



**REQUEST FOR PROPOSALS**

For

**A Biodiversity Study for Town of Vail Lands – Phase I**  
**November 18, 2022**

The Town of Vail is seeking a qualified firm or university program to conduct a biodiversity study of Town of Vail open space and riparian corridors for the purposes of completing an inventory and developing a management plan to maintain and enhance biodiversity.

**Response information:**

Proposals are due by 5:00 pm MDT on January 10, 2022

Delivered via E-mail to [kbertuglia@vailgov.com](mailto:kbertuglia@vailgov.com)

One (1) electronic copy (PDF) is required to be submitted by 5:00 pm (MDT), Tuesday January 10, 2022.

Proposals due by <b>5:00 pm</b> MDT.....	<b>January 10, 2022</b>
Selection Committee review.....	<b>January 10-12, 2022</b>
Notice of Award.....	<b>January 13, 2022</b>
Contract .....	<b>January 13-January 15, 2022</b>
Project Start.....	<b>Winter 2022/Spring 2023</b>

**PROJECT GENERAL DESCRIPTION**

**PROJECT SCOPE**

The Town of Vail is a mountain resort community in Colorado at 8150 ft. in elevation with 4.5 square miles of land area. The town comprises 583 acres of open space, approximately 20% of total land area and is home to an abundance of wildlife species and diverse ecosystems. Given the increasing state-wide human population, increases in recreation, and ongoing development, the region’s flora and fauna are continuously stressed as we balance economic growth opportunities with the goal of maintaining and enhancing ecosystem health.

In accordance with the Town of Vail’s [2018 Updated Comprehensive Open Lands Plan](#), the town wishes to fulfill the following action item:

**Management of Lands for Biodiversity:**

*At its most basic level, biodiversity refers to the variety of plant and animal species found in a particular habitat. All plant and animal life is interconnected and ultimately dependent on one another. A habitat with healthy, diverse and vibrant biodiversity is essential to how an ecosystem functions with respect to cycling of nutrients and water, soil formation and retention, resistance to invasive species and the pollination of plants. Healthy biodiversity will benefit plant and animal life. The protection and preservation of*

*the natural environment and wildlife resources of Vail's open space lands is a high priority of the community. The Town's open space lands could benefit from management programs designed to improve biodiversity.*

*During the preparation of the 1994 (Comprehensive Open Lands) Plan the Town engaged the Colorado Natural Heritage Program to complete a Natural Heritage Inventory of the Town of Vail. The goal of this study was to identify "the localities of rare, threatened, or endangered species and the locations of significant natural communities." This effort evaluated thirteen parcels in and around Vail and the findings of this inventory provided a basis for some (of) the recommended Action Items in the original 1994 Comprehensive Open Lands Plan. While the '94 Plan provided valuable information on the natural resources found on open lands in and around Vail, a current evaluation or inventory of existing conditions and the relative health of these resources should be completed as a first step to preparing a management plan for Town open spaces. Understanding the natural landscape and vegetation, habitat sub-types, hydrologic systems, wildlife resources and other characteristics found on these lands is critical to establishing a "baseline" of existing conditions. This effort should be completed by an ecological-oriented consulting firm and the scope of this effort may include land beyond Town Boundaries and include lands not owned by the Town.*

*Chapter 4 – Trails, stipulates that prior to any new trail development, a comprehensive environmental and wildlife analysis be completed to understand potential impacts from trails. The inventory described above should be coordinated with the evaluation of new trail development. Establishing a baseline [inventory] of existing conditions will be useful for two reasons. Understanding existing conditions may identify the need to implement programs to enhance these natural resources. The baseline will also provide a valuable point of reference for the ongoing monitoring of these lands. The identification of potential habitat enhancements and a defined, systematic program for the monitoring of town open spaces should be elements of this effort.*

*The protection, preservation and enhancement of vegetation, aquatic resources, riparian and wildlife habitats and other natural resources found on Vail's open lands is an important community priority. Understanding these resources and making sound decisions regarding the use and management of Town lands is an objective of this Plan. It is recommended that a comprehensive study of Vail's open space lands be completed, monitoring of these resources be initiated and programs for enhancing these lands be implemented. Understanding the existing condition and health of the natural landscape is necessary to establishing a "baseline" for the ongoing monitoring of these natural resources. This effort should be completed by an ecological-oriented consulting firm [or other qualified organization] with the underlying objectives of inventorying these natural resources and developing programs to enhance the biodiversity of these lands.*  
– 2018 Comprehensive Open Lands Plan

## **1. Timing & Logistics**

The town anticipates that field work begins in the spring/summer of 2023 and the prep work begin winter 2022-23, with deliverables submitted fall 2023.

## **2. Scope**

The Town of Vail wishes to build upon the work conducted in 1992 in which the Town of Vail enlisted the Colorado Natural Heritage Program to conduct a Natural Heritage Inventory of potential conservation sites within the Town of Vail and immediate vicinity. The goal of the inventory was to systematically identify the localities of rare, threatened, or endangered species and the locations of significant natural communities (as represented by plant associations). This project may build upon this original information from the Colorado Natural Heritage Program inventory for Vail and the later inventory of [Eagle County](#), as well as the Watershed Biodiversity Initiative in the Roaring Fork Valley with a more granular focus on species and species of concern in Vail. It is possible for funds to be spent on study sites outside of the immediate jurisdiction of Vail if needed, in either Phase I or Phase II to be determined.

The primary need is for data to direct management of town-owned properties so that the value of habitats and the species occurring therein may be enhanced and maintained. The town will utilize the data to create a long-term management plan that takes into account external uses (e.g. golf courses, stream access, wildfire protection) to better inform management of town lands, recommendations for private land management, etc.

### **Inventory and assessment needs:**

- Species of concern including but not limited to small riparian species, beaver, mink, ermine, macroinvertebrates (for which yearly sampling is completed by Timberline Aquatics), migratory birds, elk, mule deer, bighorn sheep, black bear, beaver, moose, etc.
- Vegetation: relative forage quality and availability, quantity and abundance of native species
- Alpine habitats and species to be included if time and budget allow or as part of Phase II

The inventory may be conducted through a combination of field work, GIS aerial maps and data layers, gathering existing information including Colorado Parks and Wildlife habitat zones as appropriate.

### **Outcomes:**

- I. Final Inventory and Report – Identification of lands of critical concern and recommendations for a management plan for the enhancement of biodiversity.
- II. Biodiversity Policy – recommendation to the Vail Town Council for adoption: data from this updated study will serve the development and adoption of such a policy by providing an updated picture of biodiversity value, documenting and institutionalizing that, and communicating those values to citizens and landowners.
- III. Education - the final report, inventory, and management plan will serve to support existing and future education and outreach programs for the community on the importance of biodiversity and protection of essential habitats.

### **Submittal Requirements**

In addition to being able to provide the services described above, the submittal must include the following requirements:

- A. Cover letter describing the interest the Proposer has in working on the project and what uniquely sets them apart from other equally qualified Proposers.
- B. Professional background information about the Proposer including an indication of who is the project lead and the firm or entity responsible for execution on behalf of the team.

- C. Description of relevant experience. Please provide at least two (2) references from relevant project experience including name, contact information, project date, and brief project description.
- D. Description of the approach to the project, noting project understanding, unique challenges, assessments and project interpretation, and strengths that the individual, firm or team bring to this project. Please be concise when describing the approach.
- E. Specify personnel to be assigned by name, bio, position, specific office location, and commitment of time to the project. Please note the local preference for this project.
- F. Provide a fee proposal for the scope of services of the project, with a breakdown of that fee by task. The fee proposal breakdown shall include a complete line-item budget for the work with explanations as necessary. Please note a limit on overhead expenses not to exceed 10%.
- G. Provide a project schedule
- H. A written statement identifying any reservations, conditions or constraints related to the request for proposals.
- I. Upon selection, the selected Proposer shall execute an agreement with the Town of Vail acknowledging that all design work, including but not limited to plans, photographs, documents, reports, engineered drawings and Project work shall be completed in a professional and workmanship-like manner and that the Project work shall fully comply with all applicable Town of Vail regulations and ordinances and State and Federal laws and requirements.
- J. Upon selection, the selected Proposer shall execute an agreement with the Town of Vail acknowledging that all design work, including but not limited to plans, photographs, documents, reports, engineered drawings and other work produced for the Project shall become property of the Town of Vail, and may be used or reproduced by the Town of Vail without approval from or additional compensation to the Proposer.

The Town of Vail reserves all rights to investigate the qualifications of any and all individuals and firms under consideration, to perform a financial audit of one or more firms, to confirm any part of the information furnished in a proposal, and to require further evidence of managerial, financial or professional capabilities which are considered necessary for the successful performance of work described in this RFP. The Town of Vail reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received.

All proposals and supporting documents, except such information that discloses proprietary or financial information submitted in response to qualification statements, becomes public information held in custody of the Town of Vail after the proposal submittal date given in this RFP. The Town of Vail assumes no liability for the use or disclosure of technical or cost data submitted by any Proposer.

### **Selection Criteria**

Proposals will be reviewed and selected based upon the following criteria:

- The firm/university/organization's proven track record to successfully complete similar projects of accurate biodiversity assessments, monitoring, modeling, planning, GIS, and recommendations

### **General Conditions**

#### **Limitations and Award**

This RFP does not commit the Town of Vail to award or contract, nor to pay any costs incurred, in the submission of proposals in anticipation of a contract. The Town of Vail reserves the right

to reject reparation of all or any submittal received as a result of this request, to negotiate with all qualified sources, or to cancel all or part of the RFP. After a priority listing of the final firms is established, the Town of Vail will negotiate a contract with the first priority firm. If negotiations cannot be successfully completed with the first priority firm, negotiations will be formally terminated and will be initiated with the second most qualified firm and, likewise, with the remaining firms.

#### Selection

Initial evaluation will be based upon the qualifications of the applicant. The Town of Vail reserves the right to not interview, and to make final consultant selection based upon the qualification statements.

#### Equal Employment Opportunity

The selected consultant team will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

#### Contract Phasing

Proposed tasks within this RFP may be eliminated or expanded by the Town of Vail at any time due to the progression and sequencing of the scope of work.

#### Prohibition Against Employing Workers Without Authorization

A. *Certification.* Contractor hereby certifies that, as of the Effective Date, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. *Prohibited Acts.* Contractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

C. *Verification.*

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.
2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization who is performing work under this Agreement.

D. *Duty to Comply with Investigations.* Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. *Affidavits.* If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

#### Insurance

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

**APPENDIX: Example Town of Vail Professional Services Agreement**

**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the Town of Vail, a Colorado home rule municipal corporation with an address of 75 South Frontage Road, Vail, CO 81657, (the "Town"), and \_\_\_\_\_, an independent contractor with an address of \_\_\_\_\_, ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

**II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

**III. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor an amount not to exceed \$\_\_\_\_\_. This amount shall include all fees, costs

and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

#### **IV. PROFESSIONAL RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work under the Scope of Services.

D. Contractor shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, in effect now or anytime hereafter.

#### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such



work without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

## **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

## **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VIII. INDEMNIFICATION**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability,

damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. WORKERS WITHOUT AUTHORIZATION**

A. *Certification.* Contractor hereby certifies that, as of the Effective Date, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. *Prohibited Acts.* Contractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

C. *Verification.*

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the worker without authorization who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if

during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization who is performing work under this Agreement.

D. *Duty to Comply with Investigations.* Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. *Affidavits.* If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

## **X. MISCELLANEOUS**

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. *Rights and Remedies.* The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF VAIL, COLORADO**

\_\_\_\_\_  
Kristen Bertuglia, Environmental  
Sustainability Director

ATTEST:

\_\_\_\_\_  
Tammy Nagel, Town Clerk

**CONTRACTOR**

By: \_\_\_\_\_

STATE OF COLORADO                    )  
                                                          ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 2022, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

