

CITY OF BRIGHTON

PROFESSIONAL SERVICES AGREEMENT for MUNICIPAL COURT PROBATION SERVICES

THIS AGREEMENT made and entered into this 1st day of 2018 in the year Two Thousand Eighteen by and between the **CITY OF BRIGHTON, COLORADO**, a home rule municipal corporation, hereinafter referred to as the "**City**", and Rocky Mountain Offender Management Services, LLC, a Colorado limited liability corporation authorized to conduct business in the state of Colorado, hereinafter referred to as "**Professional**".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF WORK.** The Professional agrees to provide services for (project name), as stated in this Agreement as more specifically set forth in the Scope of Services attached hereto as Exhibit "A", consisting of two (2) pages and incorporated herein by this reference.

2. **PROFESSIONAL RESPONSIBILITY.** The Professional has held itself out to the City of Brighton as having the requisite expertise and experience to perform the required Services for the Project. Professional shall faithfully perform the Work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform Work of a similar nature to the Work described in this Agreement.

3. **THE WORK SCHEDULE.** The Services to be performed pursuant to this Agreement shall be performed in accordance with the Work Schedule attached hereto as Exhibit "B", consisting of one (1) page, and incorporated herein by this reference.

4. **TIME OF COMMENCEMENT AND COMPLETION OF SERVICES.** The Services to be performed pursuant to this Agreement shall be initiated upon the City's Notice to Proceed and continue through the 31st of December, 2018 unless sooner terminated.

5. **EARLY TERMINATION BY CITY.** Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Professional. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.

All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

If Professional:

Rocky Mountain Offender Management Services, LLC
8787 Turnpike Drive #200
Westminster, CO 80031

Phone Number (303) 659-8662

If City:

With Copy To:

Director of Administrative Services
Karen Borkowski-Surine
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303-655-2012

City Manager
Philip Rodriguez
City of Brighton
500 South 4th Avenue
Brighton, CO 80601

Procurement & Contracts Supervisor
Pamela Roeding
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303-655-2003

In the event of any such early termination by the City, the Professional shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Professional's obligations under this Agreement. Such payment shall be the Professional's sole right and remedy for such termination.

6. COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS. The Professional warrants that all Work performed by Professional under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Professional shall not utilize any protected patent, trademark or copyright in performance of its Work unless Professional has obtained proper permission and all licenses, releases and other necessary documents. If Professional specifies any material, equipment, process or procedure, which is protected, Professional shall properly disclose such patents, trademarks and copyrights in the Construction Drawings or Technical Specifications.

The Professional releases, indemnifies and holds harmless the City of Brighton, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liabilities actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of Work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

7. DESIGN, PROJECT, INDEMNITY AND INSURANCE RESPONSIBILITY. The Professional shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Work rendered by the Professional. To the fullest extent permitted by law, the Professional agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Professional or any subcontractor of the Professional, or any officer, employee, or agent of the Professional or any subcontractor, or any other person for whom Professional is

responsible. The Professional shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Professional's indemnification obligation shall not be construed to extend to any injury, loss or damage which is caused by the act, omission, or other fault of the City.

Professional's duty to indemnify the City shall arise at the time written notice of a claim is first provided to the City regardless of whether claimant has filed suit on the claim. Professional's duty to indemnify the City shall arise even if the City is the only party sued by claimant so long as claimant does not allege that the City's negligence was the sole cause of claimant's damages. Professional's indemnification and defense obligation shall be limited to the percentage of fault apportioned to Professional by a court of law, arbitrator or by mutual agreement between the parties to this Agreement. Professional's indemnification and defense obligation shall cease upon a finding by a court of law, arbitrator or by mutual agreement between the parties to this Agreement that Professional was not negligent. Professional's indemnification obligation shall include, but not be limited to, any claim made against the City by (1) Professional's employee, subcontractor or subconsultant who has been injured on property owned by the City; or (2) a third party claiming patent, copyright or trademark infringement.

8. **COMPENSATION.** In consideration of the Services to be performed pursuant to this Agreement, the City agrees to pay Professional in accordance with the Fee Schedule attached hereto as Exhibit "C", consisting of one (1) page, and incorporated herein by this reference. The total of all such fees and costs shall not exceed **Fifty-Four Thousand Dollars (\$54,000)**. Monthly partial payments based upon the Professional's billings and itemized statements are permissible. The Professional shall bill its charges to the City periodically, but no more frequently than once each month. The itemized invoices from the Professional must reference the purchase order number provided and shall include:

- a. A list of the Professional's employees who worked on the Project during the billing period, the amount of time each worked, and the associated billing rate of each employee; and
- b. An itemized list of reimbursable expenses and, where applicable, copies of invoices for outside services or materials.

The amounts of all such partial payments shall be based upon the Professional's City-verified progress in completing the Services to be performed pursuant hereto and upon the City's approval of the Professional's actual reimbursable expenses. The City shall make final payment following acceptance of the work.

9. **CITY REPRESENTATIVE.** The City designates the Municipal Court Administrator as its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the Project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the City Representative.

10. **PROFESSIONAL REPRESENTATIVE.** The Professional designates Shannon Carst as its project manager to manage and supervise the performance of this Agreement on behalf of the Professional. Associated with the project manager shall be staff members whose experience and qualifications are appropriate for this Project.

11. **PROJECT DOCUMENTS.** Upon conclusion of the Project and before final payment, the Professional shall provide to the City the final written work product(s) of the Project in compact disc format and in hard copy, with two (2) copies thereof. Upon final payment, all Project notes, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other final Project work products developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Professional shall not provide copies of any material prepared hereunder to any other person or entity without the prior written consent of the City.

12. **PROGRESS REPORT.** Professional shall comply with the requirements of the Scope of Work regarding progress meetings and the obligations related thereto. Failure to provide any required monthly report or conduct the required progress meetings may, at the option of the City, suspend the processing of any partial payment request.

13. **INDEPENDENT CONTRACTOR.** The Services to be performed by Professional are those of an independent contractor and not of an employee of the City of Brighton. The City shall not be responsible for withholding any portion of Professional's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

14. **INSPECTION.** The City, through its authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

15. **CHANGES.** The City may, from time to time, require changes in the Scope of the Work to be performed hereunder, which changes shall be agreed upon by the Parties in writing. In the event such changes cause an increase or decrease in the work to be performed by the Professional or the time for such performance, the compensation to be paid to the Professional and time of performance shall be equitably adjusted. The value of any such extra work or change shall be determined in one or more of the following ways: (1) extra work lump sum; (2) time and materials; or (3) according to established hourly billing rate.

16. **SUSPENSION.** Without terminating this Agreement or breaching the obligations hereunder, the City may, at its sole discretion, suspend the Services of the Professional hereunder. Such suspension may be accomplished by giving the Professional written notice, which shall set forth the reasons for the suspension, seven (7) days in advance of the suspension date. Upon receipt of such notice, the Professional shall cease its work in as efficient a manner as possible in order to keep its total charges to the City for services under the Agreement to a minimum. In the event that the period of suspension exceeds ninety (90) days, either party may terminate this Agreement.

17. **PERSONAL SERVICES.** It is understood that the City enters into this Agreement based on the special abilities of the Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Professional shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

18. **ACCEPTANCE NOT WAIVER.** The City's approval of reports, and work or materials furnished hereunder, shall not in any way relieve the Professional of responsibility for the quality or technical accuracy of the work. The City's approval or acceptance of, or payment for, any part of the Services shall not be construed to operate as a waiver of any other rights or benefits provided to the City under this Agreement.

19. **DEFAULT.** Each and every term and condition hereof shall be deemed to be a material provision of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

20. **REMEDIES.** In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy available at law or in equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall pay the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred in connection therewith.

21. **BINDING EFFECT/AMENDMENT.** This writing, together with all exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties. This Agreement may be amended only by the mutual consent of the parties in writing.

22. **LAW/SEVERABILITY.** The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

23. **UNAUTHORIZED ALIENS.**

A. At all times during the performance of this public contract for services, the Professional shall strictly adhere to all applicable Federal, State and City laws prohibiting the employment of or contracting with undocumented workers or aliens.

B. The Professional shall not knowingly employ or contract with an unauthorized worker or alien to perform work under this public contract for services or knowingly contract with a subcontractor who knowingly employs or contracts with unauthorized workers or aliens to perform work under this Contract.

C. The Professional shall require all subcontractors of the Professional to certify in writing to the Professional that the subcontractor does not knowingly employ or contract with unauthorized workers or aliens and further to agree in writing not to knowingly employ or contract with an unauthorized worker or alien to perform work under this public contract for services.

D. The Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the City or the Department is undertaking for the purpose of determining the immigration status of all newly hired employees or contractors working on this Contract, including, but not limited to:

E. If a Professional violates a provision of this Section 23, **Unauthorized Aliens**, the City may terminate the Contract for a breach of the Contract. If the Contract is so terminated, the Professional shall be liable for actual and consequential damages to the City.

24. INSURANCE

The Professional will be required to furnish a Certificate of Insurance including Professional Liability Insurance. The City will be named as an Additional Insured on Commercial General Liability and Auto Liability policies. The policy shall list the name of the Project and project number if applicable.

A. The Professional agrees to procure and maintain in full force and effect during the term of the Agreement, at its own cost, the following coverage:

1. Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers' Liability Insurance.
2. Commercial General or Business Liability Insurance with minimum combined single limits of One Million (\$1,000,000) each occurrence and One Million (\$1,000,000) general aggregate.
3. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million (\$1,000,000) for any one occurrence, with respect to each of the Professional's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that the Consultant's insurance does not cover non-owned automobiles, then the Consultant guarantees to the City that the requirements of this paragraph shall be met by each employee, subcontractor or other agent of the Professional who utilizes an automobile in providing services to the City of Brighton under this Agreement.
4. Errors and Omissions Insurance with limits of liability of at least One Million Dollars (\$1,000,000) per claim and in the aggregate.

B. If approved by the City of Brighton prior to the commencement of any work or services under this Agreement, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

C. Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverage listed herein. Such coverage shall be procured and maintained with forms and insurers acceptable to the City of Brighton. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional in connection with providing any work or services under this Agreement. In the case of any claims made, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

D. A Certificate of Insurance shall be completed by the Professional's insurance agent(s) as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City of Brighton prior to commencement of any work or services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, non-renewed or reduced in coverage or limits until at least thirty (30) days prior written notice has been given to the City of Brighton. The completed Certificate of Insurance shall be sent to:

City of Brighton
500 South 4th Avenue
Brighton, CO 80601
Attention: Procurement & Contracts Division

E. Failure on the part of the Professional to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a Material Breach of Contract upon which the City of Brighton may immediately terminate this Agreement, or at its discretion the City of Brighton may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City of Brighton shall be repaid by the Professional to the City of Brighton upon demand, or the City of Brighton may offset the cost of the premiums against any monies due to Professional from the City of Brighton.

F. The City of Brighton reserves the right to request and receive a copy of any endorsement required to comply with the above requirements. Professional agrees to execute any and all documents necessary to allow the City of Brighton access to endorsements pertaining to this particular Project.

G. The parties hereto understand and agree that the City of Brighton, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City of Brighton, its officers or its employees.

H. In addition to procuring and delivering to the City such written Certificates of Insurance, demonstrating that the Professional has obtained and will maintain all policies of insurance coverage in the amounts required herein, the Professional shall also cause the City to be named as an Additional Insured party entitled to coverage under such policy or policies of insurance, and for that purpose the Professional shall obtain and maintain, or cause to be obtained and maintained, any and all necessary policy endorsements, additional coverage documents, or other instruments or Certificates, such as will provide such insurance coverage to the City at all times during the Professional's performance of the Project.

I. All Certificates of Insurance shall be submitted on an Acord 25-S form or most current.

IN WITNESS WHEREOF: The said Professional has hereunto set its hand and seal, and the said City of Brighton, Colorado has caused this Agreement to be signed by its representatives and countersigned by its City Clerk, the day and year first written above.

EXHIBIT "A"

SCOPE OF WORK

Professional shall provide the following services to the Brighton Municipal Court:

- a. Professional shall provide a staff member at all Municipal Court docket dates and times when probation services may be needed.
- b. This staff member shall work at the Brighton Municipal Court facility not less than forty (40) hours per forth (40) hour scheduled calendar week.
- c. Professional shall provide the Municipal Court with the qualifications of any and all employees who will be working with Municipal Court probationers. All employees of Professional shall have the following minimum qualifications:
 - i. Bachelor's degree from a four-year college or university with a major course work preferably in Criminal Justice, Sociology, Psychology, Social Work or related field; and
 - ii. A criminal history free of any felony convictions. Misdemeanor and traffic convictions will be investigated and reported to the City prior to any of Professional's staff working with the Municipal Court. The criminal history will be confirmed through a search of available criminal history registries, including the Colorado Bureau of Investigation database.
- d. Within thirty (30) days of the date of this Agreement is executed, Professional will provide the Municipal Court with Policies and Procedures governing the supervision of Municipal Court Offenders.
- e. Prior to the execution of this Agreement, Professional will provide a copy of the Professional's Employee Handbook governing employee conduct while under the employ of Professional.
- f. Professional will require a valid State of Colorado photo identification from each offender ordered to supervised probation.
- g. Professional will conduct an initial interview with each offender as soon as possible following the Court's order to probation supervision, and in any event no later than 7 days after said order.
- h. Each offender will be required to adhere to standard terms of probation supervision as established by the Municipal Court. These conditions will be explained to each offender by the Professional following sentence.
- i. Each offender will be required to report to the Professional's staff member at the Municipal Court facility at the times and on the dates by the probation officer.
- j. Professional will establish a payment plan with each offender who is ordered by the Municipal Court to pay Court costs, fees, fines and any other monies to the City of Brighton, or restitution to any victim as ordered by the Municipal Court.
- k. Professional will report the level of compliance, or lack thereof, with established terms and conditions directly to the Court on a schedule as established by the Municipal Court.

- l. The Professional will testify in any probation revocation hearing, as deemed necessary by the Municipal Court.
- m. Professional shall perform other traditional probation supervision duties as determined through mutual agreement between the Professional and the Municipal Court.
- n. Professional will provide a written summary report by the fifth (5th) day of each month summarizing the activity of the previous month.
- o. Professional will provide quarterly statistical summaries of all probation programs associated with the Brighton Municipal Court.
- p. Probation Supervision Services:
Professional shall provide services for an unlimited number of probation clients, including the following:
 - i. Pre-Sentence Investigation;
 - ii. Monitoring of compliance with educational requirements, payments of fines and fees;
 - iii. Establishing a community resource list for evaluations and treatment;
 - iv. Establishing a community service system which includes procedures for referrals and monitoring. The total cost for each defendant ordered to perform community service shall not exceed \$50 (a sliding scale may be applied when necessary);
 - v. Coordinate with the City to facilitate access by the City to Professional's computer system for the purpose of monitoring compliance by Professional of the services set forth herein;

DUTIES OF THE CITY OF BRIGHTON

- a. The City of Brighton will retain primary jurisdiction over any case order by the Municipal Court to the Professional.
- b. The Municipal Court will work with the Professional to establish supervision standards for Municipal Court cases.
- c. Municipal Court will establish Standard Terms and Conditions of Probation for Municipal Court cases.
- d. Municipal Court will provide to Professional probation revocation criteria.
- e. Municipal Court will advise all probationers ordered to probation supervision that they must cooperate with the Professional's staff or face revocation of their term of probation.
- f. Municipal Court will advise all probationers that they will be required to provide photo identification for review by Professional.
- g. Municipal Court shall clearly advise the Professional which documents shall remain confidential.
- h. The City of Brighton will provide to Professional appropriate work space in or near the Municipal Courtroom, with appropriate facilities therein.

EXHIBIT "B"

WORK SCHEDULE

The Services to be performed pursuant to this Agreement shall be performed in accordance with the following Work Schedule:

The Professional shall have available one (1) employee scheduled to be present Monday through Friday from 8:00 am to 5:00 pm for forty (40) hours per week with the exception of two (2) Wednesdays each month for Teen Court. The Professional shall follow the Holiday schedule set forth by the City Council for the City of Brighton.

EXHIBIT "C"

FEE SCHEDULE

The City of Brighton will pay the Professional for services satisfactorily performed under this Agreement in an amount not to exceed Fifty-Four Thousand Dollars (\$54,000) for the Fiscal year ending December 31, 2018, payable in equal monthly installments beginning within thirty (30) days following the completion of the first calendar year of services, January, 2018.