

**APPENDIX E – PROFESSIONAL SERVICES AGREEMENT**

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into the most recent day and year set forth below by and between Widefield Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and \_\_\_\_\_, a \_\_\_\_\_ (the “Consultant”) (the District and the Consultant are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

### WITNESSETH:

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

1. Scope of Services. The Consultant agrees to provide services related to \_\_\_\_\_ as set forth in the Scope of Services, attached as Exhibit A hereto which, is incorporated herein by this reference. The scope of services referenced above along with the Scope of Services attached is hereinafter referred to as the “Scope of Services.” All provisions of the Scope of Services, including without limitation any terms and conditions included therein, shall be subject to the provisions of this Agreement. In the event of any inconsistency between the provisions of this Agreement and the Scope of Services, the provisions contained within this Agreement shall control.

2. Early Termination by District. Notwithstanding the time periods contained herein, the District may terminate this Agreement at any time without cause by providing written notice of termination to the Consultant. Such notice shall be delivered at least three (3) days prior to the termination date contained in said notice unless otherwise agreed in writing by the Parties. In the event of any such early termination by the District, the Consultant shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Consultant’s obligations under this Agreement. Such payment shall be the Consultant’s sole right and remedy for such termination.

3. Suspension. Without terminating this Agreement or breaching its obligations hereunder, the District may, at its convenience, suspend the services of the Consultant by giving the Consultant written notice one day in advance of the suspension date. Upon receipt of such notice, the Consultant shall cease its work in as efficient a manner as possible so as to keep its total charges to the District for services under this Agreement to the minimum. No work shall be performed during such suspension except with prior written authorization by the District Representative. After a suspension has been in effect for thirty (30) days, the Consultant may terminate this Agreement at will.

4. Compensation. In consideration of the services to be performed pursuant to this Agreement, the District agrees to pay the Consultant the amounts set forth in the attached Scope of Services. The Consultant shall bill its charges to the District periodically, but no more frequently than once a month.

5. Independent Contractor. The services to be performed by the Consultant are those of an independent contractor and not of an employee of the District. **The Consultant is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement. Neither the Consultant nor its employees, if any, are entitled to workers' compensation benefits from the District for the performance of the services specified in this Agreement.**

6. Personal Services. It is understood that the District enters into this Agreement based on the special abilities of the Consultant and that this Agreement shall be considered an agreement for personal services. Accordingly, the Consultant shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the District. The Consultant accepts the relationship of trust and confidence established between the Parties. The Consultant shall use its best efforts and shall perform the services hereunder at or above the standard of care of those in its profession or industry providing similar services in the District's local area; provided, however, that in the event the standard of care is higher in the local area where the Consultant's office primarily responsible for providing the services is located, then the standard of care applicable to the local area where the Consultant's office is located shall be applicable to such services.

7. Duty to Warn. The Consultant agrees to call to the District's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Consultant by the District or a third-party that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Consultant shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the District. Nothing shall detract from this obligation unless the Consultant advises the District in writing that such data may be unsuitable, improper, or inaccurate and the District nevertheless confirms in writing that it wishes the Consultant to proceed according to such data as originally given.

8. Insurance. The Consultant represents, warrants, and agrees that it has and shall maintain State minimum workers' compensation insurance coverage for its employees, if any. The Consultant shall also maintain broad form general liability, property damage, and automotive liability insurance in the minimum amount of four hundred and twenty-four thousand dollars (\$424,000) for bodily injury, death, or damage to property of any person and one million one-hundred and ninety-five thousand dollars (\$1,195,000) for bodily injury, death, or damage to property of more than one person, or the maximum amount that may be recovered under the Colorado Governmental

Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended (the “CGIA”), whichever is higher. All insurance policies (except workers’ compensation) shall include the District and its elected officials and employees as additional insureds. At the request of the District, the Consultant shall provide the District with documentation evidencing such coverages.

9. Compliance with Laws. The Consultant is obligated to familiarize itself and comply with all laws applicable to the performance of the Scope of Services.

10. Acceptance Not Waiver. The District’s approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the District under this Agreement.

11. Default. Each and every term and condition hereof shall be deemed to be a material element 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.

12. Remedies. In the event a Party declares a default by the other Party, 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 at law or equity. If the non-defaulting Party commences legal or equitable actions against the defaulting Party, the defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party’s reasonable attorney fees and costs incurred because of the default. Under no circumstances shall either Party be liable to the other Party for special, punitive, indirect or consequential damages arising out of or in connection with this Agreement, including without limitation lost profits, loss of use, or loss of opportunity, except as required by Paragraph 9 (Workers Without Authorization).

13. Indemnification; No Waiver of Liability. Any provision contained in the Scope of Services purporting to require the District to defend, indemnify, or hold harmless the Consultant or purporting to effect a waiver or limitation of the Consultant’s liability (either by type of liability or amount), the District does not agree or accept such provisions and such provisions are not part of the Agreement. The District 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, defenses and protections provided by the CGIA or otherwise available to the District or its officers or employees.

14. Binding Effect. This writing constitutes the entire agreement between the Parties and shall be binding upon the Parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of the Parties.

15. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for the county in which the District's mailing address is located.

16. Severability. 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.

17. Annual Appropriation. The District's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the District's Board of Directors.

18. Ownership of Work Product. All documents such as reports, plans, drawings and contract specifications, information, and other materials prepared or furnished by the Consultant (or the Consultant's independent professional associates, subcontractors, and consultants) and paid for pursuant to this Agreement are instruments of public information and property of the District. All internal documents which support the public information such as field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the Consultant as instruments of service shall be provided to the District. The District understands such documents are not intended or represented to be suitable for reuse by the District or others for purposes outside the specific scope and conditions of the Scope of Services. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the District's sole risk and without liability or legal exposure to the Consultant, or to the Consultant's independent professional associates, subcontractors, or consultants.

19. Taxes. The District is a governmental entity and is therefore exempt from state and local sales and use tax. The District will not pay for or reimburse any sales or use tax that may not directly be imposed against the District. The Consultant shall use the District's sales tax exemption for the purchase of any and all products and equipment on behalf of the District.

20. Time is of the Essence. All times stated in this Agreement are of the essence.

21. Notices. All notices which are required or which may be given under this Agreement shall be effective when mailed via registered or certified mail, postage prepaid and sent to the address first set forth above.

22. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent

to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

23. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

**WIDEFIELD WATER AND SANITATION DISTRICT**

By: \_\_\_\_\_  
Name: Lucas Hale  
Title: District Manager  
Date: \_\_\_\_\_

**CONSULTANT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**