

LARIMER COUNTY, COLORADO

Professional Services Agreement (Snow and Ice Control on County Road 47)

THIS AGREEMENT is made by and between the Board of County Commissioners of Larimer County, Colorado, located at 200 W. Oak, Fort Collins, Colorado 80521 ("County"), and Big Elk Meadows Association, aka BEMA, located at 29 Willow Dr, Lyons, CO 80540, ("Contractor"). County and Contractor agree to the following terms and conditions:

1. TERM

- a. Initial Term. The initial term of this Agreement shall be from January 1, 2023 through and including December 31, 2023 ("Initial Term"), unless sooner terminated as provided for in this Agreement.
- b. Extension Terms. Following the Initial Term, this Agreement will automatically renew for subsequent one-year terms under the same terms provided for herein (each such period being an "Extension Term") unless either party provides the other party with notice of non-renewal at least 60 days prior to the first day of the new term. Election of non-renewal shall be provided as set forth in §6.
- c. Early Termination for Convenience. Either party may, at its sole option, terminate this Agreement upon sixty (60) days' written notice for its convenience and without cause. Upon receipt of such notice, Contractor shall be subject to this subsection and §5(a)(i).
 - i. The terminating party shall provide the other party written notice of such termination in accordance with §6, and such notice shall specify the effective date of the termination.
 - ii. If either party terminates for convenience, Contractor will be paid for Work completed and unpaid prior to the effective date of termination as follows:
 1. Lump Sum Contracts: The pro-rated amount for the number of days during the term that the Agreement is effective prior to termination. If the Contractor has been pre-paid, the Contractor shall remit to the County any pro-rata over payment.
 - iii. In no event shall County be liable for costs incurred by Contractor after the specified termination date, including but not limited to anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or post-termination overhead or unabsorbed overhead.

2. STATEMENT OF WORK

- a. Contractor shall perform all the services, including delivery of any goods and services relating to such goods, as described in **Exhibit A** attached hereto (the "Work") and in accordance with the provisions of this Agreement.

3. PAYMENT

- a. All charges, prices, fees, and discounts related to the Work are set forth in the price schedule attached hereto as **Exhibit B** (the "Price Schedule").

- b. The total maximum cost to County under this Agreement is \$14,100.00. In no event shall County be liable to pay any money more than this total maximum cost unless County agrees otherwise in writing.
- c. Contractor shall initiate payment requests by invoice to County in the amounts, form and manner stated on **Exhibit B**.
- d. Within 30 days of its receipt of a complete and proper invoice, County shall pay the invoice so long as the amount invoiced correctly represents Work completed by Contractor in compliance with the terms of this Agreement. Payment of any invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement. Prior to payment, County reserves the right to require such additional documentation that it reasonably deems necessary to support invoices and payments to Contractor. In such event, payment deadlines shall be tolled and non-payment pending receipt and review of such additional documentation shall not constitute a breach by County.
- e. Contractor agrees that all invoices shall be exclusive of all excise, sale, use and other taxes for which County is exempt. Upon request, County shall provide Contractor a tax-exempt certificate or other similar form demonstrating its tax-exempt status.
- f. Larimer County is a Colorado public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore. Termination of this agreement due to future non-appropriation shall not be considered a breach or default by County.

4. BREACH

- a. The failure of either party to perform any of its obligations in accordance with this Agreement, in whole or in part, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.
- b. In the event of a breach, the non-breaching party shall give written notice of the breach to the other party in accordance with §6. If the notified party does not cure the breach within 30 days after the effective date of the notice pursuant to §6, the non-breaching party may exercise any of the remedies as described in §5 for that party. Notwithstanding any provision of this Agreement to the contrary, County may immediately terminate this Agreement for convenience and without cause as provided in §1(c) with prior written notice and without a cure period.

5. REMEDIES FOR BREACH

- a. County Remedies. If Contractor is in breach under any provision of this Agreement and fails to cure such breach following notice and 30 days to cure as provided in §4 above, County may terminate this Agreement or any portion of this Agreement, or in its sole discretion choose one or more of the following remedies: Withhold payment to Contractor until Contractor cures its breach; or suspend Contractor's performance, pending corrective action by Contractor, with respect to all or any portion of the Work, which may include immediate removal from the Work of any Contractor's employees, agents or

subcontractors whom County deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable with respect to the Work.

- i. If County terminates this Agreement, Contractor shall take all actions necessary to carry-out the termination on the date specified in the termination notice and to minimize the liability of Contractor and County to third parties. All such actions shall be subject to prior approval of County and shall include, without limitation, the following:
 1. Halting performance of all services and other work under the Agreement on the date(s) and in the manner specified by County;
 2. Not placing any further orders or subcontracts for materials, services, equipment, or other items;
 3. Terminating all existing orders and subcontracts in a manner that minimizes liability to the greatest extent feasible under the circumstances;
 4. At County's direction, assigning to County any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 5. Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts;
 6. Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County;
 7. Taking such action as may be necessary, or as County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which County has or may acquire an interest.
 - ii. Contractor shall be liable to County for any damages sustained by County in connection with any breach by Contractor, and County may withhold payment to Contractor for purposes of mitigating damages and losses sustained by County in connection with any breach by Contractor.
- b. Contractor Remedies. If County is in breach under any provision of this Agreement and fails to cure such breach following notice and 30 days to cure as provided in §4 above, Contractor may terminate this Agreement and shall have all remedies available by law and equity.
 - c. No Binding Arbitration. Larimer County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement, whether expressly stated or by incorporation, shall be null and void. Any provision rendered null and void by this provision shall not invalidate the remainder of this Agreement.

6. NOTICE & REPRESENTATIVES

- a. All notices required or permitted under this Agreement shall be in writing and delivered in person, by certified or registered mail, or via email with read-receipt requested to the following designated party representatives ("Contract Administrator"):
 - i. If to County: Todd Juergens
2643 Midpoint Drive, Suite C
Fort Collins, CO 80525
tjuergent@co.larimer.co.us
 - ii. If to Contractor: Paul Cyphers
29 Willow Drive
Lyons, CO 80540
paulc@bigelkmeadows.org
- b. County's Contract Administrator does not have the authority to alter or modify the terms of this Agreement.
- c. Notices delivered in person or by certified or registered mail are effective upon delivery. Notices sent via email are effective upon receipt as evidenced by read receipt.

7. LIABILITY

- a. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of the monetary limits, notice requirements, immunities, rights, benefits, defenses, limitations and protections available to County under any applicable law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et. seq.*, as currently written or hereafter amended or implemented.
- b. General Liability & Intellectual Property Indemnification.
 - i. Contractor shall be responsible for and hold harmless County, its employees, officials, and agents for any losses and liabilities incurred by County, its employees, officials, and/or agents, that are attributable to the negligence or fault of Contractor, its employees, agents, subcontractors, or assignees in connection with this Agreement; and
 - ii. Contractor shall indemnify and hold harmless County, its employees, officials, and agents for any losses and liabilities incurred by County, its employees, officials, and/or agents, in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.
- c. Duty to Defend. Contractor shall defend the County, its employees, officials, and agents, by attorneys and other professionals reasonably approved by them against any claims, suits, actions or proceedings related to the losses, liabilities, and indemnity set forth in §7(b)(i) and (ii) above. In no event shall any matter be settled without prior approval by the County.
- d. Insurance. Contractor shall obtain, and maintain continuously for the term of this Agreement, at its expense, the insurance types and amounts set forth in **Exhibit C** attached hereto. Contractor is not relieved of any liability or other obligations due to its failure to obtain or maintain insurance in sufficient amounts, durations, or types.

- e. No Pledge of Credit or Aid to Corporations. Pursuant to Colorado Constitution Article XI, §1 and 2, and Article X, §20, County shall not indemnify or hold harmless Contractor or any party related to or operating under this Agreement. No provision of this Agreement shall limit or set the amount of damages available to County to any amount other than the actual direct and indirect damages to County, regardless of the theory or basis for such damages. Any provision included or incorporated in this Agreement by reference which purports to negate this provision in whole or in part, or which conflicts with its terms, shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of this Agreement.

8. GENERAL PROVISIONS

- a. Independent Contractor. Contractor is an independent contractor and under no circumstance will Contractor or any agent or employee of Contractor be deemed an employee of County. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through County, and Contractor is solely responsible to provide such benefits at its sole cost.
- b. No Assignment. All rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent by the other party, and any such transfer or assignment shall subject the transferee/assignee to all provisions of this Agreement.
- c. Standard and Manner of Performance. Contractor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.
- d. Not Exclusive. Contractor is not guaranteed any work except as expressly stated herein, and this Agreement does not create an exclusive contract for the Work.
- e. Choice of Law, Jurisdiction and Venue. Colorado law shall be applied in the interpretation, execution and enforcement of this Agreement. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and venue shall be in Larimer County, Colorado.
- f. Contractor's Records. Contractor shall maintain a file of all documents, records, communications, notes, accounting records and other materials relating to the Work, including documents, records, communications, notes, and other materials related to the Work performed by subcontractors or agents (collectively the "Contractor's Records"), for a minimum of three (3) years from the date of final payment to Contractor under this Agreement. During performance of the Work and for the required record retention period, Contractor shall permit duly authorized agents and employees of County to enter Contractor's offices to inspect, review, copy, examine, and/or audit Contractor's Records at all reasonable times with a minimum of two (2) business days' notice from County.
- g. Debarment. Contractor certifies by signing this Agreement that neither Contractor, the organization, nor its principals are suspended or debarred or otherwise excluded from procurement by the Federal government and do not appear on the System for Award Management (SAM) exclusions list maintained by the General Services Administration (GSA).
- h. Authority. Each party represents and warrants that the execution and delivery of this Agreement and the performance of such party's obligations have been duly authorized.

- i. No Third-Party Beneficiaries. This Agreement is for the sole benefit of County and Contractor and nothing herein shall be construed as giving any benefits, rights, remedies, or claims to any other person or entity. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to County and Contractor. Any services or benefits which third parties receive as a result of this Agreement are incidental.
- j. Public Records. County is subject to the Colorado's Open Records Act ("CORA") and Contractor acknowledges that this Agreement is disclosable to the public pursuant to CORA. Additionally, Contractor understands that other records and information related to this Agreement may be subject to public disclosure pursuant to CORA, and County will release any such records per the requirements of CORA. County shall not be responsible for any damages or claims related to its disclosure of records or information it determines must be disclosed pursuant to CORA or any other applicable law.
- k. Laws and Regulations. Contractor shall strictly comply with all applicable federal, state, and local laws, rules, and regulations in effect or hereafter established, including, without limitation, Title II of the Americans with Disabilities Act of 1990, as amended, as well as laws applicable to discrimination and unfair employment practices.
- l. Ownership of Work Product. The tangible and intangible products of the Work performed under this Agreement, including but not limited to documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, pictures, negatives, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work ("Work Product"), are intended to be works made for hire and shall be solely owned by County. Contractor assigns to County all right, title, and interest to all Work Product, and agrees to cooperate and execute any documents in furtherance of County securing and/or protecting its intellectual property rights related to the Work Product. Work Product does not include any material developed by Contractor prior to the effective date of this Agreement that is used, without modification, in performance of the Work.
- m. Counterparts and Signatures. This Agreement may be executed in several identical counterparts, all of which taken together shall constitute one single agreement between the parties. Facsimile signatures and signatures transmitted via portable document format (PDF) shall be considered as original signatures.
- n. Signature Authority: This Contract shall not be valid unless it has been approved and signed by someone authorized by Larimer County Administrative Policy and Procedure 100.2N. This Contract may be executed in two or more counterparts, each of which shall be deemed an original. The parties approve the use of electronic signatures, which shall be governed by the Uniform Electronic Transactions Act, C.R.S. §24-71.3-101 et seq. If this Contract is electronically signed it (a) is considered a "writing" or "in writing," (b) is deemed for all purposes as physically "signed," (c) is deemed an "original" when printed or copied from electronic files or records established and maintained in the normal course of business, and (d) satisfies any legal formalities requiring that agreements be in writing. Neither party will contest the admissibility of copies (or printed versions) of this Agreement under either the business records exception to the hearsay rule, the best evidence rule or otherwise on the basis that the Agreement was originated, signed or maintained in electronic form. Other than an original hand-written signature or an electronic signature of the same formality used to originally execute this Agreement, no other communication between the parties (such as email, voice mail or fax without a signature) will be construed as a signature to this Agreement (or any amendments to it or waiver of it).

- o. Data Breach: During the course of Contractor's performance of the Contract, the Contractor may be required to store or control the transmission of electronic data provided by the County ("County Data"). The Contractor represents and warrants that:
- i. It will take all reasonable precautions to maintain all County Data in a secure environment to prevent unauthorized access, use, or disclosure, including industry-accepted firewalls, up-to-date anti-virus software, and controlled access to the physical location of the hardware containing County Data;
 - ii. Its collection, access, use, storage, disposal and disclosure of County Data shall comply with all applicable data protection laws, as well as all other applicable regulations and directives;
 - iii. It will notify the County of any actual or suspected data security incident as soon as practicable, but no later than 24 hours after it becomes aware of it, including but not limited to breaches of Contractor's computer, information, email, financial or other systems;
 - iv. The Contractor will provide the County sufficient information for the County to satisfy its legal and regulatory notice obligations, and upon notice, County shall have the authority to direct Contractor to provide notice to any potentially impacted individual or entity, at Contractor's expense, and Contractor shall be liable for any resulting damages to County; and
 - v. It will promptly return or destroy any County Data upon request from the County Representative.
 - vi. Contractor's indemnification obligations identified elsewhere in this Contract shall apply to any breach of the provisions of this Paragraph.

**BOARD OF COUNTY COMMISSIONERS
OF LARIMER COUNTY**

By: _____
Todd Juergens, Road & Bridge Director DATE

CONTRACTOR

By: _____
Signature DATE

Printed Name: Paul Cyphers

EXHIBIT A

Scope of Work

Contractor Responsibilities:

Contractor shall provide snow removal and ice control services on Larimer County Road 47 ("CR 47"). The road begins at US Highway 36 and runs 3.07 miles SW to the Boulder County line.

Snow removal shall occur whenever necessary to facilitate vehicular access and provide a safe and efficient roadway. In the event that snow depths exceed Contractor's ability to remove, Contractor shall notify the County of the need for additional snow removal services.

Contractor also agrees to notify the County of all apparent maintenance work that is needed for signs, culverts, roadway surface maintenance, etc., that is the responsibility of the County.

County Responsibilities:

County shall provide all de-icing and traction material (salt, sand, sand/salt) at no cost to Contractor. Contractor is responsible for contacting the Road & Bridge Department to order de-icing and traction material as required. The de-icing and traction material shall only be used on CR 47 as described above. The cost of these materials will be in addition to the annual payment described in Section 3.

The county shall provide additional snow removal services when snow depths exceed BEMA's ability to remove.

All other maintenance, including roadway surface maintenance, sign maintenance, culvert replacement, and other major road repairs, shall continue to be the responsibility of the County.

EXHIBIT B

Price Schedule and Payment Terms

Base Amount:

In consideration of the adequate performance by the Contractor for its services, County agrees to pay Contractor the Base Amount of \$14,100.00 per year. Invoices will be prepared annually by May 15th of the current term and payment will be made within 30 days of receipt.

Economic Price Adjustment of Base Amount:

- I. If this Agreement is extended beyond the Initial Term, the Base Amount will be adjusted annually for all Extension Terms. The Base and Adjusting Indexes, for the purpose of payment adjustment, shall be the Consumer Price Index for All Urban Consumers (CPI-U) for the Denver-Aurora-Lakewood, CO area using All Items (not seasonally adjusted) and the Standard Reference Base, published by the United States Department of Labor, Bureau of Labor Statistics.
 - A. The Base Index shall be the November 2022 Index of 309.655 which shall remain constant for the entire term of the contract, including all Extension Terms.
 - B. The Adjusting Index shall be the November Index published prior to the date of payment adjustment, as specified in Section III.
- II. Only a percentage increase from the Base Index to the Adjusting Index, rounded to the nearest .01 percent (e.g., 1.92%), will be used in calculating the adjustment to the Base Amount. The Base Amount will be multiplied by the percentage increase and the resulting amount will be added to the original Base Amount to arrive at the new Extension Term Payment. In no event shall this calculation cause a reduction in the Extension Term Payment below that payable during the Initial Term (Base Amount).
- III. The date of payment adjustment shall be the starting date of each Extension Term.
- IV. An example of an adjustment calculation is provided herein for informational purposes only.
 - A. The Base Amount shall be used for all Extension Term Payment calculations and will be adjusted by the percentage calculated as follows:

| | |
|---|---------------------------|
| Adjusting Index for the current period | 315.612 |
| Minus the Base Index | -309.655 |
| Equals the Index Point Change | 5.957 |
| Index Point Change Divided by the Base Index | $5.957/309.655 = .0192^*$ |
| Result Multiplied by 100 Equals the Percentage Change | 1.92% |

* This figure shall be rounded to the fourth decimal place. When the fifth decimal is 1 to 4, the figure shall be rounded down, 5 to 9, rounded up.

- B. For a contract with an original Base Amount of \$14,100.00 and a 1.92 percent Index Point Change increase as of the first Extension Term, as shown above, the calculations for the new Extension Term Payment would be as follows:
 $\$14,100.00 \times .0192 = \270.72 , $\$14,100.00 + \$270.72 = \$14,370.72$.
- C. If the Adjusting Index went down for the second Extension Term, reflecting only a 1 percent Index Point Change increase over the Base Index, the new Extension Term Payment would be reduced from \$14,370.72 to \$14,241.00 as follows: $\$14,100.00 \times .0100 = \141.00 , $\$14,100.00 + \$141.00 = \$14,241.00$. Note that the calculations for the second Extension Term are based on the original Base Amount.
- V. Extension Term Payments shall be documented by the Base Index, the Adjusting Index, the mathematical calculations used to arrive at the Extension Term Payment, and the effective date of the adjustment.
- VI. In the event that United States Department of Labor, Bureau of Labor Statistics discontinues, or alters substantially, its method of calculating the Index cited herein, the parties shall mutually agree upon an appropriate substitute for determining the price adjustment described herein.

EXHIBIT C

Insurance Requirements

Prior to commencement of any work, contractor/vendor shall provide a Certificate of Insurance to Larimer County, 200 West Oak St., Suite 4000, Fort Collins, Colorado 80521 or InsuranceCert@larimer.org. The insurance required shall be procured and maintained in full force and effect for the duration of the Contract and shall be written for not less than the following amounts, or greater if required by law. The Certificate Holder section must list Larimer County and the address listed above.

- I. Workers' Compensation and Employers' Liability (*waiver available if no employees*)
 - A. State of Colorado: Statutory
 - B. Applicable Federal: Statutory
 - C. Employer's Liability:

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|---------------------------------|
| \$100,000 Each Accident |
| \$500,000 Disease-Policy Limit |
| \$100,000 Disease-Each Employee |
 - D. Waiver of Subrogation
 - E. **If the contractor/vendor is not required to carry Workers' Compensation coverage per Colorado Workers' Compensation Act 8-40-202(2)(b) a signed Workers' Compensation waiver must be provided.**
- II. Commercial General Liability on an Occurrence Form including the following coverages: Premises Operations; Products and Completed Operations; Personal and Advertising Injury; Liability Assumed under an Insured Contract; Independent Contractors. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001. Minimum limits to be as follows:

| | |
|--|-------------|
| A. General Aggregate Limit | \$2,000,000 |
| B. Products & Completed Operations Aggregate Limit | \$2,000,000 |
| C. Personal & Advertising Injury Limit | \$1,000,000 |
| D. Bodily Injury & Property Damage Each Occurrence Limit | \$1,000,000 |

Other General Liability Conditions:

 1. Products and Completed Operations to be maintained for one year after final payment. Contractor/Vendor shall continue to provide evidence of such coverage to the County on an annual basis during the aforementioned period (as appropriate).
 2. Contractor/Vendor agrees that the insurance afforded the County is primary.
 3. If coverage is provided on Claims Made forms, the insurance shall continue for a period of not less than 3 years following termination of the agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of the Agreement.
- III. Commercial Automobile Liability insurance including coverage for all owned, non-owned, & hired autos. Limits to be as follows:

| | |
|--|-------------|
| A. Bodily Injury & Property Damage Combined Single Limit | \$1,000,000 |
|--|-------------|
- IV. Minimum required limits set forth herein may be met by utilizing a combination of excess/umbrella policies in conjunction with primary insurance policies if necessary.

- V. **All Insurance policies** (except Auto, Workers Compensation and Professional Liability) **shall include Larimer County and its elected and appointed officials and employees as additional insureds as their interests may appear.** The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage. Additional Insured endorsement(s) shall be attached to the certificate of insurance that is provided to the county.
- VI. The County reserves the right to reject any insurer it deems not financially acceptable by insurance industry standards. Property and Liability Insurance Companies shall be licensed to do business in the State of Colorado and shall have an AM Best rating of not less than A- VII.
- VII. **Notice of Cancellation:** Each insurance policy required by the insurance provision of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after thirty (30) days prior written notice has been given to the County, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Larimer County, 200 West Oak St. Suite 4000, Fort Collins, CO 80521 or InsuranceCert@larimer.org. If the insurance company refuses to provide the required notice, the contractor/vendor or its insurance broker shall notify the County of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.
- VIII. **Subcontractors:** If subcontractors are used by contractor/vendor in the performance of contracted services, all subcontractors are required to carry insurance coverage consistent with the limits as listed in this document and the subcontractor must include Larimer County an additional insured as described in section V.

ANY DEVIATIONS FROM THE STANDARDS GIVEN ABOVE MUST BE APPROVED BY THE LARIMER COUNTY RISK MANAGEMENT DIVISION.