

REQUEST FOR PROPOSALS

for

**CONSULTING SERVICES TO
PREPARE A PARKS, OPEN SPACE, AND TRAILS MASTER PLAN
FOR THE TOWN OF FIRESTONE**

Planning and Development
RFP 2019 – 004



Town of Firestone
151 Grant Avenue
P.O. Box 100
Firestone, Colorado 80520

Mailing Address: 151 Grant Avenue
Firestone, CO 80520

Issued: **May 20, 2019**

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INVITATION TO SUBMIT PROPOSALS

The Town of Firestone, Colorado is requesting proposals from qualified consulting firms to provide professional master planning services. The Town is conducting a Qualifications Based Selection process to retain a firm for the purpose of preparing a Parks, Open Space, and Trails Master Plan.

This Request for Proposals (RFP) is being released on Monday, May 20, 2019.

Sealed proposals in response to this RFP shall be clearly marked on the envelope as follows:

RFP 2019-004 – Town of Firestone Parks, Open Space & Trails Master Plan

Sealed proposals shall be hand delivered to the Town and accepted until 5:00pm, MDT, Friday, June 21, 2019 at:

Town of Firestone
Town Clerk's Office
151 Grant Ave.
Firestone, Colorado, 80520

Proposals received after the date and time indicated above and/or proposals which are not prepared and filed in accordance with the terms and conditions of this RFP will not be considered for evaluation and will be returned to the Respondent unopened.

I. PROJECT BACKGROUND AND INTRODUCTION

The Town of Firestone

The Town of Firestone is located 30 miles north of Denver, 18 miles east of Boulder, and straddles the I-25 corridor north of E-470 and the Northwest Parkway. Incorporated in 1908, Firestone was originally established to support local coal miners and their families. At the time, the Town covered 160 acres of what is now Historic Firestone. The incorporated area now covers 14 square miles with a planning area of 47 square miles.

The Town's population grew from 2,248 in 2000 to 10,249 in 2010 growing at an average rate of 15% per year. The Town's population as of 2017 is 13,660 with a median age of 34.3 and an average household income of more than \$95K. By 2030, Firestone is expected to be home to 20,576 residents.

The Town of Firestone is located in Weld County and is home to the 688-Acre St. Vrain State Park along with an estimated 640 acres of open space, 84 acres of parks, and more than 20 miles of trails that access the Colorado Front Range Trail system. Firestone also features the Saddleback Golf Club and 18-hole golf course, regional sports complex, a 35,000 square foot regional library, and part of the award winning St. Vrain Valley School District.

Firestone's population is educated and dynamic, drawn to the Town's expansive mountain views, scenic trails, amenities, neighborhoods, community events and easy access to Denver, Fort Collins, Boulder, and Denver International Airport.

There are plenty of reasons Money Magazine identified Firestone as one of the Best Places to Live among America's Small Towns.

The Master Plan Project

The Town has experienced substantial growth and development over the last 19 years. The Parks, Open Space, and Trails Master Plan will be used in conjunction with the Master Plan (Comprehensive Plan), and the Town's goals to guide the development of future parks and recreational amenities and the enhancement of existing resources that will best meet the needs of this growing community.

Various stakeholder and public input processes will be undertaken including coordinating with the Parks, Trails, and Recreation Advisory Board (PTRAB) and the Town Board of Trustees (BOT) for the planning process. The Director of Community Resources will serve as Project Manager and liaison to the Boards.

The staff project team for this project will include the Director of Community Resources (Project Manager), Public Works Operations & Maintenance Manager, Parks Foreman, Director of Planning & Development, and Planning Manager. Other resources available to the project team include the Town Engineer (for infrastructure, traffic, or other relevant considerations), the Finance Director (for financial and funding considerations), the Police Chief (for Code, enforcement or other public safety considerations), and the Director of Marketing and Communication (for public outreach and graphics standards).

Key stakeholders for this project include, but are not limited to: Board of Trustees, Parks, Trails and Recreation Advisory Board, Cultural Committee, Planning Commission,

Carbon Valley Park and Recreation District, schools, other special interest groups, and Firestone residents and visitors.

The anticipated project schedule is:

May 20, 2019	RFP Released
June 4, 2019	Pre-Proposal Meeting
June 12, 2019	Question Period End Date
June 14, 2019	Final Addendum Issued
June 21, 2019	Proposals Due
June 24-July 12, 2019	Evaluation, Interviews, Reference Checks
July 8, 2019	Interviews with PTRAB
July 15-17, 2019	Contract negotiations with preferred Consultant
July 24, 2019	Item to Board of Trustees for Approval
July 25, 2019	Notice to Proceed issued to selected Consultant
TBD in Proposal	Project Kick-Off meeting (staff project team and consulting team)
TBD in Proposal	PTRAB/Board of Trustees Briefing #1 – introduce team, establish project goals, process, timeline
TBD in Proposal	PTRAB Briefing #2 - progress update
TBD in Proposal	PTRAB Briefing #3 – draft plan and comments
TBD in Proposal	PTRAB/Board of Trustees Briefing #4 – draft plan presented
TBD in Proposal	Board of Trustees Briefing #5 – final plan presented
March, 2020	Final Plan presented for adoption to Board of Trustees

II. PROJECT COORDINATION AND ADMINISTRATION

The Project Manager for this project is:

Julie Pasillas
 Director of Community Resources
 151 Grant Ave.
 P.O. Box 100
 Firestone, CO 80520
 (303) 531-6258 (direct office)
 (303) 833-4863 (fax)
jpasillas@firestoneco.gov (e-mail)

III. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held at Firestone Town Hall in the Board Room on Tuesday, June 4, 2019 at 2:00pm MDT.

All prospective Respondents attending the pre-proposal meeting will receive information and several relevant documents in electronic form via Bidnet that may be useful in preparing proposals, including: 2013 Town of Firestone Master Plan; Firestone Parks Design Criteria Manual; Title 16 of the Municipal Code (Subdivisions); Title 17 of the Municipal Code (Zoning); Firestone Development Regulations; Design Criteria &

Construction Regulations; Zoning Map; parks, open space, and trails maps; and other useful information.

IV. SCOPE OF WORK

The successful consultant team shall provide key tasks and services consisting of, but not limited to, the following:

- A. Review Parks Design Criteria Manual, Master Plan, relevant sections of the Town Code (note: zoning and subdivision regulations are currently being amended) and other relevant documents that provide insights and data to inform the consulting team and facilitate the delivery of the project outcomes.
- B. Inventory and map all existing parks, open space and trails assets and amenities including capacity of each amenity found within the park system as well as its functionality, accessibility, condition and convenience, etc. (the Parks Division maintains a compilation of this information establishing a baseline for the inventory). Include inventory in a GIS database formatted to the Town's LGIM;
- C. Identify and map all planned parks, open space and trails assets and amenities, as documented in current annexation agreements, subdivision agreements, plats, development plans, and other planning documents.
- D. Create definitions and a classification system for all parks, open space and trails assets based on relevant criteria with acreages, park types, parameters, etc. as appropriate (Note: existing definitions and classifications for parks, open space and trails assets may be found in the Parks Design Criteria Manual, Master Plan, and other documents and are inconsistent with themselves and likely with the new definitions and classification system).
- E. Establish standards for parks, open space and trails infrastructure (refer to NRPA, other nationally recognized guidelines and existing knowledge within the Town relating to community needs). This will identify how many and/or how much of each asset (parks, playgrounds, ball fields, trails, passive recreation areas, etc.) are needed to meet community needs based on Master Plan projections.
- F. Develop Level of Service (LOS) standards to meet community needs for parks, open space, and trails. Include specific parks and open space dedication requirements for development. Provide a benchmark and comparison table and summary of dedication requirements of select similar municipalities in the Denver-Aurora, CO Combined Statistical Area;
- G. Develop recommendations and priorities covering the next ten years (2020 through 2030), including costs, potential funding mechanisms, and other relevant considerations for:
 - a. Locations of future parks, open space, and trails as well as the types and design attributes of each in order to achieve the designated Level of Service.

- b. Criteria for future dedication of land for parks, facilities, open space and trails;
 - c. Development of any currently undeveloped or underdeveloped areas in Town ownership that may better contribute to meeting existing and future community needs;
 - d. Renovation or enhancement of existing amenities (10-year capital plan);
 - e. Maintenance standards and appropriate service levels for each asset classification to maximize existing resources (including water efficiency and conservation);
 - f. Estimates of the capital and operational costs and maintenance. The analysis should be designed to be a part of the Town's Capital Improvement Plan (CIP);
 - g. Recommendations for addressing operations, staffing, maintenance, technology, services and funding needs to support implementation of the Plan;
 - h. Potential public/private partnerships or joint ventures to maximize resources and avoid duplication;
 - i. Potential modifications to the Town's existing design criteria & construction regulations for parks, open space and trails infrastructure to enhance outcomes;
 - j. Existing and future Park Impact fees and other funding sources available to provide parks, open space and trails amenities;
 - k. Review and identify available funding and financing strategies that are options for funding of construction, maintenance, repair and replacing of amenities and for future amenities desired and identified; and,
 - l. An Action Plan with phases that prioritizes recommendations and capital projects. Includes a prioritization process/ranking system for future strategic investments and level of service capital needs.
 - m. Potential Public Arts Program and how it might be best integrated into the Town's Parks, Open Space, and Trail network.
 - n. Other considerations that will enable the Town to better meet community needs.
- H. Stakeholder/Public input processes to be utilized for this project include the following and Respondents should include staffing and other resources required to meet these requirements in their proposals:
- a. Regular staff team meetings (frequency to be proposed by Respondents);

- b. Board of Trustees meetings/briefings (at least two meetings over the course of the project);
- c. PTRAB/Advisory Boards meetings/briefings – four meetings over the course of the project (may be joint meetings with Board of Trustees):
 - i. to introduce the project team/consulting team and discuss project goals/objectives and obtain initial input. Following this initial meeting, the project team will submit written questions for PTRAB responses and PTRAB may provide additional relevant information by the established project deadlines;
 - ii. to provide a project update;
 - iii. to present and deliver the draft Master Plan and request written comments from PTRAB prior to preparation of the next draft that will go to the Board of Trustees; and,
 - iv. to present and deliver the final Master Plan and request written comments from PTRAB prior to preparation of the next draft that will go to the Board of Trustees.
- d. Referral of the draft Master Plan to the Planning Commission for comments;
- e. Public and community input as proposed by Respondent. May include online surveys, open houses, Town sponsored-events, focus groups, neighborhood park meetings, etc. throughout various phases of the project.

The Consultant will summarize and synthesize all input prior to formulating recommendations and priorities to be incorporated into the Master Plan.

- I. Key project deliverables will include, but are not limited to the following and Respondents should include staffing and other resources required to meet these requirements in their proposals:
 - a. Defined and agreed project scope and project schedule;
 - b. Regular project progress reports (brief – these may be reviewed by the Board of Trustees/Project Team and/or published on the Town’s website);
 - c. Summaries/Reports of all survey findings and public input processes;
 - d. Presentations for the Board of Trustees meetings, PTRAB meetings, open houses, and website (as required);
 - e. Initial Draft Master Plan, including maps and exhibits in agreed formats (this version will go out for comments);
 - f. Final Draft Master Plan (this version is intended for the Project Team/Board of Trustees final review and comment);

- g. Final Master Plan; and
- h. A flash drive containing all project documents, research material, photographs, illustrations, GIS databases (LGIM format), etc. and the final Master Plan in PDF format (for website and distribution) and raw/native file work product (jpeg, psd, indd, ai, doc, xlsx, dwg, mxl, shp, gdb, aprx, etc.).

V. SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA

In order to simplify the review process and obtain the maximum degree of comparability, the proposal **must follow the outline described below**, and at a minimum, contain the required information. Respondents are encouraged to include additional relevant information. Respondents must also include a signature page with company name, address, phone number, contact name, authorized signature and date.

A. Qualifications/Project Portfolio

- a. Firm capability - Company resources;
- b. Areas of specialization;
- c. Practice Philosophy;
- d. History of the firm and how many years in the business;
- e. Project Team - Key project staff assigned to this project (include resumes for each); identify any sub-consultants and their proposed roles (include resumes for each);
- f. Letter from Principal certifying the availability and commitment of staff assigned to this project;
- g. Ability to complete project within anticipated time frame; and,
- h. Work location.

B. Experience

- a. Relevant recent experience with comparable projects (regional experience preferred); and,
- b. List of clients (3-5) for whom similar work has been done in the last five years. Include a brief description of the project, a contact name and phone number for each. The projects should be comparable in complexity, size, scope and discipline (as described in the Scope of Work section) and been undertaken during the past five years.

C. Project Understanding, Approach and Schedule

- a. Detailed description of the firm's understanding of the project outlined in the Scope of Work;
- b. Description of the firm's approach to this project along with a detailed work plan showing all key tasks. Include additional proposed tasks and their purposes to fully explain the work considered necessary to complete this project;

- c. Proposed project schedule to meet the anticipated deadlines outlined in this RFP, including all stakeholder/public input processes and meetings. Please provide this in Gantt chart format;
 - d. Identify the potential key challenges presented by this project and the firm's approach to meeting them; and,
 - e. Propose additional tasks that may add value to achieving the best possible project outcomes. List the required resources **and cost for each of these separately in the cost proposal.**
- D. Quality Control
- a. Detailed description of the firm's approach to ensuring quality control over the entire project.
- E. Standard Agreement
- a. The Town's standard Agreement for Professional Services will be used for this project (refer to the attached agreement). Any exceptions to the standard agreement must be submitted in writing with the proposal.
- F. Fee Proposal (MUST BE IN A SEPARATE ENVELOPE INSIDE THE MAIN ENVELOPE)
- a. Include a total "not-to-exceed" detailed fee proposal that includes all necessary work to complete the services outlined in the Scope of Work (based on estimated level of effort to be spent on each task) and any additional tasks proposed;
 - b. Sub-consultant costs shall be included in the cost proposal;
 - c. Include an itemized schedule of all expenses by phase including a composite schedule of hours estimated for all included tasks;
 - d. Itemize all anticipated reimbursable items and include as a separate item in the cost proposal; and,
 - e. Include an hourly rate fee schedule listing each member of the project team.

VI. SELECTION PROCESS

- A. The Town of Firestone will review all responses to this RFP that meet requirements and are received prior to the designated closing date and time.
- B. The proposals will be evaluated by the Town's review team using a quality based selection criteria and format. Evaluation criteria for proposals shall generally include the following factors:
 - strength of qualifications of the individuals assigned to this project
 - strength of recent, relevant project experience
 - strength of unique qualifications of the firm
 - project approach, management strategy, and organization of tasks
 - strength of references from current and past clients
 - cost of services to be provided
- C. Upon review of the qualified firms, the Town of Firestone will conduct interviews with the highest-ranking Respondents.

- D. Following review of the proposals and interviews, the highest-ranking Respondent will be notified and, if necessary, negotiations will commence.
- E. If a satisfactory agreement with the Respondent cannot be reached, negotiations with that Respondent shall be formally terminated. The Town may then undertake negotiations with the second ranked Respondent or other Respondents or may re-issue the RFP at its discretion.
- F. The Town of Firestone will select the proposal which best reflects the Town's needs and requirements. The Town will have sole determination of which proposal, if any, is in the Town's best interest and may cancel this RFP and process at any time.

VII. SELECTION AND PERFORMANCE SCHEDULE

Following is the anticipated schedule of events for the RFP process:

Request For Proposal Available	May 20, 2019
Proposals Due	June 21, 2019
Anticipated Notice of Award	July 24, 2019

The anticipated project performance schedule is shown on page 6.

VIII. TERMS AND CONDITIONS OF PROPOSAL

All firms interested in submitting a proposal should note the terms and conditions set forth below:

- A. **RESPONSE:** An **original and five (5) copies** of the proposal must be submitted. **One original Fee Proposal must be in a separate, sealed envelope inside the main envelope and the firm is required to separate cost by major phases of the process. Do not include any reference to fees in the body of the RFP response.** In addition, the entire proposal and any attachments shall be in electronic form on a flash drive; one flash drive shall be submitted.
- B. **INTERPRETATION OF DOCUMENTS AND SPECIFICATIONS:** Wherever the word "contract" appears, it shall be held to include all the documents as listed. No less than all of the parts of the contract documents shall constitute the formal contract. If any person contemplating submitting a proposal for the proposed contract is in doubt as to the true meaning of any part of specifications, schedules, or information sheets or the proposed contract documents, he/she may submit to the project manager a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt and actual delivery. Any interpretation of such documents will be made only by an addendum duly issued, and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The Town will not be responsible for any explanation or interpretation of such documents which anyone presumes to make on behalf of the Town.

- C. **TERMS AND CONDITIONS:** As set forth in the contract agreements and any supplemental, the following terms and conditions will apply to this Request for Proposal, each vendor's proposal and to the negotiations, if any, of any said contract. Submission of a proposal in response to this RFP indicates the vendor's acceptance of the terms and conditions contained in this document and the contract.
- D. **PROPOSER EXPENSES:** The Town of Firestone will not be responsible for any expenses incurred by any vendor in preparing and submitting an offer.
- E. **WITHDRAWAL:** A vendor may withdraw his/her proposal at any time prior to the expiration of the final date and time set for receipt of proposals. Withdrawal notification must be in written form, and must be received in the Offices of the Town Clerk prior to the closing date and time.
- F. **IRREVOCABILITY:** Following the time of closing, all RFP's will become irrevocable offers to the Town and will remain as such until 90 calendar days from date of submission. By submission of a proposal, the vendor agrees to enter into a contract. In addition, all quoted prices will be firm and valid up to 90 calendar days from date of submission. The Town may, in its sole discretion, release any proposal and return any bonds if applicable prior to the 90 days.
- G. **LATE PROPOSALS:** Any proposal received after the Final date and time for receipt of proposals will not be accepted and will be unopened and discarded without being considered.
- H. **SIGNATURES OF VENDORS:** Each vendor shall sign his/her proposal, using his/her legal signature and giving his/her full business address. The person signing the proposal must be an officer of the company or partnership. Proposals by partnerships shall be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the President, Secretary, or other persons authorized to bind it in the matter. The names of all persons signing should also be printed below the signature. A proposal by a person who affixes to his/her signature the word, "President", "Secretary", "Agent" or other designation without disclosing his/her principal, may be held to be a proposal of the individual signing. When requested by the Town, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished. Proposals submitted electronically are to be typed in lieu of written signature (see the cover letter).
- I. **PUBLIC RECORDS:** Notwithstanding any language contained in a proposal to the contrary, all proposals submitted to the Town become the property of the Town. Any information considered proprietary or confidential should be marked by the vendor and as such and will be kept confidential to the extent provided by law.
- J. **SALES TAX:** Vendors shall not include federal, state, or local excise, sales or use taxes in prices offered, as the Town is exempt from payment of such taxes.
- K. **MISTAKES IN RFP INSTRUCTIONS:** If the Town makes a mistake in drafting

the RFP instructions or any other contract documents, the Town reserves the right to reject any or all proposals, or to require that vendors submit an alternate proposal with adjustments made to correct the error(s). Such errors will be set forth in an addendum. If the vendor has already been selected and has started performing work under the contract, and the Town then discovers a mistake in the contract documents for which the Town is responsible, the Town may opt to reform the contract. If the mistake causes the vendor to receive compensation for materials not used in the work or for labor that would not be required for the work, the contract price shall be decreased proportionally. If the mistake causes the vendor to fail to include work which must be performed in order to properly complete the contract, the Town may increase the contract price to equal the proportionate increase in the cost of required materials and labor caused to the vendor. In the alternative, the Town may solicit proposals for such additional work, or the Town may reassign such additional work to another vendor, as the Town deems appropriate. Nothing in this provision shall apply to mistakes made by the vendor in completing the proposal form or in performing the contract.

- L. **ACCEPTANCE OF PROPOSAL:** It is expressly understood and agreed that the Town reserves the right to reject any or all proposals, to waive formalities, and accept the proposal which appears to be in the Town's best interest.

- M. **APPEAL OF AWARD:** Solicitations will be awarded based on multiple criteria, price being just one of the conditions. Vendors can review the solicitation's special terms and conditions for information on evaluation criteria. Vendors may appeal the award decision by submitting, in writing, to the Town of Firestone, a request for reconsideration within 7 calendar days after the posting of the Notice of Intent to Award, provided that the appeal is sought by the vendor prior to the Town finalizing a contract with the selected vendor. Vendors who were deemed non-responsive are ineligible to participate in the appeal process.

- N. **DEFENSE OF SUITS:** In case any action at law or suit in equity is brought against the Town, any officer, employee, or agent thereof, for or on account of the failure, omission, or neglect of the vendor to do and perform any of the covenants, acts, matters, or things by this contract undertaken to be done or performed, or for the injury or damage caused by the negligence of the vendor or his/her subcontractors or his/her or their agents, or in connection with any claim or claims based on the lawful demands of subcontractors, workmen, material, men or suppliers or machinery and parts thereof, equipment, power tools and supplies incurred in the fulfillment of the contract, the vendor shall indemnify and save harmless the Town, trustees, employees, and agents of the Town, of and from all losses, damages, costs (including attorney's fees), expenses, judgments, or decrees whatever arising out of such action of suit that may be brought as aforesaid.

- O. **CONTRACT NEGOTIATIONS:** If the Town decides to proceed and to negotiate a contract, the Town intends to provide written notification to the vendor whose proposal is deemed by the Town to be in the best interests of the Town and the Town will attempt to negotiate a contract with the selected vendor(s) on terms and conditions stated in this RFP or in the successful vendor's proposal, but shall also include terms and conditions later negotiated. If the Town and the successful vendor are unable to execute a contract and the vendor has been notified that it

is the successful vendor then the Town may cease all discussions with the (first) successful vendor without any further obligation to that vendor and select as applicable, another (second) vendor as the successful vendor. If the (second) vendor is rejected, as per the terms above, then the Town, without any further obligation to that vendor, may select as applicable, another (third) vendor as the successful vendor and so on, or the Town reserves the right to reject all proposals.

- P. **OPENING OF PROPOSALS:** The Town reserves the right to open proposals received in response to this RFP, privately and unannounced, after the closing date and time.
- Q. **EXTENSION OF TIME:** No time extensions are being considered at this time; however, should the Town extend this proposal, all vendors will be given the same considerations.
- R. **INSURANCE:** The successful firm shall, during the course of the contract and until completion thereof, provide and maintain the minimum coverages identified in the attached Agreement for Professional Services and provide Certificates of Insurance listing the Town of Firestone as additional insured.
- S. **MEDIA:** Respondents, including the successful Respondent, shall issue no news releases pertaining to this RFP or references to this project on their firm websites without the express written authorization of the Town and the Town's Public Information Officer.
- T. **AGREEMENT:** The attached Agreement for Professional Services will be used by the Town as the contract document for the work. By submitting a proposal, Respondents accept the terms of this Agreement as stated.

IX. QUESTIONS

Questions from qualified individuals and firms in relation to this RFP, must be delivered in writing and will only be accepted in the following manner: by email to Julie Pasillas, Director of Community Resources, jpasillas@firestoneco.gov. Written questions must be received **by 5:00 pm (MDT) on June 12, 2019**.

Project: 2019 POST Master Plan
Contractor:
Total Cost:
Term:
Acct. or P.O. #

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”), made this ____ day of _____, 20____, between the Town of Firestone, a Colorado municipal corporation, whose address is 151 Grant Avenue, Firestone, CO 80520, hereinafter referred to as “FIRESTONE,” and _____, an independent contractor, whose address is _____ hereinafter referred to as “CONTRACTOR,” provides as follows:

ARTICLE I SCOPE OF SERVICES

Section 1.1 Services: FIRESTONE retains CONTRACTOR, and CONTRACTOR agrees to provide the services and tasks (“Professional Services”) and provide the Deliverables as specified or described in Schedule A (collectively, the “Project”), and in accordance with any other terms of this Agreement. Schedule A is hereby incorporated by reference and made a part of this Agreement. To the extent that this Agreement and Schedule A conflict, the provisions of this Agreement shall prevail.

Section 1.2 Project Change Requests. FIRESTONE may request changes in scope from the original Professional Services or Deliverables set forth in Schedule A by delivering to CONTRACTOR a written Project Change Request (“PCR”) specifying the requested changes. Promptly after delivery of a PCR, CONTRACTOR shall prepare and deliver to FIRESTONE a proposed amendment to Schedule A that, in accordance with the PCR: (a) assesses the impact of the PCR on the scope and timing of Professional Services and Deliverables to be provided under the Project; (b) describes any additional Services and Deliverables to be provided; (c) sets forth cost estimates, specifications, implementation plans and time schedules with milestone and completion dates; (d) contains completion and acceptance criteria; and (e) sets forth any other necessary information. A PCR shall not be effective unless authorized as an amendment to this Agreement and executed by both Parties. If CONTRACTOR proceeds without such authorization, CONTRACTOR shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of FIRESTONE is authorized to modify any term of this Agreement, either directly or implied by a course of action.

Section 1.3 Contract Time: CONTRACTOR shall commence work upon direction to proceed from FIRESTONE and complete the Project on or before _____ (“Contract Time”). The Contract Time stated or referred to in this section is of the essence.

ARTICLE II FIRESTONE OBLIGATIONS

Section 2.1 Dependency Information. FIRESTONE shall provide CONTRACTOR with data, GIS data, information, reports and such other documentation (“Dependency Information”) as may be available to FIRESTONE, and reasonably required by CONTRACTOR to perform the Professional Services and/or complete the Deliverables set forth in Schedule A.

Section 2.2 Consent to Use GIS Data. FIRESTONE grants to CONTRACTOR the non-exclusive, nontransferable right to copy, store, record, transmit, display, view, print or otherwise use GIS Data solely to the extent necessary to perform the Professional Services and to complete the Deliverables under this Agreement. The GIS Data may only be used by CONTRACTOR’s employees for the purposes of performing the Professional Services and/or completing the Deliverables set forth in Schedule A.

Section 2.3 Restrictions on Use of GIS Data. The GIS Data contains proprietary information belonging exclusively to FIRESTONE, which claims copyright and trade secret protection in the Data and in each constituent element of information provided. Except as expressly permitted by this Agreement, in particular Section 2.2, CONTRACTOR will not, and will not allow any third party to: (i) copy, modify, adapt, alter, translate, or create derivative works of the GIS Data; (ii) distribute, sell, resell, lend, loan, lease, license, operate as a service bureau, managed service, sublicense or transfer the GIS Data; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the GIS Data (except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation); (iv) use the GIS Data to knowingly violate any privacy or other rights of any third party; or (v) remove, alter or obscure any proprietary notices of FIRESTONE, its licensors or suppliers included in the GIS Data.

Section 2.4 DISCLAIMER OF WARRANTIES. ALL DEPENDENCY INFORMATION, INCLUDING GIS DATA, IS PROVIDED “AS-IS” AND FIRESTONE HEREBY MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND FIRESTONE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, INTEGRATION, TITLE AND FITNESS OF THE DEPENDENCY INFORMATION FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, FIRESTONE MAKES NO WARRANTY OF ANY KIND THAT THE GIS DATA WILL BE COMPATIBLE OR WORK WITH ANY SOFTWARE OR OTHER SYSTEM.

Section 2.5 Access to Property and Records. FIRESTONE shall provide CONTRACTOR with access to its property as required and necessary to perform the Professional Services and/or complete the Deliverables set forth in Schedule A. To the extent required by law, FIRESTONE and CONTRACTOR agree to make this Agreement and any related records available for public disclosure pursuant to any open records law, including, without limitation, the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, *et seq.* CONTRACTOR agrees to hold FIRESTONE harmless from the disclosure of any records that FIRESTONE reasonably believes it is legally required to disclose.

ARTICLE III **MUTUAL OBLIGATIONS**

Section 3.1 Delays. A Party shall immediately notify the other Party in writing as soon as it becomes aware of any developments that may delay the completion of the Project or a particular Deliverable. In the event that any such delays are in breach of either Party's obligations under Sections II and IV, (A) the non-breaching Party shall have the right to terminate this Agreement pursuant to the terms of Section VII (Termination for Cause), or (B) the non-breaching Party shall have the right modify the Scope of Services through a PCR.

Section 3.2 No Damages for Delay. CONTRACTOR shall not be entitled to any increase in the rate charged for Professional Services or Deliverables, or to damages, or to additional compensation as a consequence of any such delays.

ARTICLE IV **REPRESENTATION AND WARRANTY**

Section 4.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) it has the full right, power and authority to enter into and perform its obligations and grant the rights, consents and authorizations it grants or is required to grant under this Agreement; (iii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (iv) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

Section 4.2 Contractor Representations, Warranties and Covenants.

A. Compliance with law. The services to be performed by CONTRACTOR hereunder shall be done in compliance with all applicable federal, state, county and local laws, ordinances, rules and regulations, and shall not engage in any activity related to GIS Data or Dependency Information that would place FIRESTONE in violation of any applicable law, regulations, government request, or judicial process.

B. Warranties. CONTRACTOR warrants and acknowledges as follows: (i) CONTRACTOR will perform Professional Services using commercially reasonable best efforts of a professional quality conforming to generally accepted industry standards and practices; (ii) CONTRACTOR will not violate any third party's intellectual property rights; (iii) CONTRACTOR has obtained, or will obtain, prior to performance of the Professional Services or development of the Deliverables, all third party consents, approvals, authorizations, licenses and permissions (collectively, the "Required Consents") necessary to perform the Professional Services and/or develop the Deliverables under this Agreement; (iv) shall not access, process or otherwise use GIS Data other than as necessary to facilitate the Professional Services; (v) shall not give any third party access to GIS Data, including without limitation CONTRACTOR's other customers or clients; (v) shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of GIS Data, and shall implement administrative, technical and physical

safeguards for managing unauthorized disclosure or exposure of GIS Data stored by CONTRACTOR .

C. In the event that CONTRACTOR has on-site or remote access to FIRESTONE systems or networks in connection with the Professional Services hereunder, CONTRACTOR will comply with FIRESTONE's security requirements.

D. Because FIRESTONE has retained CONTRACTOR for its professional expertise, CONTRACTOR agrees not to employ any subcontractors to perform any Professional Services or Deliverables, unless expressly authorized in writing by FIRESTONE.

ARTICLE V **PRICE AND PAYMENT**

Section 5.1 Contract Price: In consideration for the completion of the Project by CONTRACTOR in accordance with the terms of this Agreement, FIRESTONE shall pay CONTRACTOR as described in Schedule A, but in no event shall the total compensation to CONTRACTOR under this Agreement exceed \$_____. This amount shall include all fees, costs and expenses incurred by CONTRACTOR, and no additional amounts shall be paid by FIRESTONE for such fees, costs and expenses. No change to the Contract Price for the term of this agreement, including any additional compensation, or change in or adjustment to a rate, shall be effective or paid unless authorized by written amendment executed by FIRESTONE.

Section 5.2 Payment: FIRESTONE will make payment due to CONTRACTOR for compensation for completed work in the manner and at such times and amounts as set forth in Schedule A. CONTRACTOR shall submit monthly invoices to FIRESTONE which shall be due and payable thirty (30) days after receipt. Invoices for completed work may not be submitted more frequently than monthly.

Section 5.3 Contents of Invoices. Invoices shall include the basis upon which payment is requested, such as actual time, number of hours worked, materials and expenses, along with a general description of the actual Professional Services performed, the start and completion dates of any such services performed, and who performed such services. CONTRACTOR shall provide appropriate supporting documentation with each invoice.

Section 5.4 Invoice Disputes. If there exists a good faith dispute with regard to an item appearing on an invoice, FIRESTONE has the right to withhold payment on any amounts that are disputed while the Parties attempt to resolve the dispute, provided that FIRESTONE provides CONTRACTOR with notice of such dispute within thirty (30) days after receipt of the invoice and pays all undisputed amounts by the due date. FIRESTONE's withholding of such disputed amount shall not constitute a breach of this Agreement, nor shall it be grounds for CONTRACTOR to suspend or terminate its performance of undisputed Professional Services.

Section 5.5 FIRESTONE's Right to Withhold: Notwithstanding any other provision of this Agreement and without prejudice to any of FIRESTONE's rights or remedies, FIRESTONE shall have the right at any time or times, whether before or after approval of any pay request, to

deduct and withhold from any payment that may be due under this Agreement such amount as may reasonably appear necessary to compensate FIRESTONE for any actual or prospective loss due to:

- (a) work that is defective, damaged, flawed, unsuitable, nonconforming or incomplete;
- (b) damage for which CONTRACTOR is liable under this Agreement;
- (c) liens or claims of liens regardless of merit;
- (d) claims of subcontractors, suppliers or other person regardless of merit;
- (e) delay in the progress or completion of the Project;
- (f) inability of CONTRACTOR to complete the Project;
- (g) reasonable doubt that the unpaid balance available under the Agreement is adequate to cover actual or liquidated damages, if any;
- (h) failure of CONTRACTOR properly to complete or document any pay request;
- (i) any other failure of CONTRACTOR to perform any of its obligations under this Agreement; or
- (j) the cost to FIRESTONE, including attorneys' fees and administrative expenses, for correcting any of the aforesaid matters or exercising any one or more of FIRESTONE's remedies.

Section 5.6 Set Off: In addition to any other rights FIRESTONE has under this Agreement to indemnification or recoupment, CONTRACTOR agrees that FIRESTONE is entitled to set off any amounts it may owe CONTRACTOR under this Agreement against such claims for indemnity or recoupment.

Section 5.7 No Multi-Year Fiscal Obligation. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, FIRESTONE's obligations under this Agreement are subject to annual appropriation by the Board of Trustees of the Town of FIRESTONE. Any failure of a Board annually to appropriate adequate monies to finance FIRESTONE's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to CONTRACTOR of any failure to appropriate such adequate monies.

Section 5.8 Appropriation: If this is a contract for the design or construction, or both the design and construction, of a public works project, FIRESTONE has appropriated funds equal to or in excess of the Contract Price.

ARTICLE VI

TERM AND TERMINATION

Section 6.1 Term. The term of this Agreement shall commence on the ____ day of _____, 20__ (“Commencement Date”), and shall expire, unless earlier terminated as set forth in this Article VI, upon the earlier of: (a) CONTRACTOR’S completion of the Project; or (b) one (1) year from the Commencement Date (“Term”). The Term may be extended by mutual written agreement of the Parties.

Section 6.2 Termination for Convenience. This Agreement may be terminated by FIRESTONE without cause upon seven (7) days written notice to CONTRACTOR.

Section 6.3 Termination for Cause. In the event of a breach by CONTRACTOR of the terms and conditions of this Agreement, FIRESTONE may give notice to CONTRACTOR stating such breach has occurred and giving CONTRACTOR fourteen (14) days to cure such breach. If the breach is not cured within the stated timeframe, to FIRESTONE's reasonable satisfaction, FIRESTONE may terminate this Agreement.

Section 6.4 Effect of Termination. In the event of termination, CONTRACTOR shall immediately discontinue performance, and deliver to FIRESTONE all Work Product (as defined herein). Without prejudice to any other rights or remedies it may have hereunder or at law or in equity, FIRESTONE may itself or through another service provider take over any unfinished Professional Services and Deliverables covered by this Agreement by whatever reasonable method it may deem expedient. In addition, at FIRESTONE’S request, CONTRACTOR shall timely: (a) document in reasonable detail the status of the terminated Professional Services, the Work Product delivered, and the Deliverables specified in Schedule A; and (b) deliver to FIRESTONE copies of all documents and data reasonably required for the completion of any unfinished Professional Services and Deliverables. Any such termination by FIRESTONE shall be without penalty or payment obligation, other than undisputed outstanding payment obligations relating to Professional Services performed or Deliverables provided by CONTRACTOR as of the date of termination. If payment is otherwise due in a fixed sum, FIRESTONE will pay CONTRACTOR for the pro rate value of the completed portion of the Professional Services. If, however, CONTRACTOR has substantially or materially breached the standards or terms of this Agreement, FIRESTONE shall have any remedy or right to set off available at law and equity.

ARTICLE VII **OWNERSHIP**

Section 7.1 Client Materials. All right, title and interest in and to any materials provided by FIRESTONE to CONTRACTOR, including without limitation, Dependency Information, other materials of any kind and nature, and any trademarks, service marks, trade logos or other pre-existing Intellectual Property Rights (“Client Materials”) are and shall remain the sole property of FIRESTONE. No Client Materials shall be removed from FIRESTONE’s’ premises or computer systems without FIRESTONE’s prior written consent. All Client Materials shall be returned upon the earlier of (a) FIRESTONE’s request for their return; and (b) completion or termination of the Project. CONTRACTOR shall maintain such materials in good condition.

Section 7.2 Work Product. The Parties acknowledge and agree that all items delivered in the course of performance by CONTRACTOR of its various obligations under this Agreement (the “Work Product”) have been or will have been specially ordered or commissioned by FIRESTONE, and accordingly, each is and will be a “work made for hire” (as such term is used in 17 U.S.C. § 201) for FIRESTONE, effective as of the moment each such item is fixed in a tangible medium, whether or not such item is complete. CONTRACTOR hereby transfers and assigns to FIRESTONE all of its all right, title, and interest in and to all Work Product, including, but not limited to, all United States and foreign copyright, patent, trademark, trade secret and any other proprietary rights pertaining to such Work Product held by CONTRACTOR. The forgoing shall not apply to previously created and/or owned intellectual property of CONTRACTOR. Nothing in this Agreement will prevent CONTRACTOR from retaining copies of documents for the lawful use in its own business purposes; provided; however, that Work Product is not to be used by CONTRACTOR on other project applications outside the scope of the Professional Services or work under this Agreement. CONTRACTOR will provide FIRESTONE with a ten (10) day written notice prior to disposal of documents it has retained, during which time FIRESTONE may take physical possession of same.

ARTICLE VIII **INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor of FIRESTONE under this Agreement. Nothing in this Agreement is intended to create a relationship of employee-employer between CONTRACTOR and FIRESTONE. Neither Party shall be construed to be a partner, member of a joint venture, franchisee, principal, agent, representative or participant of or with the other for any purpose whatsoever. CONTRACTOR does not and shall not have any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of FIRESTONE or to bind FIRESTONE in any manner. CONTRACTOR is responsible for scheduling and determining how Professional Services and/or Deliverables are to be completed and, except as otherwise agreed, shall supply its own tools and supplies. CONTRACTOR shall be solely responsible for paying all compensation earned by its personnel. CONTRACTOR agrees to comply with all federal and state wage and hour laws, immigration laws, and anti-discrimination laws. CONTRACTOR shall be solely responsible for withholding all federal, state, and local income taxes of its personnel, and any other obligations imposed on CONTRACTOR as the employer of the personnel.

ARTICLE IX **INSURANCE**

(a) CONTRACTOR shall at its own expense procure a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by CONTRACTOR under this Agreement. Such insurance shall be in addition to the insurance requirements below or otherwise imposed by law.

(b) CONTRACTOR shall at its own expense keep in full force and effect during the term of this Agreement and during the term of any extension or amendment of this Agreement,

insurance as stated below:

(1) Commercial General Liability Insurance with minimum combined single limits of One Million Dollars and No Cents (\$1,000,000.00) for each occurrence and One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, completed operations, explosion, collapse, and underground hazards.

(2) If professional services (architecture, engineering, design, etc.) are provided, Professional Liability Insurance with limits of One Million Dollars and No Cents (\$1,000,000.00) per claim and One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) aggregate. This policy shall remain in force for the period of design and construction and shall include a discovery period of three years, to commence upon substantial completion of the Project.

(3) Workers' Compensation Insurance to cover all obligations imposed by applicable laws for all of CONTRACTOR's employees engaged in the performance of work under this Agreement, based on statutory limits prescribed by and in accordance with Colorado law. In the event any services are performed by a subcontractor, CONTRACTOR shall require such subcontractor to provide workers' compensation insurance for its employees.

(4) Comprehensive Automotive Liability Insurance for the duration of this Agreement covering all owned, non-owned, and hired vehicles used in connection with the work performed by or on behalf of CONTRACTOR under this Agreement in an amount not less than Five Hundred Thousand Dollars and No Cents (\$500,000.00) combined single limit per occurrence for bodily injury and property damage.

(c) The insurance policies required by Subsection 3.4(b)(1) shall name FIRESTONE and its employees and agents as additional insureds and shall contain waiver of subrogation provisions. No additional insured endorsement to a policy shall contain any exclusion for bodily injury or property damage arising from completed operations.

(d) Every policy required under this Section shall provide that such insurance is primary coverage with respect to work contemplated under this Agreement by all insureds and additional insureds, and that any insurance carried by FIRESTONE, its officers, or its employees, or carried by or provided through any insurance pool of FIRESTONE, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above. Any insurance policy required under this Agreement shall be written by a responsible company or companies authorized to do business under the laws of the State of Colorado, subject to the approval of FIRESTONE.

(e) Prior to commencement of work under this Agreement, CONTRACTOR shall

provide FIRESTONE with certificate(s) of insurance completed by CONTRACTOR's insurer(s) as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to FIRESTONE. The completed certificate(s) of insurance shall be sent to:

Town of Firestone
151 Grant Avenue
Firestone, Colorado 80520
Attn:

CONTRACTOR shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section by reason of CONTRACTOR's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of CONTRACTOR to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which FIRESTONE may immediately terminate this Agreement, or at its discretion FIRESTONE 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 FIRESTONE shall be repaid by CONTRACTOR to FIRESTONE upon demand, or FIRESTONE may withhold the cost of the premiums from any monies due to CONTRACTOR from FIRESTONE.

ARTICLE X **INDEMNIFICATION**

CONTRACTOR shall indemnify, defend, and hold harmless FIRESTONE and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from this Agreement, to the extent that any such claim, damage, loss, or expense is caused, or alleged to have been caused, in whole or in part, by any negligent act, error or omission of CONTRACTOR or anyone directly employed by CONTRACTOR or anyone for whose acts CONTRACTOR may be liable.

ARTICLE XI **IMMIGRATION STATUS OBLIGATIONS**

(a) CONTRACTOR certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the CONTRACTOR will participate in the United States Government's E-Verify Program or the State of Colorado Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

(b) CONTRACTOR shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this

Agreement; or

(2) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

(c) CONTRACTOR shall affirm as required by C.R.S. § 8-17.5-102 (c) (II), as may be amended, the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

(d) CONTRACTOR is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

(e) If CONTRACTOR obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, CONTRACTOR shall be required to:

(1) Notify the subcontractor and FIRESTONE within three days that the CONTRACTOR has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (B)(2) the subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(f) CONTRACTOR shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et.seq., as may be amended.

(g) If CONTRACTOR violates any of the provisions set forth in this section, FIRESTONE may terminate the Agreement and CONTRACTOR shall be liable for all actual and consequential damages incurred by FIRESTONE.

ARTICLE XII **MISCELLANEOUS**

Section 12.1 Colorado Law: This Agreement is to be governed by the laws of the State of Colorado. Venue for any litigation shall be in Weld County.

Section 12.2 Binding Effect/Non-Assignability. FIRESTONE and CONTRACTOR each binds itself, its successors, and assigns to the other party to this Agreement with respect to all

rights and obligations under this Agreement. Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

Section 12.3 Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

Section 12.4 Notice and Communications. Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand delivery shall be utilized for notice required to be given under this Agreement. Facsimile and e-mail addresses are provided for convenience only. However, copies of mailed or hand-delivered notices may be sent to the parties via e-mail or facsimile.

FIRESTONE:

Town of Firestone
151 Grant Avenue
Firestone, Colorado 80520
Attn:
Telephone:
E-mail:

CONTRACTOR:

Telephone:
E-mail:

Section 12.5 Counterparts. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

Section 12.6 No Third Party Benefit. This Agreement is between FIRESTONE and CONTRACTOR and no other person or organization shall be entitled to enforce any of its provisions or have any right under this Agreement.

Section 12.7 Severability. If any term, covenant, or condition of this Agreement is deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be binding upon the parties.

Section 12.8 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

Section 12.9 Default/Attorney's Fees. In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.

Section 12.10 No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by FIRESTONE shall not constitute a waiver of any of the other terms or obligations of this Agreement.

Section 12.11 Colorado Governmental Immunity Act. The parties hereto understand and agree that FIRESTONE 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, Sections 24-10-101 *et seq.*, C.R.S., as may be amended, or those otherwise available to FIRESTONE, its officers, or its employees.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement the day first written above.

TOWN OF FIRESTONE

ATTEST:

By: _____
Name: _____
Title: _____

Leah Vanarsdall, Town Clerk

APPROVED AS TO FORM:

William P. Hayashi, Town Attorney

CONTRACTOR:

By: _____
Name: _____
Title: _____

SCHEDULE A

(Attached to and made a part of the Agreement between the TOWN of FIRESTONE
and _____)