




Fiscal Impact Form

Department: 151, County Attorney	Date: 04/20/2022
Document Title (i.e. Resolution, Agreement, etc.): 2022 Prof. Services. Agreement for Water Engineering and Consulting Services	Term: FY, 4 renewal options

Source of Funding:

	General Fund <input checked="" type="checkbox"/>	R & B Fund <input type="checkbox"/>	EMS Fund <input type="checkbox"/>
	Social Services Fund <input type="checkbox"/>	Public Health <input type="checkbox"/>	Other <input type="checkbox"/>

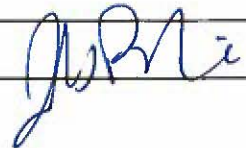
If other, please indicate:

Reporting Requirements (if any):

Description/Purpose: During the March 16, 2022 BOCC special meeting, the BOCC authorized staff to negotiate and develop a formalized contract with Wright Water Engineers, including an expanded scope of services for public outreach. Wright Water Engineers has already been providing water engineering consulting services for the county for Docket Nos. 2019CW3098 and 2021CW3064, with a maximum line-item budget of \$20,000.00 in budget series 151-7420 (water resource development). Due to the expanded scope of services, and with BOCC approval, county staff is further requesting a budget increase of \$7,500.00, to \$27,500.00, to be authorized by a subsequent supplemental budget appropriation if necessary. However, county staff anticipates additional stakeholder contribution(s) from co-applicants in 2019CW3098 may offset some or all of this increase.

Submission/Review/Approval or Denial:

Department Head / Elected Official: _____	Date: _____
County Administrator: _____	Date: _____
County Attorney: _____	Date: _____
Comments: _____	

Board of County Commissioners, Vice Chair: 	Date: <u>4/26/2022</u>
Approve <input checked="" type="checkbox"/>	Deny <input type="checkbox"/>

2022 PROFESSIONAL SERVICES AGREEMENT
FOR WATER ENGINEERING AND CONSULTING SERVICES

THIS 2022 PROFESSIONAL SERVICES AGREEMENT FOR WATER ENGINEERING AND CONSULTING SERVICES (“Agreement”) made effective the ___ day of _____, (“Effective Date”), by and between the Board of County Commissioners of the County of Ouray, Colorado, whose address is 541 Fourth Street, Ouray, Colorado, 81427, attn: County Attorney (“County”) and Wright Water Engineers, Inc., whose address is 1666 N. Main Avenue, Suite C Durango, Colorado 81301, attn: Peter Foster, P.E. (“Contractor”).

SCOPE OF WORK AND RECITALS:

1. The Contractor desires to provide professional services (“Services”), consisting of engineering consulting services for water development matters in Ouray County, including *In re Application for Water Rights for Colorado Water Conservation Board (CWCB) in Cow Creek*, Docket 2021CW3064 and *In re Application for Water Rights for Ouray County in the Uncompaghe River and its Tributaries*, Docket 2019CW3098, and related matters, as follows:

- a. Preparation, review, and assistance for engineering concepts covered in exhibits, draft rulings, any response of summaries of consultation, instream flow appropriations from CWCB, and other pleadings and underlying documents or responses. Engineering support for these concepts includes but is not limited to support regarding allocations supplemental irrigation, hydropower, augmentation, exchange, selenium water quality improvements, compact, instream flow donation and bypass concepts.
- b. Negotiations with opposers and co-applicants, including potential assistance with securing necessary agreements and/or decrees. Providing consulting engineering support and exhibits as needed.
- c. Attendance for teleconference calls with applicants’ staff and attorneys, and meetings with opposers’ engineers including Division of Water Resources staff and attorneys.
- d. Site visit(s) with applicants and opposition if needed.
- e. Assistance with securing water contracts for the County from Ridgway Reservoir.
- f. Briefing and presentations to the County Attorney, County Administrator, Outside Counsel, and Board of County Commissioners, for underlying engineering concepts for funding, management, and related decisions for current County water development project(s) in the geographical area of Ouray County.
- g. Development and assistance with public outreach, including public presentations on an as-needed basis and assistance and review of materials posted on a public website or otherwise disclosed publicly, in order to help the public understand current County water development project(s) in the geographical area of Ouray County and underlying engineering concepts.

2. The scope of services does not include the following Services, which are only available only upon submission of a separate scope of services, appropriation and availability of funding, and mutual execution and agreement of the parties of an amendment to this Agreement:

- a. Prolonged opposition or expert testimony and services for preparation and attendance if the case(s) are referred for trial.
- b. Engineering design services, including but not limited to design services for any components of any underlying water development projects such as the Ram's Horn Reservoir.
- c. Opinions of value or appraisals.

3. Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services described herein as follows: (1) in a timely manner; (2) in accordance with all applicable federal, state and local laws and regulations affecting the Project, including but not limited to Contractor's requisite ownership, rights and licenses to perform its obligations, and in a manner that will be free from all liens and encumbrances; (3) in a manner that will be free from deficiencies and defects in materials, workmanship, design or performance, as applicable, performed by qualified personnel in a professional and workmanlike manner, and consistent with industry standards and generally accepted standards for Contractor's profession; and (4) and in a manner that will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party.

TERM:

4. The Term of this Agreement ("Term") shall commence on the Effective Date first set forth herein and shall terminate on December 31, 2022, unless sooner terminated or replaced as provided herein. This Agreement may be extended for up to four (4) subsequent annual terms, subject to the appropriation and availability of funding, and the agreement of both parties to additional annual extension(s). The County Attorney or designee may provide notice of annual extension(s) including a not-to-exceed amount and an additional or modified requested scope of Services, and approval of any such extension(s) by the Contractor shall be secured in writing. Any annual extension(s) of this Agreement are strictly subject to County making an annual budget appropriation in an amount sufficient to fund extensions of this Agreement.

COMPENSATION:

5. County's current appropriations for fiscal year ("FY") 2022 are \$20,000.00 for water development matters. County also agrees to obligate an additional \$7,500.00 for water development matters in FY2022, for a total of \$27,500.00 in FY2022, due to the extensive scope of services set forth herein including extensive remaining services required in Docket No. 2021CW3064 and 2019CW3098. As of the Effective Date of this Agreement, \$9,672.75 has already been expended for water development matters. Given the ongoing litigation nature of the

work, it is difficult to estimate and project Contractor engineering fees. In consideration and exchange for Contractor's performance of the Services during the Term, County shall pay Contractor's reasonable and customary fees as more specifically not to exceed \$17,824.25 for the remainder of FY2022, subject to additional written authorization by the County with payment to be made by County to Contractor within 45 days of receipt of an invoice. Additional stakeholder contributions to the County for water development matters are applied or used at the sole discretion of County, and do not affect the not-to-exceed amount set forth herein but may be used to offset the costs of the Contractor.

SPECIAL PROVISIONS:

Assignment. Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of County which consent County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

Authority. By their signatures below, the parties acknowledge that they have the necessary authority and approvals to execute this Agreement and bind the respective entities.

Appropriation and Availability of Funds. Any obligation to remit payments or any other amounts due is contingent upon availability of funds and approval of the appropriation of funds by the County's governing body.

Audits and Availability of Records. Contractor shall be subject to financial audit by federal, state or county auditors or their designees, upon reasonable notice, and Contractor shall fully cooperate during such audit or inspections. Contractor shall keep and maintain all records for work performed under this Agreement along with financial records associated with payments from the County issued pursuant to this Agreement, in a manner which shall permit federal state, or county auditors or their designees to audit, inspect, examine, excerpt, copy, and transcribe such records in accordance with federal and/or state law, within any reasonable retention period determined by Contractor.

Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, assignees, and successors. However, the Contractor may not assign its rights or obligations under this Agreement without the written permission of the County.

Conflicts of Interest. Contractor has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services, and Contractor shall not employ any person having such known interests. The Contractor shall also not engage in any transaction, activity, or conduct that would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or

work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the County. The County, in its sole discretion, will determine the materiality of a conflict of interest in the event it determines a conflict exists, and after it has given the Contractor written notice describing the conflict, may immediately terminate the Agreement or maintain a right of first refusal to require Contractor to not engage in new transactions, activities, or conduct that would result in a conflict of interest under this Agreement. The Contractor works with entities in Ouray County and the Uncompahgre River watershed. Existing clients in Ouray County include the City of Ouray and Tri-County Water Conservation District. These clients retained the Contractor before Ouray County initially retained the Contractor. The nature of work for these clients has been discussed and no conflicts were identified at that time. If a conflict arises in the future, it is the Contractor's policy to continue work for the client that retained the contractor first. Separate contracted water development activities for co-applicants in Docket No. 2019CW3098 shall be presumed to not constitute a conflict of interest, provided said activities do not materially and adversely affect the interests of Ouray County.

Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Discrimination and ADA Compliance. Contractor agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that County take for the purpose of complying with any such laws and regulations. Contractor further represents and warrants to County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance County relies.

Employment Requirements for Public Contracts. Pursuant to §§8-17.5-101, et seq., C.R.S., Contractor certifies, warrants, and agrees that it and its subcontractors that perform work under this Agreement do not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S.

Entire Agreement. This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties. This Agreement supersedes prior negotiations, representations or agreements, either written or oral.

Electronic and Facsimile Transmissions and Signatures. For the convenience of the parties, this Agreement may also be executed by electronic means or signatures, signatures to this Agreement may be provided through facsimile or email transmission and in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. The signature of a party to this Agreement supplied by facsimile or email transmission, or electronic means or signatures, shall be as binding as an original.

Force Majeure. Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of an unforeseeable event outside the control of such party, and not caused by such party's negligence, including war or armed conflict, fire, flood, strike, riot or insurrection, terrorist attack, nuclear, chemical or biological attack, natural disaster, martial law, unreasonable delay of carriers, governmental order or regulation; provided however, that any delay caused by the Covid-19 Pandemic (or Endemic), or any other communicable disease pandemic or endemic, shall NOT be considered a force majeure event. If a force majeure event occurs, the time for performance shall be extended by mutual agreement of the parties for a period of time as may be reasonably necessary to compensate for such delay, provided that if such performance still cannot be completed within such extended period of time, either party may terminate this Agreement and both parties will be released from any further obligation to the other.

Governing Law and Dispute Resolution. This Agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The exclusive venue for any action arising with respect to this Agreement shall be the Seventh Judicial District, State of Colorado. In the event that either party to this Agreement brings an action to interpret the terms of this Agreement or to enforce its terms, both parties shall be responsible for their own costs and attorney's fees incurred in such action. Prior to commencing such an action, the parties agree to attempt to confer and resolve the dispute in good faith, along with a specific condition precedent of nonbinding mediation, with the costs for such mediation to be borne equally by each party, subject to the appropriation and availability of funds for County.

Governmental Immunity. County retains governmental immunity to the maximum extent permissible under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., and other applicable law. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes and other applicable law.

Independent Contractor Relationship. The parties agree that an Independent Contractor relationship is created by this Agreement. County is interested only in the results to be achieved, and the conduct and control of the work will lie solely with the Contractor. Contractor and its employees are not to be considered agents or employees of County for any purpose, with no authority to bind County, and it is specifically understood and agreed that the Contractor and its employees are not entitled to any of the benefits that County provides for its employees. Therefore, it is agreed that none of the benefits provided by County to its employees, including, but not limited to, any federal or state withholding taxes, FICA, insurance in any form, retirement plans, worker's compensation, or unemployment compensation, are available from County to the Contractor under the terms of this Agreement.

Indemnification: Neither party shall indemnify the other shall indemnify each other, including their officers, directors, employees, agents, representatives or successors and assigns, from or against any and all claims, demands, action, or causes of actions regarding work performed under this Agreement.

Insurance. Contractor agrees that at all times during the Term of this Agreement, Contractor shall maintain, in full force and effect and at its sole cost and expense: (1) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement; and (2) as applicable for any Services performed under this Agreement, comprehensive general liability insurance, comprehensive automobile liability insurance, and professional liability insurance such as errors and omissions coverage, in an amount no less than Three Hundred Fifty Thousand and No/100 U.S. Dollars (\$350,000.00) for injury to one person in any single occurrence; and no less than One Million and No/100 U.S. Dollars (\$1,000,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate). The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Contractor shall be responsible for the payment of any deductible or self-insured retention. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Interpretation: The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party. The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof. In the event of any conflicts between the language of the Agreement and any exhibits to it, the language of the Agreement controls.

Notices. Each notice, demand, request, or other communication required to be given or served by either party to the Agreement on the other, or which either party desires to give or serve on the other shall be in writing and any statute, ordinance, or regulation to the contrary notwithstanding, shall not be effective for any purpose whatsoever unless given or served to the

parties' addresses on page 1 of this Agreement. The parties may also agree to email delivery of any such notice, demand, request, or other communication, provided reasonable notice is given of such email delivery. The parties agree to the following general primary contact points for all work performed under this Agreement:

COUNTY:

Primary: Leo Caselli, County Attorney P.O. Box C, 541 4th Street Ouray, CO 81427, 970-325-7961, lcaselli@ouraycountyco.gov

Alternate/Legal/ Outside Counsel: Carol Viner, 1104 S. Townsend Ave, Montrose, CO 81401, 970-208-9418, cviner@cvinerlaw.com , or other such attorney designated as Outside Counsel by the County Attorney

Alternate/Financial/Administration: Connie Hunt, County Administrator, P.O. Box C, 541 4th Street Ouray, CO 81427, 970-325-7263, chunt@ouraycountyco.gov

CONTRACTOR:

Peter Foster, P.E., Vice President/Project Manager, 1666 N. Main Avenue, Suite C Durango, Colorado 81301, pfoster@wrightwater.com

Property Ownership. Any work product, information, materials, goods, or intellectual property generated as a result of the Services shall become the sole and exclusive property of the County, and Contract agrees to relinquish any rights, implied or otherwise, to such property, including but not limited to any resulting intellectual property rights.

Public Records. To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act. The parties further acknowledge and understand that all work product or materials provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S, unless otherwise excepted from disclosure by applicable state or federal law.

Severability. If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.

Termination. Either party shall have the right to terminate this Agreement at any time, with or without cause, upon ninety (90) days prior written notice to the other. Upon termination,

Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms provided in this Agreement. Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to termination or any other rights or other remedy a party may have with respect to breach of this Agreement which existed at or before the date of termination. County shall also retain the right to immediately terminate this Agreement, upon its discovery of fraud, other illegal activity, or conflicts of interest as described above.

Third-Party Beneficiary Rights Prohibited. Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the County or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

Time is of the Essence. The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.


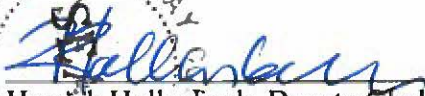
Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF OURAY, COLORADO

By: 
Jake Niece, Vice Chair

ATTEST


Hannah Hollenbeck, Deputy Clerk

CONTRACTOR

By: 
Peter R. Foster, P.E. Vice President WWE
(print name and title)