

## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_, 202\_\_ by and between the TOWN OF MINTURN, Colorado, a home rule municipality ("Minturn" or the "Town"), and Stolfus & Associates, Inc.\_ (the "Consultant").

WHEREAS, the Town desires that Consultant perform the services of Stolfus & Associates, Inc. as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the job description attached as **Exhibit A**; and

WHEREAS, Consultant desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the Parties hereto desire to set forth certain understandings regarding the services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. **Services.** The Town agrees to retain Consultant to provide the services set forth herein, and as further specified in **Exhibit A**, attached hereto and incorporated herein by reference ("Scope of Services"), and Contractor agrees to so serve. Contractor represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. The Town reserves the right to omit any of the Services identified in **Exhibit A** upon written notice to Consultant. In the event of any conflict between this Agreement and **Exhibit A**, the provisions of this Agreement shall prevail. All services shall be performed in conformance with the standard of care ordinarily exercised by members of Consultant's profession practicing at the same time in the State of Colorado.

2. **Compensation.** The Town agrees to pay Contractor a sum not to exceed One hundred thousand\_ Dollars (\$100,000.00) as adjusted to reflect the deletion by the Town of any of the Services set forth in **Exhibit A**. The Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Consultant, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

3. **Term.** The Term of this Agreement shall be from the date first written above until completion of the Services, unless extended by written agreement of the Parties.

4. **Outside Support Services and Subcontractor.** Any subcontractors shall be pre-approved by the Town. A rate sheet for such subcontractors shall be provided to the Town.

5. **Ownership of Instruments of Service.** The Town acknowledges the Consultant's work product, including electronic files, as instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to the Consultant. The Town agrees not to use Instruments of Service for purposes other than as described in the Agreement or to modify such Instruments of Service without Stolfus' prior written consent and to the extent allowable by law agrees to indemnify Stolfus and hold Stolfus harmless from any and all claims, damages, losses, liabilities, and expenses arising out of or resulting from any use or modification not consented by Stolfus.

6. **Monitoring and Evaluation.** The Town reserves the right to monitor and evaluate the progress and performance of Consultant to ensure that the terms of this Agreement are being satisfactorily met in accordance with the Town's and other applicable monitoring and evaluating criteria and standards. Consultant shall cooperate with the Town relating to such monitoring and evaluation.

7. **Independent Contractor.** The Parties agree that the Consultant shall be an independent contractor and shall not be an employee, agent, or servant of the Town. Consultant is not entitled to workers' compensation benefits from the Town and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.

8. **Insurance Requirements.**

a. **Comprehensive General Liability Insurance.** Consultant shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Consultant and naming the Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the performance of the Services with at least one million dollars (\$1,000,000.00) each occurrence, two million dollars (\$2,000,000.00) aggregate. The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

b. **Comprehensive Automobile Liability Insurance.** Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Consultant and naming the Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Consultant which are used in connection with the Project, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least one million dollars (\$1,000,000.00). The limits of said insurance shall not, however, limit the liability of Consultant hereunder.

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c. Terms of Insurance.

i. Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as Consultant deems reasonable for the Services. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the Town. Consultant shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Consultant changes to "occurrence," Consultant shall carry a six (6)-month tail. Consultant shall not do or permit to be done anything that shall invalidate the policies.

ii. The policies described in subparagraphs a. and b. above shall be for the mutual and joint benefit and protection of Consultant and the Town. Such policies shall provide that the Town, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents because of negligence of Consultant, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the Town may carry.

d. Workers' Compensation and Other Insurance. During the term of this Agreement, Consultant shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law. If under Colorado law Consultant is not required to carry workers' compensation insurance, Consultant shall provide the Town an executed Certificate of Exemption from Statutory Workers' Compensation Law and Acknowledgment of Risk/Hold Harmless Agreement, which shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

e. Evidence of Coverage. Before commencing work under this Agreement, Consultant shall furnish to the Town certificates of insurance policies evidencing insurance coverage required by this Agreement. Consultant understands and agrees that the Town shall not be obligated under this Agreement until Consultant furnishes such certificates of insurance.

f. Subcontracts. Consultant agrees to include the insurance requirements set forth in this Agreement in all subcontracts. The Town shall hold Consultant responsible in the event any subcontractor fails to have insurance meeting the requirements set forth in this Agreement. The Town reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Consultant if, in the Town's opinion, such variations do not substantially affect the Town's interests.

9. **Indemnification.** Contractor hereby covenants and agrees to indemnify, save, and hold harmless the Town, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or omission or other tortious conduct of Consultant, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

10. **Termination.**

a. **For Convenience.** The Town may terminate this Agreement without cause if it determines that such termination is in the Town's best interest. The Town shall affect such termination by giving written notice of termination to Consultant, specifying the effective date of termination, at least thirty (30) calendar days prior to the effective date of termination. In the event of such termination by the Town, the Town shall be liable to pay Consultant for Services performed as of the effective date of termination, but shall not be liable to Consultant for anticipated profits. Consultant shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the Town.

b. **For Cause.** If, through any cause, Consultant fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, and does not commence correction of such nonperformance or violation within seven (7) calendar days of receipt of written notice and diligently complete the correction thereafter, the Town shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Consultant. In the event of such termination by the Town, the Town shall be liable to pay Consultant for Services performed as of the effective date of termination, but shall not be liable to Consultant for anticipated profits. Consultant shall not perform any additional Services following receipt of the notice of termination. Notwithstanding the above, Consultant shall not be relieved of liability to the Town for any damages sustained by the Town by virtue of any breach of this Agreement, and the Town may withhold payment to Consultant for the purposes of setoff until the exact amount of damages due to the Town from Consultant is determined.

c. **Payment upon Termination.** In the event that this Agreement is terminated, Consultant shall be entitled to payment for its costs and services performed, up through the date of termination, less allowances for services rendered that were negligent or otherwise contrary to this Agreement.

11. **Use of Software and other Intellectual Property.** Consultant hereby represents and warrants that it has obtained all necessary rights and licenses to use any software or other intellectual property that may be required by Consultant to perform the Scope of Services. Consultant hereby agrees to indemnify, hold harmless and defend Town against any claim brought against Town for improper use or infringement upon any software or intellectual property interest.

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12. **Agreement Subject to Appropriation.** To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it shall be subject to annual appropriation pursuant to the Town of Minturn Municipal Code and Article X, Section 20 of the Colorado Constitution. The Town shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

13. **Responsibilities.** The Consultant shall be responsible for all damages to persons or property caused by the Consultant, its agents, employees, or subcontractors, to the extent caused by its negligent acts, errors, and omissions hereunder, and shall indemnify and hold harmless the Town from any claims or actions brought against Consultant by reason thereof.

14. **Entire Agreement.** This Agreement, along with any addendums and attachments hereto, constitutes the entire agreement between the Parties. The provisions of this Agreement may be amended at any time by the mutual consent of both Parties. The Parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

15. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Eagle, State of Colorado.

16. **Governmental Immunity Act.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

17. **Assignability.** Consultant shall not assign this Agreement without the Town's prior written consent.

18. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

19. **Survival Clause.** The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

20. **Severability.** In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

21. **Headings.** Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

22. **Notices.** Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

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23. **Limitation of Liability:** To the maximum extent permitted by law, the Client agrees to limit the liability of the Consultant and the Consultant's employees, owners and subconsultants for the Client's damages to insurance policy limits. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

If to the Town:	TOWN OF MINTURN Attn: Town Clerk PO Box 309 Minturn, CO 81645
With copy to:	Michael J. Sawyer, Esq. Karp Neu Hanlon, P.C. 201 14 <sup>th</sup> Street, Suite 200 P. O. Drawer 2030 Glenwood Springs, Colorado 81602
If to Consultant:	Elizabeth Stolfus, PE Stolfus & Associates, Inc. 5690 DTC Blvd, Ste 330W Greenwood Village, CO 80111

23. **Authority.** Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter and execute this Agreement and to bind the Party it represents to the terms and conditions hereof.

24. **Attorneys' Fees.** Should this Agreement become the subject of litigation between the Town and Consultant, the prevailing Party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

25. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.



**EXHIBIT A**  
**SCOPE OF SERVICES**



