30) days of receipt unless the Services or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

5.0 PROJECT REPRESENTATION

- 5.1 The Town designates _____ as the responsible Town staff to provide direction to the Consultant during the conduct of the Services. The Consultant shall comply with the directions given by _____ and such person's designees.
- 5.2 The Consultant designates _____ as its project manager and as the principal in charge who shall be providing the Services under this Agreement. [The Services shall not be provided by persons other than _____.] [or] [Should any of the representatives be replaced, particularly _____, and such replacement require the Town or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.]

6.0 TERM

- 6.1 This Agreement shall be effective as of the Effective Date and shall extend for one year, unless earlier terminated pursuant to this Agreement. Upon completion of the initial one-year term, the Agreement will automatically extend for up to _____ additional one-year terms, unless, at least sixty (60) days prior to the renewal date, either party gives the other party written notice of its intent not to renew the Agreement.
- 6.2 Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the Town within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the Town under this Agreement are subject to annual budgeting and appropriation by the Bennett Board of Trustees, in its sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of non-appropriation, this Agreement shall terminate effective December 31 of the then-current fiscal year.

7.0 INSURANCE

- 7.1 The Consultant agrees to procure and maintain, at its own cost, the policies of insurance set forth in Subsections 7.1.1 through 7.1.4. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement 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. The coverages required below shall be procured and

maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained from the date of commencement of services hereunder. The required coverages are:

- 7.1.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Evidence of qualified self-insured status may be substituted.
 - 7.1.2 General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the Town of Bennett, its officers and its employees, as additional insureds, with primary coverage as respects the Town of Bennett, its officers and its employees, and shall contain a severability of interests provision.
 - 7.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Consultant has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Consultant providing services to the Town of Bennett under this Agreement.
 - 7.1.4 Professional Liability coverage with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.
- 7.2 The Consultant's general liability insurance, automobile liability and physical damage insurance, and professional liability insurance shall be endorsed to include the Town, and its elected and appointed officers and employees, as additional insureds, unless the Town in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Consultant. Such policies shall contain a severability of interests provision. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.
- 7.3 Certificates of insurance shall be provided by the Consultant as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. No required coverage shall be cancelled, terminated or materially changed until at least 30 days' prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 7.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Town.

7.5 The parties understand and agree that the Town 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, 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 Town, its officers, or its employees.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the Town, and its elected and appointed officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if and to the extent such injury, loss, or damage is caused by the negligent act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant or any subcontractor, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands. The Consultant shall further bear all other costs and expenses incurred by the Town or Consultant and related to any such liability, claims and demands, including but not limited to court costs, expert witness fees and attorneys' fees if the court determines that these incurred costs and expenses are related to such negligent acts, errors, and omissions or other fault of the Consultant. Notwithstanding the foregoing, if the Services are for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the Consultant's duty to defend, indemnify and hold harmless the Town, and its elected and appointed officials and employees as set forth in this section shall only arise upon determination, by adjudication, alternative dispute resolution, or mutual agreement between Consultant and the Town, of the Consultant's liability or fault. The Town shall be entitled to its costs and attorneys' fees incurred in any action to enforce the provisions of this Section 8.0. The Consultant's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

9.0 QUALITY OF WORK

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of services of a similar nature in the Denver metropolitan area.

10.0 INDEPENDENT CONTRACTOR

It is the expressed intent of the parties that the Consultant is an independent contractor and not the agent, employee or servant of the Town, and that:

10.1. Consultant shall satisfy all tax and other governmentally imposed responsibilities including but not limited to, payment of state, federal, and social security taxes, unemployment taxes, worker's compensation and self-employment taxes. No state, federal or local taxes of any kind shall be withheld or paid by the Town.

10.2. **Consultant is not entitled to worker's compensation benefits except as may be provided by the Consultant nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some entity other than the Town.**

- 10.3. Consultant does not have the authority to act for the Town, or to bind the Town in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the Town.
- 10.4. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder.
- 10.5. The Town will not provide training or instruction to Consultant or any of its employees regarding the performance of the Services hereunder.
- 10.6. Neither the Consultant nor any of its officers or employees will receive benefits of any type from the Town.
- 10.7. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the Town.
- 10.8. All Services are to be performed solely at the risk of Consultant and Consultant shall take all precautions necessary for the proper and sole performance thereof.
- 10.9. Consultant will not combine its business operations in any way with the Town's business operations and each party shall maintain their operations as separate and distinct.

11.0 ASSIGNMENT

Except as provided in section 22.0 hereof, Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due or to become due hereunder without the Town's prior written consent.

12.0 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.

13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.
- 13.2 In addition to the foregoing, this Agreement may be terminated by the Town for its convenience and without cause of any nature by giving written notice at least fifteen (15) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed a pro-rated daily rate, for the services rendered to the date of termination, and upon such payment, all obligations of the Town to the Consultant under this Agreement will cease. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14.0 INSPECTION AND AUDIT

The Town and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.0 DOCUMENTS

All computer input and output, analyses, plans, documents photographic images, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed for the Town in performance of the Services are and shall remain the sole and exclusive property of the Town. All such materials shall be promptly provided to the Town upon request therefor and at the time of termination of this Agreement, without further charge or expense to the Town. Consultant shall not provide copies of any such material to any other party without the prior written consent of the Town.

16.0 ENFORCEMENT

16.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

16.2 This Agreement shall be deemed entered into in Adams County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Adams County of the State of Colorado, and in no other court. Consultant hereby waives its right to challenge the personal jurisdiction of the District Court of Adams County of the State of Colorado over it.

17.0 COMPLIANCE WITH LAWS

Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the Town; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

18.0 INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

19.0 NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, by United States first class mail, postage prepaid, registered or certified, return receipt requested, by national overnight carrier, or by facsimile transmission, addressed to the party for whom it is intended at the following address:

If to the Town:
Town of Bennett
Attn: Town Manager
207 Muegge Way
Bennett, CO 80102
Telephone: (303) 644-3249

Fax: (303) 644-4125
Email: _____

If to the Consultant:

Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

20.0 EQUAL OPPORTUNITY EMPLOYER

20.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

20.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

21.0 NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22.0 SUBCONTRACTORS

Consultant may utilize subcontractors identified in its qualifications submittal to assist with non-specialized works as necessary to complete projects. Consultant will submit any proposed subcontractor and the description of its services to the Town for approval. The Town will not work directly with subcontractors.

23.0 AUTHORITY TO BIND

Each of the persons signing below on behalf of any party hereby represents and warrants that such person is signing with full and complete authority to bind the party on whose behalf of whom such person is signing, to each and every term of this Agreement.

In witness whereof, the parties have executed this Agreement to be effective on the date first above written.

TOWN OF BENNETT,
a Colorado Municipal Corporation

By: _____

Attest: _____
Town Clerk

CONSULTANT:

By: _____
Title: _____