STATE OF COLORADO
Colorado Mesa University
Consultant Agreement

1. PARTIES. THIS AGREEMENT is entered into by and between the STATE OF COLORADO, acting by and through the Board of Trustees of Colorado Mesa University for the use and benefit of Colorado Mesa University, hereinafter referred to as the "State" or "University", and Consultant or Contractor, having its offices at Colorado Mesa University, hereinafter referred to as the Consultant or Contractor.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY. This Agreement shall not be effective or enforceable until it is approved and signed by the University Vice President of Finance and Administration or its designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Consultant for any performance hereunder or be bound by any provision hereof prior to the Effective Date.

RECITALS

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment in Fund Number TBD, Account Number 6100; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the University intends to procure Consultant, hereinafter called the Work; and

NOW THEREFORE, it is hereby agreed that

ARTICLE 1. SCOPE OF WORK

The Consultant, in consideration of State’s promises hereinafter made, promises to perform and accomplish all the work and services proposed, and in accordance with the terms and conditions set forth in the scope of work description, which documents are attached hereto and made a part hereof by reference as Exhibit A, (including the Consultant’s Services Schedule). Consultant shall undertake and perform the necessary work and services (as detailed in the Consultant’s Services Schedule outlining the required time to perform such work and services and including University review times) as is customarily done in the professional practice of Consulting in the community for undertakings of similar character, scope and magnitude.

ARTICLE 2. COMPENSATION

In consideration for the performance of the said work and services including Reimbursable Expenses if applicable, University agrees to pay to Consultant fees and charges not to exceed $Click or tap here to enter text.). Payments to the Consultant shall be made monthly based upon Consultant’s performance and progress, through a properly submitted invoice. Payments shall be due per C.R.S. § 24-30-202(24) (correct notice of amount due), within forty-five (45) days of receipt by the University of an invoice.

ARTICLE 3. REIMBURSABLE EXPENSE

Reimbursable expenses are included in the compensation for said work and services and include actual expenditures made by the consultant and its employees and consultants in the interest of the University.
The consultant understands and agrees that a certain dollar amount as enumerated in EXHIBIT A, Consultant’s Proposal has been established as a maximum amount to be paid including all reimbursable expenses. Reimbursement of travel expenses is to be based on reasonable and necessary travel costs within the limits of State/Federal per diem rates as published in the travel section of the University Fiscal Rules, Meal and Incidental Per Diem Rates: https://drive.google.com/file/d/1DtrL-DxFIdbUhK5_xRxgKzCL9KD4jW8G/view

ARTICLE 4. AGREEMENT EXPIRATION

Unless sooner terminated, this Agreement shall remain in effect until the work and services are completed and accepted by the University.

ARTICLE 5. TERMINATION OF AGREEMENT

5.1 DEFAULT
This Agreement may be terminated by either party upon seven (7) days written notice, should the other party fail substantially to perform in accordance with its terms through no fault of the other.

5.2 TERMINATION FOR CONVENIENCE
The State may terminate this Contract for any reason, at any time, and without penalty or liability thereto. The State shall effect such termination by giving written notice of such termination to the Contractor and specifying the effective date thereof, but no less than forty five (45) days before the effective date of such termination. The State shall reimburse Contractor for accepted performance up to the date of termination.

ARTICLE 6. CONSULTANT’S ACCOUNTING RECORDS

Records of the Consultant’s Direct Personnel, Consultant, and reimbursable Expense pertaining to this Agreement and records of accounts between the University and Consultant shall be kept on a generally recognized accounting basis and shall be available to the University at mutually convenient times and extending to three (3) years after final payment under this Agreement.

ARTICLE 7. INSURANCE

7.1 Certificates
Consultant shall provide the State with certificates showing insurance coverage required hereunder within seven (7) Business Days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Consultant shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the Term of this Contract, consultant shall, within seven (7) Business Days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §7.1.

7.2 COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)
This insurance must protect the Consultant from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any work under this Contract, whether such operations be by the Consultant or by any Subcontractor under him or anyone directly or indirectly employed by the Consultant or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Aggregate</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Products – Completed Operations Aggregate</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Personal Injury</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The following coverages shall be included in the CGL:
1. Additional Insured status in favor of the State of Colorado.
2. The policy shall be endorsed to be **primary and non-contributory** with any insurance maintained by Additional Insureds.
3. A waiver of Subrogation in favor of all Additional Insured parties.

7.3 **AUTOMOBILE LIABILITY INSURANCE**
Automobile liability insurance and business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).

Combined Bodily Injury and Property Damage Liability
(Combined Single Limit): $1,000,000 each accident

Coverages:
Specific waiver of subrogation

7.4 **WORKERS COMPENSATION INSURANCE**
The Consultant shall procure and maintain Workers’ Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the State of Colorado.

The Consultant shall also require each Subcontractor to furnish Workers’ Compensation Insurance, including occupational disease provisions for all of the latter’s employees, and to the extent not furnished, the Consultant accepts full liability and responsibility for Subcontractor’s employees.

In cases where any class of employees engaged in hazardous work under this Contract at the is not protected under the Workers’ Compensation statute, the Consultant shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

**ARTICLE 8. SPECIAL PROVISIONS**
These Special Provisions apply to all Contracts except where noted in *italics*.

8.1 **VICE PRESIDENT AND UNIVERSITY CONTROLLER APPROVAL.**
This Contract shall not be valid until it has been approved by the University’s Vice President for Finance and Administration and the University Controller or their authorized delegates.

8.2 **FUND AVAILABILITY. C.R.S. § 24-30-202(5.5)**
Financial obligations of the University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

8.3 **GOVERNMENTAL IMMUNITY**
Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

8.4 **INDEPENDENT CONTRACTOR**
Consultant shall perform its duties hereunder as an independent contractor and not as an employee. Neither Consultant nor any agent or employee of Consultant shall be deemed to be an agent or employee of the University. Consultant and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the University and the University shall not pay for or otherwise provide such coverage for Consultant or any of its agents or employees. Unemployment insurance benefits
will be available to Consultant and its employees and agents only if such coverage is made available by Consultant or a third party. Consultant shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Consultant shall not have authorization, express or implied, to bind the University to any agreement, liability or understanding, except as expressly set forth herein. Consultant shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the University, and (c) be solely responsible for its acts and those of its employees and agents.

8.5 COMPLIANCE WITH LAW
Consultant shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

8.6 CHOICE OF LAW
Colorado law, and procedures and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, procedures, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

8.7 BINDING ARBITRATION PROHIBITED.
The University does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contact or incorporated herein by reference shall be null and void.

8.8 EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.
See CRS §§24-18-201 and 24-50-507.
The signatories aver that to their knowledge, no employee of the University has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

8.9 VENDOR OFFSET
[Not applicable to intergovernmental agreements]
If required by CRS §24-30-202.4 (3.5), the University Controller may withhold payment under the state's vendor offset intercept system for debts owed for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the state as a result of final agency determination or judicial action.

8.10 PUBLIC CONTRACTS FOR SERVICES. See CRS §8-17.5-101.
[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment
screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the University within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the University a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the University may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

8.11 PUBLIC CONTRACTS FOR SERVICES. C.R.S. § 8-17.5-101
[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the University within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the University a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the University may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

8.12 PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. § 24-76.5-101
If a a natural person eighteen (18) years of age or older, Contractor hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Contract.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 SUCCESSORS AND ASSIGNS
Except as otherwise provided for herein, Consultant rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts or sub-consultants approved by Consultant or the State are subject to all of the provisions hereof. Consultant shall be solely responsible for all aspects of subcontracting arrangements and performance.

9.2 CONTINGENT FEE PROHIBITION, in accordance with C.R.S. § 24-30-1404 (4)
As amended, the Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for him, to solicit or secure this contract, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of this contract.

For breach or violation of this warranty, the University shall have the right to terminate this contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, or consideration.

9.3 EXTENT OF AGREEMENT
This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

University and Consultant understand and agree the attachments and exhibits hereto are and shall be integral parts of this Agreement and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.

9.5 CONSTRUCTION OF LANGUAGE
The language used in this Agreement shall be construed as a whole according to its plain meaning, and not strictly for or against any party.

9.6 SEVERABILITY
Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

9.7 SECTION HEADINGS
The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

9.8 NO THIRD-PARTY BENEFICIARIES
Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

9.9 WAIVER
Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

9.10 INDEMNIFICATION
Contractor shall indemnify, save, and hold harmless the University, the State of Colorado, their employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
9.11 BINDING EFFECT
Except as otherwise provided in 9.1, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

9.12 COUNTERPARTS
This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

9.13 MODIFICATION
By the Parties, except as specifically provided in this Agreement, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with the Office of the State Architect.

By Operation of Law, This Agreement is subject to such modifications as may be required by changes in federal or Colorado state law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

9.14 SURVIVAL OF CERTAIN CONTRACT TERMS
Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Consultant fails to perform or comply as required.

9.15 TAXES
The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. § 39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions may require payment of sales or use taxes even though the product or service is provided to the State. Consultant shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Consultant for such taxes.

9.16 CORA DISCLOSURE
To the extent not prohibited by federal law, this Agreement and the performance measures and standards under the University Procurement Rules, if any, are subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-201, et seq.
SIGNATURE APPROVALS:

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

THE CONSULTANT

STATE OF COLORADO, acting by and through the Board of Trustees of Colorado Mesa University for the use and benefit of Colorado Mesa University

By: ____________________________

Joseph Taylor, Controller

Date: ____________________________

Legal Name of Contracting Entity

*Signature

By ________________

Name (print) ________________ Title ________________

Date: ____________________________

ALL CONTRACTS REQUIRE APPROVAL BY THE UNIVERSITY’S VICE PRESIDENT FOR FINANCE AND ADMINISTRATION

The University’s Fiscal Rules require the University’s Vice President for Finance and Administration to approve all Contracts. This Contract is not valid until signed and dated below by the University’s Vice President for Finance and Administration or authorized delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the University is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.

VICE PRESIDENT FOR FINANCE AND ADMINISTRATION

Laura Glatt

By: ____________________________

Laura Glatt or Authorized Delegate

Date: ____________________________