

# **CITY OF BRIGHTON**

## **PROFESSIONAL SERVICES AGREEMENT**

for

### **Land Acquisition Services for Ag Preservation**

**THIS AGREEMENT** made and entered into this 12th day of July in the year Two Thousand and Sixteen (2016) by and between the **CITY OF BRIGHTON, COLORADO**, a home rule municipal corporation, hereinafter referred to as the "City", and **THE CONSERVATION FUND**, a Maryland nonprofit 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 SERVICES.** The Professional agrees to provide services for the Land Acquisition Services for Ag Preservation as more specifically set forth in the Scope of Services attached hereto as Exhibit "A", consisting of one (1) page 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 Services required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform services of a similar nature to the Services described in this Agreement.
3. **THE SERVICE SCHEDULE.** The Services to be performed pursuant to this Agreement shall commence on the date on which the City issues its Notice to Proceed, and shall end on completion of the project subject to the right of the City to request an earlier start date or to extend the time for the provision of Services, as more specifically set forth in the Scope of Services (Exhibit "A").
4. **TERM.** The term of this Agreement shall be for one (1) year, commencing on the date this Agreement is executed by the City, subject to extension as provided herein. All Services to be performed under this Agreement shall commence promptly after receipt of a fully executed copy of the Agreement to the extent that the Professional has been authorized to proceed by the City.

The City, at its sole discretion, may offer annually to extend this Agreement for up to four (4) additional one-year terms provided Professional has performed the Services satisfactorily and all terms and conditions of the Agreement have been fulfilled. Each extension must be mutually agreed upon in writing, by and between the City and the Consultant, approved by the City of Brighton City Council, and shall be subject to the annual appropriation of funds therefor.

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:  
The Conservation Fund  
1942 Broadway, Suite 323  
Boulder, CO 80302  
303-444-4369

If City:

With Copy To:

Director of Parks and Recreation  
City of Brighton  
500 South 4th Avenue  
Brighton, CO 80601

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

Procurement & Contracts Manager  
City of Brighton  
500 South 4th Avenue  
Brighton, CO 80601

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. **DESIGN, PROJECT, INDEMNITY AND INSURANCE RESPONSIBILITY.** The Professional shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Services rendered by the Professional. The Professional shall save, indemnify, defend, and hold harmless the City of Brighton, its officers, agents, and employees, from and against all liability, claims, judgments, suits, demands for damages to persons or property with respect to the liability coverages, except Professional Liability coverage, specified herein which arise out of, result from or are in any manner connected with the Services to be performed under this Agreement, to the extent such injury, loss or damage is caused by, or is claimed to be caused by, the negligent acts, errors, or omissions of Professional, any subconsultant or subconsultant of Professional, or any officer, employee, or agent of Professional.

Professional agrees to indemnify and hold harmless the City of Brighton, and its officers, agents and employees, from and against all liability, claims judgments, suits, demands for damages to persons or property with respect to the Professional Liability coverages specified herein which arise out of, result from or are in any manner connected with the Services to be performed under this Agreement, to the extent such injury, loss or damage is caused by, or is claimed to be caused by, the negligent acts, errors or omissions of



Professional, any subconsultant or subconsultant of Professional, or any officer, employee or agent of Professional

("Agent of the Professional"). For purposes of this Agreement, appraisers, environmental and mineral consultants, surveyors or other outside consultants and experts hired by Professional in accordance with the Scope of Services are not and shall not be deemed an agent of the Professional. The City may enter into a separate contractor services agreement with such contractors or consultants, as necessary. The Professional shall at its expense engage experienced and competent legal counsel to represent Professional to draft purchase agreements, conservation easements, and other legal instruments necessary and appropriate to carry out the Scope of Services attached here to Exhibit "A" for the review and approval of the City of Brighton and its legal counsel; the City of Brighton agrees that Professional and its legal counsel are not providing legal advice to the City of Brighton, and the City of Brighton agrees that it is relying solely upon its own legal counsel concerning this Agreement and any matters described herein, including any work performed by the Professional, its legal counsel and any other Agent of the Professional.

Professional's duty to indemnify the City of Brighton shall arise at the time written notice of a claim is first provided to the City of Brighton regardless of whether claimant has filed suit on the claim. Professional's duty to indemnify the City of Brighton shall arise even if City of Brighton is the only party sued by claimant and/or claimant alleges that the City of Brighton's negligence was the sole cause of claimant's damages. Professional's indemnification obligation shall include, but not be limited to, any claim made against City of Brighton by (1) Professional's employee, subconsultant or subconsultant who has been injured on property owned by the City of Brighton; 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 Professional shall bill its charges to the City periodically, but no more frequently than once each month. The itemized invoices from the Professional 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 Director of Parks and Recreation 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 Christine Quinlan, 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 Services 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 CONSULTANT.** The Services to be performed by Professional are those of an independent consultant 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 services 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. **ILLEGAL ALIENS.**
  - A. At all times during the performance of the contract, the Professional shall strictly adhere to all applicable Federal, State and City laws prohibiting the employment of or contracting with undocumented workers or illegal aliens.
  - B. The Professional shall not knowingly employ or contract with an undocumented worker or illegal alien to perform work under this Contract or knowingly contract with a



subconsultant who knowingly employs or contracts with undocumented workers (illegal aliens) to perform work under this Contract.

- C. The Professional shall take affirmative action to insure that it does not employ or contract with undocumented workers or illegal aliens to perform work on this public contract for services with the City by participation in either of the following options:

**OPTION 1-E-VERIFY PROGRAM**

- (1) Execute a Memorandum of Understanding with the Social Security Administration and Department of Homeland Security for participation in the E-Verify Program for the verification of immigration status of employees hired after the date of execution of the Memorandum of Understanding.
- (2) Verify or attempt to verify through participation in the E-Verify Program that the Professional does not and will not employ undocumented workers or illegal aliens.
- (3) The Professional shall comply with all terms and conditions of the Memorandum of Understanding related to the E-Verify Program, and in particular shall not use the process for verification of immigration status to verify and applicant employment eligibility; submit a request for verification until after the employee is hired and the Form I-9 is completed and submitted; or, to reverify employees hired prior to the date of the Memorandum of Understanding.

**OPTION 2-STATE OF COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT PROGRAM ("DEPARTMENT PROGRAM")**

- (1) The Professional shall notify the Department and the City of Brighton of its intent to participate in the Department Program, and the Professional's consent in writing to the Department conducting random audits of the affidavits of the Professional filed with the City and the related documents maintained by the Professional.
- (2) The Professional shall within twenty days after hiring new employees to perform work on this public contract for services with the City, filed with the Department an affidavit affirming that the Professional has examined the legal work status of such employees, retained file copies of the required documents related thereto, and has not altered or falsified the documents for such employees.
- (3) The Professional shall provide a written, notarized copy of the affirmation to the City on or before its filing with the Department.

If the Professional has not entered in to a Memorandum of Understanding to participate in the E-Verify Program and is awarded the contract herein proposed, the Professional shall participate in the Department Program and comply with all requirements thereof during the term of the contract.

- D. The Professional shall require all subconsultants of the Professional to certify in writing to the Professional that the subconsultant does not knowingly employ or contract with undocumented workers or illegal aliens and further to agree in writing not to knowingly employ or contract with an undocumented worker or illegal alien to perform work under this public contract for services.



(1) The Professional shall not enter into a contract with a subconsultant that fails to certify to the Professional that the subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

(2) If the Professional obtains actual knowledge that a subconsultant performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Professional shall:

- a) Notify the subconsultant and the City within three days that the Professional has actual knowledge that the subconsultant is employing or contracting with an illegal alien; and
- b) Terminate the subcontract with the subconsultant if within three days of receiving the notice required pursuant to subsection D (2) (a), the subconsultant does not terminate the employment or contract with the illegal alien; except that the Professional shall not terminate the contract with the subconsultant if during such three days the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with an illegal alien.

E. The Professional shall comply with any reasonable request by the City or 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 consultants working on this Contract, including, but not limited to:

- (1) Inspections and/or interviews at such locations as this Contract is being performed;
- (2) Review documentation related to the immigration status and/or employment eligibility of any newly hired employees or consultants performing work on this public contract for services; or,
- (3) Any other reasonable steps that are necessary to determine whether a Professional or subconsultant is complying with the provisions of this Contract related to the employment of or contracting with undocumented workers or illegal aliens.

F. The Professional shall, upon request, provide to the City copies of documentation and verification of immigration status and employment eligibility received by the Professional for itself or from subconsultants; and, if requested, copies of information received from a subconsultant submitted to establish that the subconsultant has not knowingly employed or contracted with an illegal alien.

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

**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.



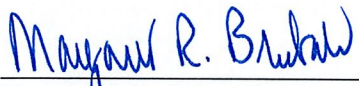
**THE CITY OF BRIGHTON, COLORADO**  
a home rule Municipal Corporation

BY:   
Richard N. McLean, Mayor

**ATTEST:**

  
Natalie Hoel, City Clerk

**APPROVED AS TO FORM:**

  
Margaret R. Brubaker, Esq.  
City Attorney


**THE CONSERVATION FUND**  
a Maryland nonprofit Corporation

BY: 

Holly Cannon  
Above Name Typed or Printed

TITLE: Senior Vice President & GC  
Corporate President or Vice President

**ATTEST:**

  
Corporate Secretary



(Corporate Seal)



## EXHIBIT "A"

### SCOPE OF SERVICES

#### *Land Acquisition Services for Ag Preservation*

The Professional, being familiar with all of the requirements of this Agreement, shall furnish all labor, material, tools, supplies, equipment, transportation, services and all other things necessary for the completion of the Project in accordance with the requirements and intent of the Agreement documents.

Specifically, the Professional shall:

- A. Assist the City with landowner negotiations and acquisition of real estate, water rights, and/or conservation easements on a willing seller basis, doing so in close collaboration with the City on the selection and relative priority of parcels within the acquisition area.
- B. Handle landowner discussions and negotiations, prepare and enter into purchase contracts, negotiate and prepare conservation easements and other transaction agreements, and assist with planning and zoning matters as needed, keeping the City apprised of negotiations and transaction details throughout the process of each transaction.
- C. Conduct a full due diligence review on each property (including title review, environmental assessment, mineral assessment, water analysis), and facilitate the closing of transactions. Professional will provide the City with copies of materials and reports it prepares or obtains as part of the due diligence review. Professional will consult with the City on selection of third-party consultants or experts as needed to complete due diligence.
- D. Assist the City in the application for funding from other sources, including but not limited to Adams County Open Space funds, and Great Outdoors Colorado (GOCO), and assist with satisfying due diligence and other grant requirements for funds awarded. Unless otherwise agreed, City staff shall retain primary responsibility for preparing grant applications and related materials.
- E. Act as an interim owner of property, as determined necessary and possible on a case by case basis, in situations that call for such an arrangements in order to satisfy landowner concerns and/or accommodate the timing of availability of funding from the City and its partners. Professional's decision to act as an interim owner shall be conditioned upon a commitment from the City, or another suitable buyer, to take title to the property at a later date.
- F. There may be properties to be acquired that will be identified by the City over the next 5 years. If desired by the City additional years may be added to acquire additional lands.



**EXHIBIT "B"**

***WORK SCHEDULE***

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

The initial term of the Agreement shall be for one year. It is anticipated that it may take as long as five years to complete this project. This Agreement can be renewed upon approval of both parties, and dependent upon funds being available in the yearly budget for such services, for four additional one year extensions.

## EXHIBIT "C"

### *FEE SCHEDULE*

A Service Fee for each property based upon percentage of the appraised fair market value (FMV) of the property. Unless otherwise agreed by the parties in writing, the Service Fee shall be 5% of the FMV of the property, but in any case not to exceed \$200,000 per property. Payment of the Service Fee shall be made by the City to the Professional at the time of Conveyance of a property to the City (or to such other owner as is agreed upon by the City and Professional); however, if Professional holds a property for a period of time, the Service Fee shall be paid by the City half at the time of Professional's acquisition of the property, and half at the time Professional conveys the property to the City (or to such other owner as is agreed upon by the City and Professional).

All transaction costs incurred by Professional for third-party consultants and experts (including, without limitation for appraisals, legal fees, surveys, environmental and mineral inspections, baseline reports, and water analysis) which have been approved by the City (the Direct Costs), will be billed directly to and paid by the City, or if paid by the Professional, will be promptly reimbursed by the City to the Professional within thirty (30) days of receipt of an invoice for such costs. At closing, the City shall pay all costs of closing, recording, title insurance premiums and other closing fees related to the conveyance of property to the City.

In the event the Professional utilizes its own funds to acquire property, and agrees to hold a property for a period of time until other funding is available to complete conveyance of the property to the City (or to such other owner as is agreed upon by City and Professional). The City shall reimburse the Professional for all costs incurred by the Professional as a result of ownership of the Property including but not limited to taxes, insurance, interest, maintenance, repairs, utilities (the Ownership Costs). Payment of Ownership Costs shall be made by the City to the Professional at the time of conveyance of a property to the City (or to such other owner as is agreed upon by the City and Professional).

Payment by the City of Direct Costs and Ownership Costs is in addition to the Service Fee.

Professional will, in close cooperation with the City, use best efforts to recover all or part of the Service Fee, Direct Costs and Ownership Costs from other sources, which may include the seller/landowner of a property or other funding partners; however, the City is responsible for payment to the Professional of the Service Fee, Direct Costs and Ownership Costs in the event they cannot be recovered from other sources.

There will be no hourly charges by the Professional for scoping with landowners or properties, for time spent participating in public processes and meetings, or generally assisting the City with its overall goals of preserving farmland and agricultural heritage in the designated area.